

Books of Significance—*Simple Justice*

BY JON BUCHAN

This article is the first in what we hope will be an ongoing series written by North Carolina attorneys. As such, we asked Jon Buchan to talk about one book that has had an impact.

During the summer of 1976, after my first year in law school, I lived in Durham, working part-time as a reporter for *The Raleigh Times*, and part-time for Durham's Legal Services office. The city's sauna heat and cinnamon sweet smell of cured tobacco reminded me much of my growing up years in Mullins, South Carolina.

Fresh from Professor William Van Alstyne's constitutional law class, I dug into Richard Kluger's just-published *Simple Justice*, curious to learn more about the Supreme Court's 1954 tradition-shattering decision in *Brown v. Board of Education*. That brief, ten-page edict reversed the half-century "separate but equal" reign of *Plessy v. Ferguson* and mandated the desegregation of the nation's public schools—albeit at what turned out to be the glacial pace of "all deliberate speed."

Kluger modestly subtitled his book "The History of *Brown v. Board of Education* and Black America's Struggle for Equality." But his beautifully-written, intelligent, analytical, granular—almost loving—account of the decades of shrewd legal strategy and persistent personal courage that led up to that monumental victory is so much more than that. *Simple Justice* brings to life the human dimen-

sions of many of the key players who, at great personal risk, devoted their lives to that almost unattainable goal.

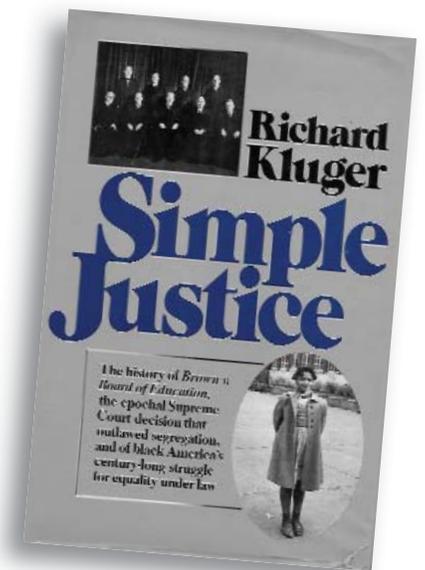
Forty years later, I can say that it's one of the best books I've ever read, helping me understand and appreciate the long, arduous legal efforts required to pry away the stubborn tentacles of state-mandated Jim Crow laws and segregated schools. It also taught me how determined, passionate lawyers can use and expand existing law, find and present critical facts, and pursue constitutional remedies in court that could eventually force necessary legal change that the democratic process has refused to make.

Simple Justice provides wonderful insight into the real lives and the high human stakes that led up to the Supreme Court's politically explosive opinion by a unanimous Court, carefully knitted together by the newly

appointed Chief Justice Earl Warren, a man with no judicial experience, but decades of political savvy.

The book focused me on the critical role a courageous group of black men and women had played in *Brown v. Board*. All were from Clarendon County, South Carolina, where seven in ten citizens were black. Determined to stand up for their school children, they first asked in 1948 for just a school bus or two—like those the white children had—to help them get to their all-black schools. That demand fell on the deaf white ears of the local school board. In 1949, led by local pastor J.A. DeLaine, and assisted by NAACP lawyer Thurgood Marshall, they filed a federal lawsuit—*Briggs v. Elliott*—seeking equal schools for their children.

Kluger describes how the white community struck back at those who joined as plain-



tiffs, firing them from their jobs as gas station attendants, maids, and teachers, and refusing to gin their sharecropped cotton. Eventually, DeLaine's house and his church were burned. He was shot at in the night, and he later fled across the state line to North Carolina, charged with a felony for firing back.

But *Briggs* worked its way through the federal courts and was eventually consolidated with cases from Kansas, Virginia, Delaware, and the District of Columbia for hearing and decision by the United States Supreme Court in what we now know as *Brown v. Board of Education*.

Simple Justice sets the stage for this epic legal battle with a brief but gripping account of the “original sin” of slavery and the post-Reconstruction racial backlash that ultimately led to the United States Supreme Court's decision in *Plessy v. Ferguson*. In that case, the Supreme Court in 1896 held that state-mandated segregation of Louisiana railroad passenger cars did not violate the equal protection clause of the Fourteenth Amendment. As the Court remarkably said, “in the nature of things, [the Fourteenth Amendment] could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either.”

And for the next 58 years of Jim Crow rule, the legal myth of “separate but equal”—based “in the nature of things”—was the law of this land.

With a fine touch for significant detail, Kluger brings us onto the battlefields of this slow march for legal equality for blacks. He recounts the early fights, jurisdiction by jurisdiction, institution by institution, to expose to judges the myths that poorly funded state-run black law schools and black pharmacy schools were “equal” to their white counterparts, and that all-white political primaries afforded blacks an “equal” participation in the political process. He tells much of the story through rich mini-biographies of the larger than life individuals who planned, fought in, or judged these civil rights battles, such as:

- Charles Houston, who in 1929 became dean of the Howard University Law School—then described by Justice Louis Brandeis as a “fifth-rate” law school—and who “injected enormous momentum into a social movement that has not yet ended.” Houston cleaned house at the law school and

attracted top-flight black legal scholars such as William Hastie, a graduate of Amherst and Harvard Law School, to the faculty. Houston taught, with a tough style, eventual civil rights giants such as Oliver Hill and Thurgood Marshall. And he litigated many of the early key civil rights cases of the 1930s.

- Thurgood Marshall, a 1933 Howard Law School graduate who led the NAACP's decades of landmark civil rights litigation. Marshall worked with Houston in a key case establishing in 1936 that there was no “separate but equal” state law school for blacks in Maryland, and persuading the Maryland courts to order the desegregation of the existing all-white school. As the lead lawyer in the *Brown v. Board* desegregation cases, Marshall made the strategic decision to move beyond arguing the “inequality” of the black schools and institutions, to making the bold and novel argument that “separate” could not, as a matter of law, be “equal.” Kluger captures well the eventual Supreme Court justice's passion, wit, legal savvy, and physical courage, describing him as a “blend of militant radical-idealist and wily pragmatist.”

- Judge John J. Parker, a prominent North Carolina Republican (then as rare as “white elephants” in North Carolina, Kruger writes) who was appointed to the Fourth Circuit Court of Appeals in 1925 at the age of 40. Nominated in 1930 by President Herbert Hoover for a seat on the United States Supreme Court, he was opposed by the NAACP and organized labor—many thought unfairly—and his nomination was defeated in the Senate. Parker was highly respected by his legal peers, and was one of the three federal judges who served as the “trial judges” in *Briggs v. Elliott*. He felt bound by *Plessy* and voted with longtime seg-

regationist Judge George Bell Timmerman against the black plaintiffs in *Briggs*.

- Judge Waties Waring, a Charleston, South Carolina, patrician whose political awareness around racial issues, as reflected in his court rulings, grew after he was appointed a federal district judge. As one of the three trial judges in *Briggs*, he forcefully dissented. Waring bravely wrote that “segregation in education can never produce equality,” adding that segregation is an “evil that must be eradicated.” Attacks on Waring were so vicious that he was given 24-hour security. Rocks were thrown through his Charleston windows, and crosses were burned in his yard. He was ostracized in his hometown and later left the bench and moved to New York. (In 2014 a statue of Waring was erected on the grounds of the Charleston federal courthouse, honoring his courageous stands on racial issues.)

Kluger's *Simple Justice* chronicles for us the lives of those individuals who had the vision and courage to stand on the right side of these civil rights issues, often in the face of hateful, threatening opposition. He also writes of many of the smart, gifted people who were comfortable apologists for racial segregation and die-hard advocates for the sad and dated doctrine of “separate but equal.” His account reminds us of the need to engage—as lawyers and citizens—in the important issues of our own times, to question tradition, and to challenge ourselves and others, every day, to try our best to stand on the right side of history. ■

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