FOCUS on Law Studies

Teaching about law in the liberal arts

SPRING 2004
Volume XIX, Number 2

PUBLISHED BY THE DIVISION FOR PUBLIC EDUCATION OF THE AMERICAN BAR ASSOCIATION

Defending Liberty Pursuing Justice

Brown and Its Impact on Schools and American Life: A Dialogue

PART I: The Color Line

EDITOR (John Paul Ryan): In 1903, W.E.B. Du Bois predicted that "the problem of the 20th century is the problem of the color line." To what extent did the *Brown* decision help break the "color line"?

CHRISTINE ROSSELL (Boston University/Political Science): The impact of the *Brown* decision was far wider than school desegregation. Shortly after the 1954 Supreme Court decision, federal courts at all levels were citing *Brown* in cases challenging different forms of official segregation. Against segregated beaches in Baltimore, golf courses in Atlanta, and public housing in Michigan and Missouri, *Brown* was invoked repeatedly to show that state-sanctioned segregation had to be expunged from the laws. *Brown* eliminated the status of black Americans as "official pariahs." It set forth, as a goal of the American people, the elimination of discrimination and thus the official "color line." By the early 1980s, that official color line had completely disappeared. At that point in time, 94 percent of both black and white Americans believed in the principle that black and white children should go to the same schools. Thus, the great triumph of *Brown* and the civil rights movement is that today racism (i.e., the color line) is socially unacceptable, and almost all Americans believe that racial diversity is a good thing, though they may disagree about how to achieve it.

MICHAEL KLARMAN (University of Virginia Law School): There are two separate questions here. First, to what extent has the color line disappeared, or at least been eviscerated, over the course of the 20th century? The answer to this question is mixed. On the one hand, we live in a nation where African-Americans comprise more than 50 percent of the prison population, even though they are just 12 percent of the general population. Black children are far more likely than white children to live in poverty; their parents are far more likely to be unemployed or to earn low incomes. Many school systems outside of the South are more racially segregated than in 1954. Today in Clarendon County, South Carolina—one of the original five desegregation cases that became *Brown v. Board of Education*—the public schools are 98 percent black, and the private schools established when court orders finally compelled "integration" of county schools are 98 percent white. This is not progress.

On the other hand, vast improvements in American race relations and in the status of African-Americans over the past half-century are undeniable. Today, an African-American man is secretary of state, and an African-American woman is national security advisor. An African-American has been on the Supreme Court since 1967 and will continue to be for the foreseeable future. None of these developments would have been easy to imagine in 1954. The extent to which blacks have achieved cultural and professional recognition in the last generation is reflected in the Supreme Court's decision last term in the Michigan affirmative action case (*Grutter v. Bollinger*). Americans have grown so accustomed to seeing minority faces in all major public and private institutions that a conservative Justice O'Connor was unwilling to upset the applecart by invalidating race-based preferences in higher education.

A second question asks how much *Brown* was responsible for eviscerating the color line. Probably, it was a lot less than most lawyers and judges are inclined to believe. Dramatic ideological, social, and political forces inaugurated or accelerated by World War II had produced significant changes in racial attitudes and practices by the early 1950s. The ideology of the war was anti-fascist and pro-democratic, and the contribution of African-American soldiers was undeniable. Upon their return to the South, thousands of black veterans tried to vote, many expressing the view that after having been overseas fighting for democracy, they should enjoy a little of it at home. Thousands more joined the NAACP, and many became civil rights litigants. During the 1940s, more than one and a half million southern

Editor's Note: *Eight social science, humanities, education, and legal scholars discuss the cultural and legal context for the* Brown v. Board of Education *decision in 1954, the sharp differences between formal equality and substantive equality, Brown's impact on schools then and now, and the continuing gap in learning outcomes.*

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blacks migrated to northern cities. This mass relocation–from a region in which blacks were nearly universally disfranchised to one in which they could vote nearly without restriction–greatly enhanced their political power. The onset of the Cold War in the late 1940s created another impetus for racial reform. In the ideological contest with communism, American democracy was on trial, and southern white supremacy was its greatest vulnerability. As the Justice Department's brief in *Brown* argued, "Racial discrimination furnishes grist for the Communist propaganda mills."

As a result of these forces, by the early 1950s most of the justices considered segregation anathema, as did growing numbers of Americans. In 1947, Jackie Robinson had desegregated major league baseball. In 1948, President Truman had issued executive orders desegregating the federal military and civil service. Startling changes in racial practices occurred even in the South. Black voter registration in the South increased from 3 percent in 1940 to 20 percent in 1950. Dozens of urban police forces in the South hired their first black officers, minor league baseball teams signed their first black players, and blacks had begun serving again on southern juries.

As they deliberated over *Brown*, the justices expressed astonishment at the scope of the recent changes. Jackson called African-American progress "one of the swiftest and most dramatic advances in the annals of man." Frankfurter agreed, remarking that "the pace of progress has surprised even those most eager in its promotion." Yet to say, as Frankfurter did, that these sorts of changes made *Brown* possible is not to say that *Brown* did not play a significant role in the civil rights movement that swept the nation in the 1960s. *Brown* played a role both in generating direct action and in shaping the response it received from white southerners. *Brown* made Jim Crow seem more vulnerable, and any social protest movement must overcome a formidable hurdle in convincing potential participants that change is feasible. *Brown* raised the hopes and expectations of black Americans, which were then largely dashed by massive resistance; this demonstrated that litigation alone could not produce meaningful social change. *Brown* inspired southern whites to try to destroy the NAACP, with some temporary success in the Deep South, and this unintentionally forced blacks to support alternative protest organizations, which embraced philosophies more sympathetic to direct action.

Finally, and most importantly, *Brown* created a massive backlash among southern whites, radicalizing southern politics and fomenting violence against civil rights demonstrators. But that violence, especially when directed at peaceful protestors and broadcast on national television, produced a counter-backlash. In 1954, most northerners agreed with *Brown* in the abstract, but their preferences were not strong enough to make them willing to face down the resistance of southern whites. It was violence against civil rights demonstrators that transformed national opinion on race. By the early 1960s, northerners were no longer prepared to tolerate brutal beatings of peaceful black demonstrators, and they responded to such scenes by demanding civil rights legislation that attacked Jim Crow at its core. By helping to lay bare the violence that underlay it, *Brown* accelerated the demise of white supremacy.

> Brown *made Jim Crow seem more vulnerable.*
>
> *[MICHAEL KLARMAN]*

CATHERINE PRENDERGAST (University of Illinois/English): Lurking underneath Michael Klarman's helpful parsing of the question into two parts, there is another question: How much can the Court ever influence culture? The *Brown* decision, perhaps more than any other decision of the Supreme Court, brings this question to the fore. It has been frequently noted that the color line remains vivid in the area of education, even while there has been noticeable, though completely insufficient, progress in other areas of American life. The great irony here is that it was only in the area of education that *Brown* condemned segregation. In its intentionally narrow tailoring, it did not address segregation in public facilities, private facilities, housing, hiring, or any other area. *Brown* suggested that segregation hampered a child's ability to "adjust normally to his environment," while leaving aside any discussion of the segregation normally characterizing that environment. Yet in striking at *Plessy*, the first *Brown* decision in 1954 generated a principle that gave official legitimacy to those protesting segregation more broadly. It was a principle that the Supreme Court itself refused to honor fully as it offered up the toothless "with all deliberate speed" in *Brown II* the following year, thereby giving official legitimacy to those resisting the mandate of *Brown I*.

CHRISTINE ROSSELL: The color line does, and does not, remain vivid in the area of education. Virtually everyone supports the principle that black and white children should go to school together. At the time of *Brown*, only a minority of whites and virtually no white southerners supported that principle. I have tracked the reduction in racial isolation in the

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Focus on Law Studies (circulation: 5,438), a twice-annual publication of the American Bar Association Division for Public Education, examines the intersection of law and the liberal arts. Through the essays, dialogues, debates, and book reviews published in *Focus*, scholars and teachers explore such subjects as law and the family, human rights, law and religion, and constitutional interpretation, as well as such legal policy controversies as gun control, civil rights, federalism, privacy, capital punishment, affirmative action, and immigration. By examining the law from a variety of disciplinary and interdisciplinary viewpoints, *Focus* seeks to both document and nourish the community of law and liberal arts faculty who teach about law, the legal system, and the role of law in society at the undergraduate collegiate level. The views expressed herein have not been approved by the ABA House of Delegates or the Board of Governors and, accordingly, should not be construed as representing the policy of the American Bar Association.

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South and the reduction in racial prejudice; they are highly correlated, though I cannot tell which is the causal variable.

Whites are now quite tolerant of interracial dating and marriage and supportive of the success of blacks. They want at least a few blacks in their neighborhoods and schools, but not so many that it changes the culture of the school and neighborhood. The problem for whites is how to make blacks successful (and more like them) without much redistribution of resources. *Brown* started all this in motion by beginning the elimination of *de jure* segregation. But the courts can't solve the material or *de facto* problems that remain in a capitalist society, where people are free to vote with their feet and are unwilling to give up too much to help others.

GERALD ROSENBERG (University of Chicago/Political Science): Every profession has its blinders. For lawyers, an uncritical belief in the importance of courts looms large. But courts and their decisions are part of broader social currents. On their own they can do little to alter those currents. *Brown* was part of a tide of history that created enormous pressure for change in civil rights. In *Brown*, the Supreme Court jumped in and was swept along with the rest of the country.

Racism and racial discrimination are not practices of the past. Clearly, African-Americans have more opportunities than they did fifty years ago. To that extent the color line has become less distinct. But African-Americans remain largely concentrated in racially and economically segregated communities and schools. Compared to whites they have less education, lower savings, worse health, a shorter life span, and fewer opportunities. A fundamental problem of the 21st century, as of the 20th, is the color line.

The positive changes that have taken place in the lives of African-Americans were largely driven by economic and demographic changes that pre-date *Brown*. The Great Depression and World War II played crucial roles. The military demands and labor shortages created by the war opened new opportunities for blacks. The heightened demand for labor prompted wartime concessions, and many formerly segregated workplaces desegregated under the pressure to perform. A distinct effect of economic changes was population shift. From 1940–1960, more than 3 million blacks moved from the rural South to the cities of the South and, especially, the North to take advantage of jobs.

This combination of economic and demographic change pressured segregation in a number of ways. First, it allowed for the strengthening of black organizations. Black colleges came into their own, as their enrollments more than doubled between 1941 and 1961. Black civil rights organizations, particularly the NAACP, also grew—from a membership under 100,000 in the mid-1930s to 420,000 by 1946. Improved economic conditions and migration produced black organizations that were insulated from white economic pressures and able to fight for civil rights.

> Brown *was a small rivulet flowing into a sea of change.*
>
> *[GERALD ROSENBERG]*

Second, economic and demographic change made blacks economically better off. In 1939, the median wage and salary income of non-white families and individuals was 37 percent of their white counterparts; by 1952, that ratio had increased to 57 percent. Third, economic and demographic changes created political pressure for civil rights. About 87 percent of all blacks who left the South between 1910 and 1960 settled in the seven key electoral states of California, Illinois, Michigan, New Jersey, New York, Ohio, and Pennsylvania, which alone accounted for more than 70 percent of the electoral votes needed to elect a president. While there was some awareness of this potential vote in the 1930s, full political recognition came in the 1950s.

These massive economic and demographic changes weakened the color line. They pre-dated *Brown* and were independent of it. Viewed in this way, *Brown* was a small rivulet flowing into a sea of change.

JOSEPH WATRAS (University of Dayton/Education): In the short, clear statement that comprised the *Brown* decision, Chief Justice Warren approvingly quoted a lower court decision acknowledging that segregation with the sanction of law retarded the educational and mental development of African-American youths. He noted that modern authorities supported this opinion. Almost immediately, critics complained that Warren had made a mistake in connecting segregation to the harm it caused African-Americans. These critics added that, if social psychology proved that segregation did not cause harm, the decision could be undone. To some extent, this is what happened.

In 1986, the U.S. Supreme Court refused to hear the case of *Riddick v. School Board of the City of Norfolk, Virginia*, in which a lower court had allowed the school district to dismantle a desegregation plan. Although the justices noted that white flight could not be a reason for a school district to avoid dismantling a dual system, they pointed out that the previously ordered racial desegregation had caused white flight. Continued efforts in the same direction would prevent further improvement of the schools. Consequently, these justices used the findings of social scientists to verify the dangers of a school desegregation plan in the same way that the Warren Court had depended on social scientists to show that segregation caused black students to feel inferior. In a short period, many other school districts dismantled their desegregation plans.

Of course, the *Brown* decision provided the rationale for wider changes. One important mechanism was the U.S. Civil Rights Act of 1964. Unfortunately, the *Brown* decision also provided the means by which many gains, such as the racial desegregation of schools, could be undone. In 1954, critics claimed that the *Brown* decision would have been much stronger if it had simply asserted that the U.S. Constitution demands equality before the law.

JUAN F. PEREA (University of Florida Levin College of Law): I think Du Bois's prediction for the 20th century remains apt for the 21st. It is premature to state that the color line is broken; the color line has been adjusted somewhat. Collectively, today we expect some degree of racial diversity that is greater than it was at the time *Brown* was decided. The Court recently confirmed this understanding in the *Grutter* decision, when it affirmed the principle of diversity in higher education for

its educational benefits and because diversity is necessary to confer legitimacy upon major public institutions. While this change is welcome, it continues to fall far short of meaningful racial equality by virtually every measure we have of group well-being and attainment. The fuller context, as described by Michael Klarman and Gerald Rosenberg, shows that the *Brown* decision alone cannot be credited with even this limited amount of change.

Our educational system is as segregated today as it was about thirty years ago; in some places it is more segregated. While blacks remain severely victimized by inadequate public schools, by every measure Latinos are the most severely injured by our public schools. Latinos have the lowest graduation rate, the highest dropout rate, and the lowest rate of college attainment, among other bleak statistics (Perea, 2004).

Although this may read as heresy, it is possible to see *Brown* as a relatively insignificant, though correct, decision prohibiting state-sanctioned apartheid. *Brown*'s legacy, considered today, is modest at best. We are witnessing extensive societal resegregation. Fifty years ago, we might have described our educational system as yielding disproportionate benefits for whites and disproportionately unequal results for black and Latino children. Unfortunately, today I can accurately make exactly the same statement. *Brown* and its progeny may best serve as an illustration of the severe limits of law alone in challenging and attempting to reform a racist culture. *Brown* also raises interesting questions about our collective need for a great symbol of equality, notwithstanding the extreme educational inequality that *Brown*'s halo hides from view.

VANESSA SIDDLE WALKER (Emory University/Education): When W.E.B. Du Bois made this prediction in 1903, the color line in the South encompassed a variety of barriers that included institutional restrictions, interpersonal interactions, educational opportunities, and psychological beliefs. Du Bois made the observation shortly after the *Plessy* decision of 1896 and, more importantly, soon after the Supreme Court violated its own mandate in *Plessy* in 1899 by allowing the high school of which his close friend, Richard R. Wright Sr., was principal to be closed in Georgia amidst community protest, while a white high school was maintained. In the aftermath of this decision, restrictions were placed on the intermingling of the races throughout the South in restaurants, trains, and public facilities. The gap between black and white teachers' salaries—which had been minimal in Georgia in 1896—began to widen. Indeed, in his 1901 report of the Negro Common School, Du Bois bemoaned the fact that the new era was systematically inviting a status of inferiority that was different from the previous era. As president of the American Negro Academy during the time of his famous "color line" statement, Du Bois was keenly aware of the closing of opportunities that confronted black people, including the gunfire and beatings that were threatening black educators at the turn of the century.

To think of *Brown* as a single catalyst for change also begs for context. As others have already noted, a variety of factors converged after World War II to create a belief that the time had come for America to live up to its creed, including the Double V campaign of the black press and the returning black GIs who were determined to continue to fight for equal rights. Equally important, black principals and citizens were registering voters in local communities, petitioning school boards for increased equality, and agitating for change in myriad ways. To suggest that *Brown* facilitated all of the changes does not do justice to the other actors who preceded, worked concurrently with, and (ultimately) continued the struggle in the aftermath of *Brown*.

Did any of these factors—of which *Brown* surely represents our shining moment as a country—break the color line? If we focus on institutional restrictions and interpersonal relationships, we might conclude that Americans no longer hold the value that the races should be legally separated. If so, then post-*Brown* has produced an era in which we have a color line different from Du Bois's context, in that freedom of movement and access exist across racial lines in the South in ways that were restricted at the turn of the previous century.

Yet Du Bois's comment also surely expressed concern about the color line as it related to schools. On this front, despite our public valuing of democracy and racial equality, the evaluation may be different. From 1954 to 1969, the color line in public education was generally maintained as states mounted massive resistance plans. Not until after *Green v. County School Board of New Kent County*, in 1968, did many students in the South cross lines to attend desegregated schools. Yet even within those desegregated schools, lines were often carefully drawn to be certain that interactions between blacks and whites would be limited academically. Moreover, consistent with the rulings of the Supreme Court, which began to limit *Brown* within five years of its massive implementation, the color line is now being more rigidly drawn across schools and not merely within them. Blacks and whites continue to be segregated from one another in increasing numbers. Even in desegregated schools, students resegregate themselves in club, musical, and social activities.

But Du Bois also raised an equally salient issue that has been lost amidst his frequently quoted 1903 observation. In the years after *Brown*, while noting that the United States has a long history of ignoring and breaking the law, he wrote: "During the 25 or 50 years while the South refuses to obey the law, what will happen to the Negro children?" As we celebrate *Brown*'s 50th anniversary, this question is the one that begs an answer.

AMY STUART WELLS (Columbia University/Teachers College): *Brown* and the subsequent rulings and policies it spawned have definitely allowed some of the people, some of the time, to step over the color line. But today, if we look at our neighborhoods, workplaces, schools, and churches or temples, we would be foolish to conclude that the color line has been "broken" in any meaningful way.

Recent evidence suggests that now, at the beginning of the 21st century, the suburbs are offering a repeat performance of the urban white flight that occurred 30–40 years ago. Many of the inner-ring suburbs—those closest to the city boundaries—are not becoming racially diverse communities and models of integration once black and Latino families arrive. Rather, like the city neighborhoods before them, these suburban communities are flipping from white to black or Latino fairly quickly. Thus, even though 40 percent of African-Americans now reside in suburbs, they (and to a lesser extent Latinos) have remained highly segregated in their new suburban homes.

The story of this second generation of white flight from diverse to less diverse suburbs is portrayed in 2000 Census data, but it is even more dramatically displayed in school district demographics. If we look at the nearby suburbs of New York City, we see in New Jersey and Westchester and on Long Island, the school districts tend to be *either* predominantly black and Latino or wealthy enclaves of white and Asian families. This is the pattern across the U.S. If suburban districts are not one, they tend to be the other; very few school districts remain racially diverse for long.

What we see, therefore, as we look back over the last fifty years are a few progressive moments in the context of a country that refuses to challenge racial segregation and inequality. *Brown* was perhaps the most hopeful of those progressive moments and the impetus for several that followed, including the school desegregation orders of the late 1960s and 70s and the affirmative action policies that gave us Colin Powell and Clarence Thomas. These legacies of *Brown* did help thousands of people step over the color line. But as I have learned from my research on 1980 graduates of desegregated high schools, once we move past the institutions where these policies touch our lives, we return to a very separate and unequal society. Thus, the graduates I interviewed, who thought that by attending desegregated schools in the 1970s they were being prepared for the "real world," realized shortly after graduation that the "real world" was far more segregated than their high schools had been.

Part II: Equality and the Promise of *Brown*

EDITOR: In your view, was the promise of *Brown* formal legal equality (i.e., an end to segregation sanctioned by law) or substantive equality (i.e., equality measured by social outcomes such as educational achievement, income levels, health, etc.)? In the fifty years since *Brown*, have we "changed our minds" about *Brown*'s intentions?

VANESSA SIDDLE WALKER: Our perspective on *Brown*–its formulation, intent, and accomplishment–has been primarily a legal discussion. Although important, it fails to incorporate an understanding of the actors who joined together to accomplish *Brown*, and it measures success or failure by a legal standard rather than by the standard initially held by its primary proponents. The historical record shows that, through their teachers' associations in the South, black educators were the earliest, most consistent, and most vocal advocates of school equality for black education for seventy-five years prior to *Brown*. Indeed, the *Brown* cases were the result of a carefully concealed collaborative network, which utilized the law as a way of accomplishing an agenda that had been long held by black educators. Carefully hidden behind the scenes, these educators provided the conceptual foundation, the plaintiffs, and the financial support for the legal effort. For them, switching to a legal strategy to accomplish their agenda represented a later step in a series of movements to achieve equality.

> *Black educators provided the foundation for the* Brown *legal effort.*
>
> *[VANESSA SIDDLE WALKER]*

GERALD ROSENBERG: The promise of *Brown* reached beyond the words of the decision and the schools that were ordered to dismantle segregation. The promise of *Brown* was the achievement of a colorblind society, in which it was assumed all people would enjoy roughly equal substantive outcomes. The Court followed *Brown* with decisions banning racial segregation in public parks and recreation facilities, intrastate and interstate commerce, courtrooms, and facilities in public buildings and in the 1960s banned segregation in sexual relations and marriage. None of these cases had anything to do with public school education, but they all were based on reading *Brown* as holding that the Constitution did not tolerate racial segregation.

The political reaction to *Brown* was based on the assumption that it mandated the end of segregation in all aspects of life. The day after the decision, Thurgood Marshall was quoted in *The New York Times* as predicting that "by the time the 100th anniversary of the Emancipation Proclamation was observed in 1963, segregation in all its forms would have been eliminated from the nation." *The Times* editorialized on the same day in broad terms: "When some hostile propagandist rises in Moscow or Peiping to accuse us of being a class society, we can ... recite the courageous words of yesterday's opinion."

By the 1970s *Brown* was understood as having required the ending of all segregation. In *Brown*, Aleinikoff wrote, the Supreme Court "quite simply, buried Jim Crow." For Kluger, the decision was "nothing short of a re-consecration of American ideals." As Wilkinson put it, "*Brown* may be the most important political, social, and legal event in America's twentieth-century history." The promise of *Brown* was wide-ranging.

In the last decade many commentators have, indeed, changed their minds about *Brown*'s intentions. The promise of *Brown* has been limited to schools and, for some, simply to the ending of state-mandated segregation. So, today, equality of outcome is often not seen as part of *Brown*'s promise. The problem of poor-performing minority students in racially segregated schools is understood as a cultural and social issue, not a constitutional one. As long as racial segregation in schools is not legally mandated, it is argued, *Brown*'s requirements have been met.

JOSEPH WATRAS: Instead of speaking about the legal reasoning in the *Brown* decision, I would like to respond with an observation about the political battles in the city that I studied most closely–Dayton, Ohio. The arguments that took place in that Midwestern city reflect what conflicting groups felt were the promises of the *Brown* decision.

In 1954, Dayton voters reacted to the *Brown* decision by electing the first black school board member. Although appeals to desegregate the schools came regularly to the board, little action took place until the board appointed a new superintendent in 1968. From 1969 until 1975, two groups fought for seats on the Dayton Board of Education. One was a loosely knit group of incumbent board members and a newly appointed superintendent. From 1968 to 1971, this group tried to satisfy the pressures from the U.S. Depart-

ment of Health, Education, and Welfare to desegregate the public schools. The other group was a political party, Serving Our Schools (SOS), organized in 1969 complete with membership dues and ward-like organization. The aim of this conservative group was to resist the efforts of the group they labeled as the "liberals." In 1971, the liberals formed a coalition, Independent Citizens for Good Schools (IGS), to resist the growing popularity of the SOS.

The heated school board campaigns were contests of competing views of rights. On the one hand, the liberal group argued that the federal government would enforce the rights of African-American children to attend integrated schools. In making this argument, the liberals relied on a misreading of *Brown*, claiming that segregated schools harmed black children. On the other hand, the SOS members claimed that children had the right to attend neighborhood schools, where children knew each other and the teachers had met the rest of the family members. Although the SOS members did not specifically turn to *Brown*, they found support in Justice Powell's 1973 dissent in *Keyes v. Denver School District No. 1*. Noting that neighborhood schools reflected the desire of citizens for a sense of community in the schools, Powell warned against dissolving what people see as a traditional source of strength for the nation.

While stories of independent citizens banding together to fight city hall have a long tradition, the NAACP's legal victory inspired the conflicting groups in Dayton to advance their particular views by claiming that state or local policies would deny their constituents their rights. To the members of these groups, it was less important what particular remedy the *Brown* decision offered than the reasons they thought the *Brown* decision justified remedial action. To them, the promise of the *Brown* decision lay in the political strategy that it represented.

CATHERINE PRENDERGAST: The primary purpose of *Brown* was not to improve educational outcomes for African-American children, any more than the primary purpose of *Plessy* was to clarify seating assignments on trains. The primary purposes of these decisions were, respectively, to take away and to lend constitutional sanction to cultural practices of segregation. For the Court to have addressed the issue of substantive equality in *Brown*, it would have had to acknowledge that "separate but equal" was not equal, not just because segregation caused feelings of inferiority, but because in segregated areas white children were generally attending nice schools paid for by tax revenues from both communities, whereas African-American children were attending schools in worse shape without the same benefit of state support. Nor was the purpose of *Brown* to achieve full formal equality under the law, but rather to remove a very visible manifestation of formal inequality under the law. In this endeavor, *Brown* was swimming with the tide, as Gerald Rosenberg earlier suggested.

JUAN F. PEREA: The *Brown* decision was regrettably vague about the remedy for the constitutional violation of equal protection. Thus, anything from formal equality to integration to more substantive equality could be understood to be within *Brown*'s promise. After *Brown II* and subsequent decisions, it became clearer that integration was the remedy that courts would enforce. The Warren Court, over time, enforced a view beyond minimal formal equality. I doubt that the Court envisioned any substantive equality beyond what could be attained through integration.

While integrated education still seems a worthy ideal, it is clear that integration as practiced in the wake of *Brown* did not work. Integration came to mean the one-way relocation of black and Latino children into hostile environments formerly dedicated to keeping them out. Black and Latino children were expected to assimilate into environments designed to educate white children. The particular cultural and educational needs of black and Latino children were never taken into account in an educationally responsible manner. "Equality in education" meant, and still means, conformity by black and Latino children with standards designed for the benefit of and by white educators, students, and school administrators (Perea, 2004).

Equal education, in my view, is something quite different from the transmission of and expectation of conformity with standards designed primarily or exclusively with white people in mind. Equal education should mean a substantively equal and appropriate education for *every* child, taking the child's particular needs into account. Children should be entitled to a substantively excellent education as a fundamental constitutional right. I recognize that the Supreme Court declined to recognize education as a fundamental right in the 1973 *Rodriguez* case, but that decision was a serious error that hindered the attainment of more educational equality.

Brown probably intended much less than I advocate. Since *Brown*-style integration has failed, we should instead strive for educational excellence in every school, segregated or not, and commit the resources necessary to provide and produce excellence.

AMY STUART WELLS: The promise of *Brown* was not about *either* legal equality *or* substantive equality. It was about one as a means to the other. The promise was that ending legally sanctioned apartheid in the U.S. would lead to substantive equality. This is what Thurgood Marshall meant when he said, "Equal means getting the same thing, at the same time and in the same place."

We see the clearest articulation of the argument that separate is inherently unequal when we look at Supreme Court rulings in the pre-*Brown* higher education cases in 1950—*Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents for Higher Education*. The *Sweatt* and *McLaurin* decisions rested on the negative effect of black students' exclusion from white institutions, not simply because of the resources or facilities—the "tangible" factors—in these institutions, but also because of their status in society and the social networks of faculty and students within them—the "intangible factors." The status of educational institutions has been, and continues to be, exceedingly important in American society, in terms of graduates' access to other high status institutions and positions of power.

Social science research has documented this theory. Research on employers, for instance, demonstrates that African-American graduates of a white suburban high school are more likely to be hired by a white-owned business than similar graduates of all-black, inner-city schools, as Braddock *et al*. found in their 1986 study. In our study of the St. Louis urban-suburban school desegregation plan, Robert Crain and I found that for African-American students from poor urban neighborhoods, access to more prestigious schools made a great deal of difference in their aspirations and expectations about college and careers. Although opponents of that

plan argued that money spent busing black students to suburban schools would be better spent "fixing up" the all-black schools in the city, the students who ride the buses every day to the suburbs understand what Sweatt and McLaurin were fighting for nearly 60 years ago—access to institutions with the best reputations and the most influence in a predominantly white society (Wells and Crain, 1997).

VANESSA SIDDLE WALKER: We often fail to consider what *Brown* was intended to be by those who helped initiate the vision. Fortunately, these educators left a written record of their vision. For those who fought the longest and sacrificed the most, their belief was that desegregation would maintain the type of schooling environments they had built for black children during the years of oppressed circumstances. Contemporary research shows that these school environments were ones in which institutional and interpersonal caring permeated the climate, and where African-American children were encouraged to believe in what they were capable of achieving, despite the neglect of white school boards. By arguing that the desegregated school should maintain the clubs, assemblies, leadership roles, and community support that they had used to accomplish this vision, they hoped to achieve a world where black children would have equality of facilities and resources *and* caring environments. They never expected to exchange one for the other. In addition, they argued the need to utilize collaborative approaches in building schools that would maintain the tradition of both black and white schools. They argued that desegregation policies should not unfairly expect black parents to sacrifice in ways that exceeded the sacrifice of white parents; they believed that black teachers (who were better trained than white teachers in six southern states and the District of Columbia) should be maintained and that personnel decisions should utilize the best qualified personnel. They also expressed deep concern about the wisdom of allowing desegregation policies to be decided by school boards that were 99 percent white and had a long history of poorly serving black children.

If one expands the historical portrait to encompass a more accurate picture of what happened before and after *Brown* from the perspective of all participants, then the question about "changing our minds about *Brown*'s intentions" is easily answered. Black educators and communities wished to have both equality in school structures *and* high expectations and caring in school climates. What black parents want appears to be what white parents take for granted: that their children will be educated in environments where facilities and resources will support educational attainment and where their children will be taught by teachers who are well-trained and who believe in their capacity to achieve. The frustration we may label as a "changing of the mind" may be the result of continually being expected to choose one type of environment or another, when those who sought *Brown* most surely hoped to achieve both.

CATHERINE PRENDERGAST: *Brown* suggested that substantive equality would be the result of equality of educational opportunity; in so doing, it overstated the power of education to counteract the pernicious effects of racism pervading all spheres of American life. But nothing since the *Brown* decision has fulfilled even *Brown*'s on-its-face promise of equality in education. The political will to redistribute the resources necessary to create such equality still seems to be lacking. It's even possible that the "score" has now become so lopsided, repairing the past completely might not even be possible. As my University of Illinois colleague James Anderson observed after tallying up the funding disparities between historically white and historically African-American schools, there are debts so huge that this government may not even be able to repay them. What's worse, however, is the pretense that those debts don't exist. Yet unfortunately, that pretense has most aptly characterized the recent political climate.

MICHAEL KLARMAN: There is little doubt that the justices participating in *Brown* thought they were addressing a question of formal legal equality, not substantive equality of result. I have never seen any evidence that they thought—in 1954—that *Brown* had implications for northern schools or that it had implications in the South beyond segregation and discrimination imposed by state law.

Judge John Parker of the Fourth Circuit famously said in dictum on the remand in the South Carolina case that *Brown* "forbids the use of governmental power to enforce segregation; it does not require integration." Parker's interpretation sounds to many people like a bad-faith distortion of *Brown*'s meaning, but he was no nullifier. One of Justice Burton's clerks had stated an identical view during deliberations in *Brown II*—a perspective that Burton apparently voiced as his own during the justices' conference: "the mere admission of colored children to white schools or vice versa, is not itself justifiable; the Constitution does not call for that." Even compliant lower court judges thought that *Brown* "may well not necessitate such extensive changes in the school system as some anticipate."

Indeed, the justices changed their view about what *Brown* required over time. Although the success of the civil rights movement probably explains much of the justices' more aggressive posture on desegregation in the 1960s, they may also have become frustrated with the intransigence and disingenuousness of southern whites. Massive resistance may have come back to haunt white southerners. As the justices grew tired of the endless evasion and bad faith, they adjusted constitutional and other doctrines in response. For example, exasperated at the bad faith of Alabama jurists, in 1961 the justices ordered them to quickly hold a hearing on the NAACP's right to operate in the state or forfeit jurisdiction to the federal district court. For similar reasons, *McNeese* (1963) abandoned the traditional requirement that federal litigants exhaust their state administrative remedies. In *Griffin* (1964), the Court invalidated school closures partly because of the illicit motivation behind them—defiance of a federal court desegregation order. Traditional constitutional doctrine disfavored judicial inquiries into legislative motive, but years of massive resistance had changed the justices' minds. By 1964, they were so irritated by delays in Prince Edward County, where desegregation litigation had commenced in 1951, that they refused to afford state courts the usual opportunity to resolve state constitutional questions before the federal courts ruled on federal issues—the opposite of what they had done in an important NAACP case from Virginia in 1959. They also approved the district court's order to the county to levy taxes for the operation of public schools—a virtually unprecedented decision, the propriety of which the justices had serious doubts. Beginning in 1968, the Court evaluated desegregation plans based on actual results—i.e., how many blacks attended mixed schools.

Contrast this with 1954, when many justices apparently believed that compliance with *Brown* need not require a great deal of integration.

Part III: A Return to Segregated Schools?

EDITOR: U.S. Supreme Court decisions in the 1990s (*Board of Education of Oklahoma City v. Dowell*, 1991; *Freeman v. Pitts*, 1992; *Missouri v. Jenkins*, 1995) have allowed some southern cities to withdraw from court-mandated desegregation plans and return to "neighborhood schools." The result, according to a number of observers including the Harvard Project on School Desegregation, is that southern schools are again becoming increasingly segregated. If this is true, it raises several questions. Has mandatory desegregation failed? Have the cities in question made the "good faith" effort required? Are there better ways to achieve integration of public schools nationwide? Is the *Brown* vision of school integration impossible to achieve or, indeed, no longer desirable?

AMY STUART WELLS: We should not use the shortsighted rulings of the Supreme Court in these three cases as evidence of the failure of school desegregation. Rather, these rulings point to how our society, and especially those in positions of power, failed school desegregation. From the *Milliken* decision in 1974 through the *Jenkins* decision in 1995, the Supreme Court has stated that our highly unequal and increasingly separate public educational system is permissible and preferable to federal interventions to lessen it. As a result, school desegregation plans are limited in both scope and duration, and they have become very fragile countervailing forces in a societythat economically rewards whites for purchasing homes in predominantly white communities.

In order to assess the success or failure of this policy, we need to ask the students who lived through it and pay less attention to what pundits with no desegregation experience say. When we did talk to some of the children of *Brown*–those who had attended many years of desegregated schools–my co-authors and I found that students who lived through school desegregation said it was one of the most valuable experiences of their lives and one of the far-too-few opportunities they had to make friends across color lines. In fact, our central finding is that school desegregation fundamentally changed the people who lived through it, yet had a more limited impact on the larger society. Public schools faced enormous challenges during the late 1970s, as educators tried to facilitate racial integration amidst a society that remained segregated in terms of housing, social institutions, and often employment. Nonetheless, desegregation made the vast majority of the students who attended these schools less racially prejudiced and more comfortable around people of different backgrounds. After high school, however, their lives have been far more segregated, as they re-entered a more racially divided society.

Our society, especially those in power, have failed school desegregation.

[AMY STUART WELLS]

Perhaps the question we should be pondering now is not whether school desegregation is a "failed" public policy. Rather, we should ask whether or not, as a society, we have failed the goal of school desegregation and racial integration more broadly.

GERALD ROSENBERG: What is the relationship between judicial decisions and social change? The underlying question involves the effects of judicial decisions on the broader society. Judicial decisions are not self-implementing, and implementation is a political process that requires both elite and popular support. The sad truth is that support for school desegregation has seldom, if ever, been present in the U.S. on a wide scale. In practice, this has meant that pressure for the implementation of school desegregation has been fleeting.

In the first decade after *Brown*, there was neither pressure for desegregation nor much desegregation. Ten years after *Brown*, barely one percent of black schoolchildren in the 11 southern states that required segregation by law attended schools with white children. This changed only after a major national commitment to end school segregation embodied in Title VI of the 1964 Civil Rights Act. Coupled with the 1965 Elementary and Secondary Education Act, and the federal dollars it made available to local school districts, both courts and the executive branch achieved some success in school desegregation.

The problem, however, was–and remains–that many whites do not accept school desegregation. They either fled to all-white suburbs or placed their children in all-white private schools. Today, for example, in the city of Chicago, only 9 percent of public-school children are white, although the white population of the city is approximately 40 percent. Indeed, over two-thirds of black children in Illinois (68 percent) attended majority black schools during the last school year. While this is actually a slight improvement over 1979, when the figure was 77 percent across Illinois, a major study by the *Chicago Tribune* found that most of Illinois's black children are still relegated to segregated and inferior schools. Nearly 40 percent of black children attend one of the state's 335 schools on academic watch, where students have failed state tests and other standards four years in a row. Less than 1 percent of white children attend those schools. "Separate and unequal" remains the reality for many black schoolchildren in Illinois fifty years after *Brown*. These data suggest how little courts can do without public and elite support.

To say that courts can do little to help end racially segregated schooling is only one side of the coin. Courts can make matters worse. In school systems where political forces have succeeded in implementing desegregation plans, judicial decisions ending those plans can tip the political balance against desegregation. The data from the Harvard Project on School Desegregation show that re-segregation is occurring in such school systems.

The *Brown* vision of school integration was–and is–impossible to achieve on a wide scale until white America embraces it. Unfortunately, there is little that courts can do to hasten the time when that occurs.

JOSEPH WATRAS: The Dayton story is important because it illustrates the way people recreate the history of busing to satisfy a popular desire to disparage ef-

forts for racial integration. In 2002, negotiators for the Dayton school district, the Ohio State Department of Education, and the NAACP concluded two years of talks and agreed to a settlement that would end mandatory desegregation in the last city in Ohio to retain busing for racial balance. As a result of the agreement, the U.S. district chief judge declared the district to be unitary. The lawyer who represented the NAACP said that the Dayton case began in an era when litigation was necessary, but that the country had transcended that moment.

Cross-district busing began in 1976 in the city of Dayton; by most measures, it was successful. There were no public protests, nor any threat of them. Pupil attendance exceeded 80 percent. *The New York Times* and the Associated Press carried stories congratulating Dayton on its success. The chief of the U.S. Justice Department's Civil Rights Division said that Dayton had one of the most successful plans in the nation. When reporters interviewed teachers about the effects of pupil transfers, the teachers said it was wonderful. In part, the success came from the ease with which busing was accomplished, facilitated by Dayton's compact size and short bus rides.

Today, some officials in Dayton contend that the busing caused people to leave the city, but I could find little evidence of white flight to avoid desegregation. The city has suffered from a continual loss of population, and some of those changes reflected white flight. Figures from the state department of education indicated that the white student population in suburban schools increased at a rate of about one percent per year before–and after–the 1976–77 school year, the first year of busing. In all, total student enrollments declined in the county from 1968 until 1980. Dayton city schools' share of those total enrollments declined from about 44 percent to about 37 percent over the same period. A big cause of these enrollment drops was the severe recession experienced by Dayton in the 1970s, as several large employers moved from the city.

In 2002, when the federal judge declared Dayton schools to be unitary, school board members, public officials, and city officials proclaimed school desegregation to have been a mistake. They claimed that desegregation caused families to move from the city and weakened instruction in the schools. The only public voice to remind people of the successes that Dayton had enjoyed was the federal judge who presided over the settlement to release the school district from the desegregation order.

In the months that followed the agreement, the school board sent out publicity statements with the slogan that a new day is dawning. Since the state department of education had promised to pay a considerable sum of money to remove itself from any further entanglements, the school board promised to build schools in the neighborhoods. Because Dayton neighborhoods are segregated, racial integration would become even more difficult.

Although financial problems have prevented the promised construction, the school buildings are more segregated than they were in 2001. However, teachers tell me that they have roughly the same racial composition in their classes that they had before the busing ended. When the board members ended the busing program, they claimed that busing had distracted students from academic affairs. Unfortunately, by the following year student achievement as measured by Ohio proficiency tests was among the lowest in the state. Most telling, however, the pupil enrollment in the Dayton city schools continued to drop. The end of racial desegregation did *not* cause students to return to the public schools.

In 2002, Dayton officials called school desegregation a mistake.

[JOSEPH WATRAS]

The patterns of development in the Dayton metropolitan region suggest that the problems of racial segregation of the schools cannot be solved. Furthermore, the tendency of people to recast the past successes in school desegregation as failures makes the problems worse.

VANESSA SIDDLE WALKER: To suggest that the courts cannot solve the full measure of the problem should not be construed as a "there is nothing we can do" response. Indeed, much of desegregation has failed on the school level. As Joseph Watras notes about Dayton, school boards can make choices about pupil placement, teacher placement, funding, and other variables that influence success, and the national data show that many of these choices disadvantage African-American and Hispanic youth. To expect the courts to preserve the opportunity for children of different ethnic groups to be in school together and then to ignore the policies that preserve segregation within the schools sends mixed messages about the purpose of desegregation and does not address the underlying issues that may be generating both responses. We need to address those issues that generate these structures and then create new structures, both in government and in the schools, which will generate the America that we all claim to desire.

MICHAEL KLARMAN: It's very difficult to have desegregated schools in a country that has pervasive residential segregation. In 1954, the justices were not confronting that problem; there was not a major city in the United States that was majority black or Latino. The process of white flight from cities had begun, but the justices could not have imagined a world in which whites either did not live in cities or, if they did, did not attend public schools.

When the Court decided cases such as *Dowell*, the justices were faced with this dilemma: Court-ordered busing was having no integrative effect beyond blocking the effect of segregated housing patterns on school segregation. In other words, for school integration to remain a reality in Oklahoma City, the court order would have to remain in effect in perpetuity. In practice, this meant that young black kids would be bused. This was not something that the black community was keen about, and a majority of the justices did not believe that it was sensible social policy.

Without fixing the housing segregation problem, it's extremely difficult to achieve school integration. Yet it is hard to imagine courts trying to desegregate neighborhoods. Certainly, there are some good constitutional arguments for challenging the status quo of residential segregation. Government has clearly played a significant role in producing that residential seg-

regation. For example, local governments passed residential segregation ordinances beginning about 1910; for decades until *Shelley v. Kraemer* (1948), the courts enforced racially restrictive covenants. The federal government refused to subsidize housing loans for black families trying to move into white neighborhoods until well after World War II. Local housing authorities since the 1930s have built segregated public housing, and the federal government actively encouraged that policy. Local police forces refused to provide protection to black families moving into white neighborhoods. These are all forms of state action that directly contributed to the pervasive residential segregation today. Nevertheless, unless public opinion supports integrated housing, the Supreme Court will not be inclined to tackle the problem, as *Dowell* and other cases make quite clear.

JUAN F. PEREA: If the goal of *Brown* was integration alone, then some integration was achieved as the result of federal court intervention and supervision. Had federal judicial supervision continued as it was implemented during the 1970s, we might not be witnessing extensive resegregation. White flight, however, ensured that relatively wealthy whites would flee desegregated environments and choose segregated white environments.

The focus of NAACP lawyers and the federal courts came to be on integration alone as the measure of success in implementing *Brown*. This was understandable and excellent strategy at the time *Brown* was decided and shortly after. With the benefit of hindsight, however, one can see that the assimilative vision of integration advanced in *Brown* was never likely to produce educational equality. This is because of the presumption that formerly hostile learning environments that privileged white students, educators, and administrators would somehow, magically, become appropriate and nurturing for African-American and Latino students with no, or minimal, changes in teacher training, pedagogy, curriculum, and personnel (Perea, 2004).

CHRISTINE ROSSELL: I am more optimistic about what *Brown* has accomplished. Although I am willing to admit that it was not the only force and was certainly prompted by other factors already discussed, *Brown* made racial discrimination illegal when once it had been not only legal, but mandatory.

Anyone who was caught treating blacks as equals in the South was suitably punished before *Brown*. *Brown* emphatically changed that. Although racial discrimination continued, if the discriminating individuals were dragged into court, they typically had to claim they were not discriminating when once they could proudly claim they were enforcing racial segregation and discrimination. Having gone to an all-white school in an all-black neighborhood in Alexandria, Virginia, a few miles from the nation's capital, I am profoundly impressed by the fact that all-white schools in all-black neighborhoods will never again exist. Mandating that a school be all-white despite the racial composition of the neighborhood is illegal and unacceptable to everyone. When I lived in the South, white adults routinely made anti-black (and often anti-Semitic) statements in public in front of blacks. It was perfectly acceptable, if not expected, and it was assumed that blacks had no feelings that any white had to care about. Today, if you have racist feelings, you have to hide them; if you are found out and you have a public position, you are publicly humiliated and often have to resign. I see this as nothing short of a revolution.

Furthermore, the civil rights movement, of which *Brown* was a seminal force, is the largest peaceful change in the history of this country. It took a civil war to abolish slavery, and even that was not a complete victory. Incrementalism characterizes policymaking in the U.S., and *Brown* was the largest incremental change in this century. I have no doubt that someday blacks will be the equal of whites in every aspect (income, education, achievement, etc.), although this will not occur in my lifetime nor probably in my daughter's. Nevertheless, when I went to high school in the late 1950s and early 1960s, white females did not date black males. Today, a white female in Massachusetts who would not go out with a black male because of the color of his skin would be shunned by the most popular females because she was a racist. Again, I see this as nothing short of a revolution.

Brown and the civil rights movement have been extremely successful in achieving their legal and symbolic goals, even though there is more to accomplish. The biggest failure is in the struggle to achieve the tangible goals (equal income, equal education, equal achievement, residential integration). We were naive in thinking that these would be accomplished speedily. They will take much longer, because it means not just making laws prohibiting discrimination but redistributing resources–that is, taking from one to give to another. In democratic societies, this occurs at glacial speed.

Part IV: *Brown* and the Current Learning Gap

EDITOR: There is much discussion today about the "racial gap" in learning–i.e., the differences in achievement test scores, graduation rates, and other performance measures–between white and Asian students on the one hand and African-American and Latino students on the other hand. What is the best way to address these differences?

CATHERINE PRENDERGAST: The biggest barrier to addressing the achievement gap between whites and African-Americans and Latinos is that a significant proportion of whites really don't want the gap to disappear. The notion that it is this gap in measured performance that is keeping whites from happily integrating, where they have not integrated before, is not supported by this country's history. Instead, history has demonstrated that many whites have resented groups perceived as non-white when those groups have excelled. In the 1920s, for example, when Jews (who were not at that point considered really "white") began outperforming their Anglo-Saxon counterparts, many Ivy League colleges responded by instituting geographical restrictions to reduce their percentages of Jewish admissions.

The history of anti-Asian sentiment presents another example. In the 1920s, white parents in California argued that segregated schools for Japanese students were necessary because Japanese students won too many awards. After the lifting of racial restrictions on immigration in 1965 prompted another wave of Asian immigration, polls showed that many whites felt Asians were being given too many advantages. Asian-American students continue to be viewed as overrepresented in many academic environments. The "model minority" myth–the myth that Asian-

Americans (in contrast to African-Americans and Latinos) have assimilated easily and successfully in American culture—not only hides incidences of discrimination, but also encourages disregard for the needs of those Asian-American groups (e.g., Hmong, Filipino) now struggling economically and educationally.

CHRISTINE ROSSELL: Whites would like the black-white and Latino-white achievement gap to disappear, but they want it to disappear without any redistribution of resources or sacrifice on their part. The same thing is true for upper-middle-class blacks and Latinos. We humans are self-interested first and altruistic second.

A major impediment to closing the black-white achievement gap rapidly is that the treatment, whatever it is, will have to be withheld from whites. That is politically possible only if the treatments are small and/or weak. School desegregation is a small and weak treatment, but it is only possible to attain voluntarily and indirectly given the current state of the law.

At a Harvard University conference on "50 Years After Brown" that I recently attended, I gleaned that there are four promising treatments that would have a positive effect on black achievement, but all of them would be available to other races, too: (1) preschool starting at age 2 and childcare (probably starting at birth); (2) vouchers with income criteria; (3) programs and policies to increase the number of adults/parents in black families; and (4) programs to eliminate all-black schools. All-black schools apparently tend to have a culture that is poisonous to academic achievement. That effect may be spurious and caused by income, but the primary researcher (Eric Hanushek) claims to have eliminated the income effect; David Armor is finding the same thing.

One of the most discouraging pieces of research at that conference was reported by Derek Neal—indicating that 12 percent of young adult black males are in jail at any given point in time, and the number of two-parent black households is only 37 percent—less than half that for whites. One proposal to increase the number of parents in black families is to decriminalize drug-only (selling and using) crimes, since a huge proportion of those incarcerated black males were convicted of drug-only crimes. I would also recommend significant tax incentives to eliminate the marriage penalty and provide more tax credits for low-income, two-parent families.

In my view all-black schools should reduce their enrollments by half. A few years ago, I talked to a principal of an all-black high school in Dayton. He claimed to have turned his school around, from an out-of-control school to a model of discipline. I learned incidentally that he had cut out one-third of the attendance zone, and the school was now almost half the size it had been before. Other research supports the notion that smaller schools have more discipline. More discipline should lead to higher achievement, all other things being equal.

We should expand and publicize vouchers, but they should continue to have income criteria. Caroline Hoxby's research suggests that this kind of competition improves the environment not only for the children who go to a new school but also for those who are left behind. If this finding is correct, I would hypothesize that making the schools left behind smaller (because many students have left) might be a large part of the positive effect. She suggests that it also motivates school improvement.

Finally, I recommend tax incentives for living in integrated neighborhoods. Of course, all of this requires getting the attention of members of Congress, but perhaps this could be done by scaring them on the crime issue. These are programs that would make good citizens and coincidentally have a positive effect on school achievement.

JOSEPH WATRAS: During his first State of the Union Address in January 1964, President Lyndon B. Johnson called for heroic measures to abolish poverty. In this War on Poverty, educational reforms took two directions. In general, these represent the directions open to any educational program for low-achieving students from any low-income group.

One direction came from Title VI of the 1964 U.S. Civil Rights Act, which the U.S. Office of Education interpreted to mean that schools could not receive federal funds until the commissioner determined that no person had suffered from discrimination. Despite the confusion that resulted from trying to enforce such a requirement, many schools desegregated in a short period of time. The other direction was a result of the 1965 U.S. Elementary and Secondary Education Act (ESEA) that sent $1 billion to local schools to overcome the problems of what was called "educational deprivation." Both directions developed from studies of school programs, including the 1966 Coleman report, which found that the educational backgrounds and aspirations of children's peers were the most significant influences on their academic achievement. Ideas of compensatory education enjoyed a wide range of supporters such as the psychologist, Frank Riessman, who contended that children from low-income homes developed attitudes that kept them from succeeding in schools.

In later years, studies of the efforts to integrate schools and of compensatory education programs failed to show that either led to significant improvements in academic achievement of children from low-income homes. Some authors contended that racial integration did not improve academic performance; others argued there was no clear evidence whether racial integration had any effect; and a third group argued that racial integration seemed to have positive effects on the academic achievement of students, but the conditions were complex.

These two approaches were intended to work together, but this did not happen. In fact, although courts disapproved, some educators argued that the children should be racially segregated so that teachers could provide similar programs of compensatory education to groups of children who shared similar deficits. Such arguments have become more popular, as courts released school districts from desegregation requirements. For example, in Dayton, educators proclaimed that, once released from the court order to carry out racial balance, they would begin programs of compensatory education tailored to the needs of the children.

My bias is in favor of racial integration. Unfortunately, in Ohio, it is unlikely that anyone will introduce wide-scale programs of racial integration. People in my city continually repeat the verdict that busing for racial balance did not work. In making these false claims, people ignore the successes that took place, and they misrepresent the problems that schools face.

GERALD ROSENBERG: I am not an expert on education, but I do believe there is little that courts can do. Improving educational outcomes for students involves developing and implementing theories of how students learn. This requires a depth and breadth of knowledge that judges don't have and can't acquire. In addition, whatever policies are adopted will require large expenditures of funds and bureaucratic change. Courts don't have taxing and budgetary powers, except in extraordinary circumstances that are controversial and impossible to sustain, and judges lack the resources to manage bureaucracies effectively. In short, judges lack the tools to create, implement, and maintain good educational policy.

In addition, courts are unlikely to succeed where other governmental institutions have failed. Lacking implementation powers, courts rely on both the public and elites to implement their decisions. If there is no societal commitment to improve educational outcomes for minority students, there is little the judiciary can do.

VANESSA SIDDLE WALKER: Several of you have spoken to proposals to close the achievement gap, such as those espoused by "No Child Left Behind." The language of a public policy aimed at equality is difficult to disagree with. Of course, we want all children to achieve, and few Americans are likely to disavow the language of a policy that speaks directly to a vision of ourselves. Yet, the very language itself masks some fundamental differences that must be addressed if the structures aimed at eradicating inequality of opportunity are to be widely adopted by those who must implement them. Fundamentally, the conversation we most need to have is not merely about the structures that are being proposed, but about what the language masks–i.e., the issue of trust.

Do the Americans most affected actually trust the public policy designed to generate equality for them? At the root of our debates about appropriate structures lie vast differences in levels of trust. If one believes that the policy discussions have as their end the genuine achievement of equality, then one is willing to tinker with structures so that these ends can be achieved. On the other hand, if one distrusts the intent behind the public language, then the structures are more likely to be discounted. Thus, the debate actually rests on a much deeper level than we generally discuss.

We should consider the policies that have preceded this moment in time and explore the ways in which they have, or have not, served to forward the interests of black or other ethnic minority youth. Does any segment of the American population have basis in fact to be leery about public pronouncements? If one examines the history of public and private policy and the vocal leaders who achieved reputations for advocating for minority children, one can understand the distrust that now exists.

American education leaders have proclaimed schooling as important for full participation in a democracy, while at the same time utilizing structures that preserved inequality. This contradiction in rhetoric and practice is easily identified in research on the history of schooling for Native Americans, Hispanics, and some immigrant groups, the latter who lived on the wrong side of the equation until they achieved the status of "white." As James Anderson has eloquently chronicled, northern philanthropists touted a widely held vision for black education that fell far short of any intent to achieve full equality at the turn of the last century. On the state level, during the same era, white leaders who claimed to advocate for black education also advocated for structures that would limit attainment. To add to the distrust, the national and state leaders within educational organizations were of little help in pointing out the contradictions between rhetoric and practice. To the contrary, they maintained rigid silence about issues of inequality related to race, although these same organizations were vocal on issues of inequality related to gender.

JUAN F. PEREA: Pre-*Brown*, the purpose of public education was essentially to teach black and Latino children to be content with menial roles in society and second-class citizenship (Weinberg, 1977; Carter, 1970). Segregated schools, with their palpably unequal resources, were designed to protect and perpetuate white privilege and black and Latino subordination. Post-*Brown*, newly integrated schools, under the same racial management as before, taught many of the same lessons using different techniques: the harassment and scapegoating of children of color; the identification of black and Latino children as "discipline problems"; the disproportionate assignment of black and Latino children to vocational classes and classes for the educable mentally retarded; steering black and Latino children away from college preparatory classes; and excluding black and Latino children from classes for the gifted. All of these practices continue today and are easily demonstrated statistically (Perea, 2004).

The overall distribution of educational opportunities, resources, and achievement, which privileges whites to an overwhelming degree, fits our society's collective expectation of how things should be. As a society, we expect whites to be at the top, blacks and Latinos at the bottom. Through the structural mechanisms of unequal urban public schools, usually with the least experienced teachers, and achievement standards and tests tailored to the educational resources and needs of white students, we get exactly the expected results, with occasional exceptions. If the current allocation of educational privilege did not operate overwhelmingly to favor whites, then it would probably be deemed intolerable. Consider the following hypothetical, inspired by Derrick Bell (Bell, 1987). Imagine if, instead of the results we see today, black and Latino students scored the highest on standardized tests, won most academic honors, and constituted majority populations at the most elite institutions. Suppose further that most faculty members at these institutions were black and Latino, due to their established excellence. I believe that many people would find something wrong and disturbing about this scenario and would feel compelled to do something to "fix it"–i.e., to restore majority white privilege and presence in the academy.

I introduce this hypothetical to emphasize the social "naturalness" of white privilege in education. The hypothetical also allows us to contrast the urgency that would be felt to correct an educational system that apparently disadvantaged whites with the relative indifference and passivity with which many people accept the disadvantaging educational structures faced by children of color. Thus, there is a large social investment in maintaining the "achievement gap."

To begin to close the "gap," we must embrace, not blame, children, communities, and cultures. We need to finance education and teacher training such that best

practices are followed for teaching every child. We must make sure that children are taught by teachers who genuinely value their different cultures and, just as importantly, are trained to teach well in the cultural environment in which they will teach. Many aspects of education should be removed from direct majoritarian control. For example, maintenance bilingual education, in which the goal is to maintain competence in Spanish while teaching competence in English, is well known to constitute "best practices" for teaching Spanish-speaking youngsters. The components of an excellent education, like bilingual education, should never be allowed to be the subject of political referenda or majority vote. Similarly, majorities should not have control over the content of history textbooks, a situation that has led to genuinely appalling and inadequate books.

CATHERINE PRENDERGAST: The "No Child Left Behind" Act is really a Trojan horse for the privatization of education, rather than a sincere effort to recommit public resources to communities in need. Some of the schools most lauded by the program are those that reject transfer requests from all but the most promising applicants. Schools that must take every student always will have lower achievement results.

What strikes me as most radical about the *Brown* decision is the faith in public schooling that the Court expressed. As a society, we have lost the commitment to public schooling. We have given the public school to the most disenfranchised groups and starved it of the funds and those less tangible elements–like the clubs and community support that Vanessa Siddle Walker spoke of–necessary to raise achievement. We have largely been encouraged to stop asking "achievement in what?" by the rhetoric embracing an impoverished notion of minimal competence through testing. The question of what students need to know in order to be both critical and productive members of society still needs to be engaged in schools and communities and in the courts. Lastly, we need to appreciate that low achievement is primarily a symptom of disenfranchisement, rather than a cause. Racial equity and justice must be pursued in such areas as housing, hiring, and health care in order to make true progress in the area of education.

VANESSA SIDDLE WALKER: The very language of our current public policy debates is questionable. To frame the discussion as the achievement "gap" makes the issue to solve one of ineptitude, as the larger population ponders the "problem" inherent in the children, their parents, and their communities. This approach creates a public perception that sees the problem as the children, rather than an understanding of the structures that create inequality in achievement. Instead of seeing the resilience of a black community that raised literacy rates, college attendance rates, and high school graduation rates during a system of overt oppression in the South, the public continues to believe that black teachers and principals knew nothing about how to educate black children and nothing of merit happened for them until after desegregation.

To close the gap, we must embrace, not blame, non-white children, communities, and cultures.

[JUAN F. PEREA]

Americans generally do not acknowledge the sacrifice and continued belief in a dream for equality that motivates many black parents to drive or bus their children to school because they understand that the resources and test scores are superior on another side of town. To the contrary, data from the National Opinion Research Center crisply summarizes the widely held public view of blacks: 78 percent of whites believe that blacks prefer welfare, and 53 percent believe blacks are less intelligent. When we use language that focuses on the student as the problem, we never allow the public to understand the severity of the structures that create the problem. Yet, the following three points should be carefully considered outside the education community: (1) one-third of black children in high-poverty schools are taught by a teacher out of field; (2) minority schools are three times as likely to have a teacher with three or fewer years of teaching experience, and the absentee rate for teachers averages 6–10 percent per day; and (3) black children are often in schools with larger class sizes, less technology, greater concerns about safety, and more severe challenges for parental involvement. If the public widely understands these inequalities, we might rephrase the conversation to focus on the "resource" gap, which attributes blame to its source rather than to its symptom.

CHRISTINE ROSSELL: The world I live in (the academic community) is one where everyone is in anguish over the minority of the population (blacks and Latinos) not having their fair share of test scores, education, income, etc. Moreover, I have no doubt that if blacks and Latinos were at the top, they would have the same reaction to whites being at the bottom–regret over the injustice, but an unwillingness to support the kind of massive redistribution of resources necessary to change things rapidly. Whites did not invent racism and prejudice; it is apparently part of the human condition. I no longer believe that children have to be taught to hate. I look at the world around me and conclude that it is just the opposite–children have to be taught to love.

CATHERINE PRENDERGAST: The day that a gap between whites and other racial groups on achievement tests ceases to become apparent will be the day state and federal legislatures end their love affair with high stakes standardized testing and look for a new and more efficient means to mark education as white property. The problem here is that although literacy has often functioned as a vehicle for social mobility, it has just as often functioned as a tool to enforce racial exclusion.

Let me provide an illustration. In 1959, four years after *Brown II*, the Supreme Court upheld the use of literacy tests for voter eligibility (*Lassiter v. Northampton County Board of Elections*). Louise Lassiter, an African-American woman, charged that the North Carolina literacy test through which she was denied the opportunity to register to vote and, thereby, to serve on juries violated her constitutional rights. The Court, however, determined that the requirement to 'be able to read and write any section of the Constitution of North Carolina in the English language,' did not on its face violate the Fifteenth Amendment." The decision was made with full knowledge of the horren-

dous practices of voter disenfranchisement in the South, where customarily one's skin color would determine the difficulty of the literacy task one would be required to complete in order to register. For decades literacy tests, arbitrarily enforced and regularly manipulated, were one of the most effective means of keeping African-Americans out of the voting booth. Nevertheless, Justice Douglas's opinion concluded that the requirement of the literacy standard in North Carolina for voter registration "seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springs for the citizen."

In the case of North Carolina's literacy standard, however, it need not even have been enforced arbitrarily to be racially exclusive. Until 1957, North Carolina had a grandfather clause exempting from the literacy test men registered to vote before 1867 and their progeny. By law, most whites would be unaffected by the requirement. The only reason the literacy requirement existed was to disenfranchise African-American voters. Through its decision, the Court recognized white ownership over literacy, while African-Americans had to prove theirs.

No one is against education and high achievement. Most whites don't wake up in the morning wondering how they can enforce seemingly neutral practices that lead to the continuation of their near-exclusive franchise on the best-funded educational institutions. However, what Juan Perea has aptly termed "the social naturalness of white privilege in education" functions on a level so scenic as to go unnoticed and, to date, largely unchallenged.

CHRISTINE ROSSELL: I agree with everything you say, Catherine, but I would add that social stratification exists everywhere, even in virtually one-race societies. Indeed, the only reason that the tests are questioned in the U.S. is because of their correlation with race. In Europe and Japan, there is much more educational stratification by testing, and it is much less controversial because race is less of an issue (indeed it is no issue at all in Japan.) The Japanese go through "examination hell" in 9th grade, which produces a rigid stratification by test scores in high school; then they go through it again to get into college. No one questions this, partly because it is an ethnically homogeneous society. To a lesser extent, this is the case with Europe.

I disagree that standardized testing is tolerated in our country because it produces whites at the top and blacks at the bottom; it is that aspect that makes it controversial. Of course, it would be even more controversial if it produced the opposite result–blacks at the top and whites at the bottom. Testing is universal and global; its purpose is to maintain social stratification. When it correlates with race, it is more controversial; when it does not correlate with race, it is more acceptable. We have reached a point where segregation by race is disquieting, and that is certainly an improvement from fifty years ago.

Standardized testing is global; only its correlation with race makes it controversial in the U.S.

[CHRISTINE ROSSELL]

VANESSA SIDDLE WALKER: Your comments, Christine, suggest that I should wait many more years for equality and not be disturbed about the delay–that what white people do today is OK because other white people in Europe do the same thing, and that I should believe that the shallow conversations I participate in regularly within the education community about equality are more than rhetoric because you say the academic community in which you live says it is outraged. You expect me to discount history, contemporary research, opinion polls of African-Americans, recent decisions of the Court, experiences of children in schools, and my own lived reality and replace them with a "cup is half full" vision of the world. I believe in *Brown*–it took me from a segregated school in the rural south to a doctorate at Harvard, and I believe America wants to believe in *Brown*. Indeed, America has to believe that *Brown* was successful, because to do less stings its vision of itself and violates the Constitution we value.

Nevertheless, this *Brown* anniversary must refocus efforts to achieve equality. We had segregated schools, overcrowded classrooms, and fewer materials fifty years ago; similar inequalities still exist for many black children today. The messages the larger society sent the children pre-*Brown* doubted their ability to achieve; the messages in this moment are comparable. And the strong, caring teachers and principals who worked to help achieve success for the children have been fired and replaced by too many people who do not know or understand or are not willing to continue the struggle for racial uplift. My intent here is not to leverage a personal attack, as I believe we must work together to move forward. But I need you to know that while you appear to relish in victory, I am near tears over what is happening to black children.

CHRISTINE ROSSELL: Of course, Vanessa, you should be disturbed about the delay, and you should never be content with less than what is due. I was offering the "realistic" impression of what has happened so far (a lot of movement forward) and what is likely to occur (much slower movement). But it is people like you–holding everyone's feet to the fire with your passion and anger–who keep us moving forward. And I agree that our failures are tragic, even though I also believe we were naive to think we could get society to move that fast. Although social stratification seems to be endemic to the human species, there are societies with less and more stratification–and less would definitely be preferable.

Part V: *Brown* in the Future

EDITOR: Fifty years from now, how do you think the *Brown* decision will be remembered or re-imagined?

JUAN F. PEREA: National symbols have different meanings to different communities, depending upon the reality that they live. *Brown* will be remembered differently in different communities, rather than in any unitary way, as the diversity of our own dialogue indicates.

When I teach constitutional law, I am often astounded that textbooks do not provide adequate materials to study and commemorate the period of radical Reconstruction, the framers of the Reconstruction amendments, and Reconstruction's vindication of abolitionism. As I tell my students, the Constitution that they

celebrate for its values of equality and the enforcement of the Bill of Rights emerges entirely from Reconstruction. The experiment in equality that emerged during Reconstruction was dramatically quashed by the withdrawal of federal troops from the South and by a Supreme Court intent on minimizing the effects of the constitutional amendments wrought during that time. We still live with this minimal interpretation of constitutional equality through the muted privileges and immunities clause, the state action doctrine, the intent requirement, and the frustration of congressional will in the name of federalism. Southern historians also successfully painted the era as a tragic failure rather than a brief triumph of equality.

If the ringing, equality-promoting phrases of the Thirteenth, Fourteenth, and Fifteenth Amendments can be rendered ineffectual through Court interpretation and largely disappear from our collective memory as achievements that at least document our highest aspirations, then surely *Brown*'s legacy is not secure. One can understand that American law has operated to support first enslavement and then subordination for a far longer time than it has ever operated to support equality. Indeed, in American history equality, or relative equality of treatment, is an anomaly. Only during radical Reconstruction (about 10 years) and the civil rights era/Warren Court (roughly 20 years) can it be fairly said that substantial commitments to equality were made by powerful government actors with majoritarian support.

So I predict that, like Reconstruction itself, the *Brown* decision and the legal results of the civil rights era may be seen either as valiant, but minor, deviations from the societal mean or gradually become neglected. An important but ironic lesson that may be learned is that courts and law may not be the best forums in which to seek racial justice. This is not at all intended to diminish the heroism, intelligence, and courage that it took to accomplish greater equality, especially on the part of the African-American civil rights movement and the NAACP legal defense fund. But we continue to live out the basic themes of our history. The liberal mythology of gradual, inevitable progress is not supported by much historical evidence when it comes to race. In the wake of the progressive accomplishment of the Reconstruction amendments, the white backlash was extreme, resulting in Jim Crow, thousands of lynchings of black Americans, and little justice. Progress, as Fredrick Douglass well recognized, only comes through effective struggle. To paraphrase him, power cedes nothing without a demand. As we may be witnessing, it is easier to go backward than to continue struggling forward.

MICHAEL KLARMAN: Public perceptions of *Brown* are not likely to change much in the next fifty years. Today, virtually everyone thinks the decision was right; that's unlikely to change. Many people also regard *Brown* as a failure, because full racial equality has not yet been achieved. I would like to think that will have changed in fifty years, but I see little reason to be confident about this—especially since, in some significant ways, we are further from that goal than when *Brown* was decided. So *Brown* will be celebrated for its condemnation of white supremacy, much as it is today, but supporters of substantive racial equality will regret the fact that the full promise of the ruling has not been fulfilled.

Brown will continue to be celebrated for its condemnation of white supremacy.
[MICHAEL KLARMAN]

CHRISTINE ROSSELL: I do not think *Brown* is a failure, and I would guess that most people do not see it as a failure. Fifty years from now, I think the *Brown* decision will be thought about in the same way that the Civil War and the abolition of slavery now are. *Brown* was a momentous event that was morally right and that dramatically changed our society, but it did not accomplish all that we had hoped for. Nevertheless, one cannot imagine going back to 1953 and the legal apartheid that existed in the South and the informal stratification of the North. *Brown* set in motion, or was part of, an incredible social revolution that, unfortunately, still has a long way to go to reach the finish line: a colorblind society where the races are equal in every respect, not just legally and politically.

I would also like to emphasize that the civil rights movement made heroes out of not just specific African-Americans but the entire black community. My mother can remember watching civil rights demonstrations on television and getting goose bumps and teary eyed at the courage of these heroic people—black men, women, and children. We are starting to forget that, as we deal with the less exciting details of achieving the tangible, material goals that will complete the quest for racial equality. But we shouldn't. I try not to let my students forget that the black civil rights movement was not only heroic, but also responsible for making this a more decent society for everyone. I hope this is what we remember fifty years from now.

VANESSA SIDDLE WALKER: I hope that we will not be like the era after the Civil War, which ushered in race relations that were unprecedented only to eliminate them with subsequent Jim Crow laws. Frankly, it is possible to go back. Black heroes have existed in every period; yet their memory has not eradicated the passing of laws that devalue their sacrifice. Unless we remember our history of valuing equality while ignoring and retreating from structures that would enforce it, we may find ourselves, like our predecessors, creating new names to mask old problems. I hope not. *Brown*, like other icons we value, represents America at its best, and its proponents have rightly earned a place in history. Yet, racial inequality, whether overt or covert, still smacks against the intent of the proponents of this decision. In fifty years, I hope that we will have addressed its principles and its promises. If so, then it will be time to clap. Until then, we hold on to the promise, while understanding that we still have much work to do to create quality education for African-American and other ethnic minority youth.

JOSEPH WATRAS: As I approached this question, I thought that I could place possible answers about the long-term significance of the *Brown* decision on a continuum. On one end, I expected that there would be the positive outlook that the *Brown* decision has changed the attitudes of people and ended segregation. On the other end of the continuum, I thought I

would find the view that the *Brown* decision allows people to think that the courts solved the desegregation issue so that they need not recognize the extraordinary segregation and inequalities that exist in contemporary schools.

The careful qualifications I find in my colleagues' responses indicate the extraordinary complexity of the issues involved in the *Brown* decision. While I would like people in the future to count the *Brown* decision as an instance where legislation changed the moral feelings of citizens, this is more than I can ask. But I cannot be so pessimistic as to believe the decision had no influence. In the course of my research on the desegregation of Dayton schools, I interviewed about 100 former activists. I remember standing in an elementary schoolyard with one teacher looking over a neighboring and formerly segregated public housing project. He described the conflicts he had faced in his classes when desegregation began and explained how he and his fellow teachers set up conditions so that the children could study together with a minimum of disturbance. He was confident that he had been doing something that was good for everyone. This teacher was not a zealous reformer, because he considered himself to be only mildly interested in political affairs. Yet, the *Brown* decision had set him in the direction of working to bring about needed social change. I would like to believe that *Brown* will continue to inspire individuals to undertake such efforts in the future.

GERALD ROSENBERG: The meaning of Supreme Court decisions, like other political events, is largely determined by the use to which they are put by activists, intellectuals, and political leaders. I am not so naive to believe that the future will inevitably bring a society free of racism. If there is a resurgence of racism (a real possibility given demographic trends and economic dislocation), then *Brown* may well be seen fifty years from now as it was in the 1950s—an unprincipled political decision that sacrificed freedom of association to the political agenda of northern elites. On the other hand if, as I fervently hope, we as a society make greater strides to overcome racism, *Brown* may be celebrated as a symbol of America's commitment to overcome the wrongs of the past.

There is another possibility: *Brown* may fade in importance. During the second half of the 20th century, the American judiciary has been celebrated by liberals as a crusading institution for social justice. That view, unique in American history, is likely to fade. Indeed, the Rehnquist Court has certainly contributed to a loss of faith by liberals in litigation. This means that fifty years from now *Brown* may not be thought about very much at all; it may just be part of a list of cases in which the Court struck down state-enforced racial segregation. More attention may be given to the real moving force in ending state-enforced segregation—the social mobilization and political action of African-Americans.

AMY STUART WELLS: If we keep heading down the current path of high-stakes accountability for students and educators amidst one of the most unequal and racially segregated educational systems in the world, fifty years from now *Brown* will seem insignificant—a remnant of a brief period in our history when we were foolish enough to believe we could overcome white supremacy.

> *Brown will be remembered more for the stories of African-American sacrifices.*
>
> *[CATHERINE PRENDERGAST]*

We need to realize that so many of the gains that we celebrate today grew out of civil rights policies spawned by *Brown*. We should also realize that our more recent history leaves us very little to venerate as, over the last two decades, the power of those civil rights policies has been chipped away, and the trend is toward more racially separate and unequal public education.

Since the Reagan administration argued in the early 1980s that our nation was "at risk" because of its public schools, the federal education agenda has focused mostly on creating strict accountability systems measured by standardized tests. Guaranteeing all students equal access to schools that teach the material tested is not a high priority, as school desegregation policies have been replaced by free-market school choice plans that place the burden of finding and enrolling in quality schools on families.

Students—mostly African-American and Latino students in poor urban schools—are being punished for their lack of opportunity to learn the material on which they are being tested. We are now spending more money on prisons than on public schools. It does not take a crystal ball to see that, unless we change our course rather dramatically, the next fifty years will only make the promise of *Brown* more elusive than it is today.

CATHERINE PRENDERGAST: The *Brown* decision will be remembered as one of many times in American history that African-Americans have risked their lives to hold this country accountable to its founding principles. It will be remembered more for the stories of sacrifice behind it than for the legal principles it advanced. I believe these stories will become more, rather than less, vivid over time. Just as textbooks are doing a better job these days representing Rosa Parks as a member of a coordinated civil rights campaign rather than as a random tired woman on the bus, textbooks in the future will dispel the popular myth that the *Brown* decision was the result of one disgruntled family acting alone. There will be greater awareness of the long strategy leading up to *Brown* and greater awareness of the other plaintiffs and the costs they paid to bring *Brown* to fruition. Of course, white supremacy has found ways in the wake of *Brown* to blunt the effects of the African-American community's efforts, but that fact does not distinguish *Brown* from any of the other watershed moments in a centuries-old struggle.

This has been an amazing year in which campuses, communities, organizations, and institutions across the nation have provided opportunities to study *Brown* and reflect on its meaning. It's an incredibly resonant event in American history. The many dialogues on *Brown* that this anniversary has provoked will help, I hope, to re-engage the public with questions of equity and justice. The fruits of these dialogues—the texts, exhibits, documentaries, etc.—will themselves become part of the legacy of *Brown*.

Editor

JOHN PAUL RYAN

(johnpryan@mindspring.com) is president of The Education, Public Policy, and Marketing Group, which provides program and editorial services to nonprofit organizations. He served as director of college and university programs and, later, school programs for the American Bar Association Division for Public Education from 1984 to 2000. He is co-author of *American Trial Judges* (Free Press, 1980), and his articles on courts and legal policy have appeared in *Law & Society Review, Policy Studies Journal,* and *Social Education.* He currently serves on the Virginia Law-Related Education Advisory Board, on a publications committee for the National Council for the Social Studies, and as secretary of the caucus that slates (K–8) school board members in Deerfield, Illinois.

Contributors

MICHAEL KLARMAN

(mjk6s@virginia.edu) is the James Monroe Distinguished Professor of Law and professor of history at the University of Virginia, where he teaches in the areas of constitutional law and constitutional history, among others. He has written widely on the *Brown v. Board of Education* decision in both law reviews and history journals and is the author of *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford, 2004). He currently serves on the editorial board of the *Law and History Review*.

JUAN FRANCISCO PEREA

(perea@law.ufl.edu) is the Cone, Wagner, Nugent, Johnson, Hazouri & Roth Professor of Law at the University of Florida, where he teaches and writes in the areas of constitutional law and race and race relations. He has been a visiting professor at Harvard Law School. His most recent article, focusing on *Brown* and integration, is "*Buscando América:* Why Integration and Equal Protection Fail to Protect Latinos," 117 *Harvard Law Review* 1420 (2004). He is the lead author of *Race and Races: Cases and Resources for a Diverse America* (West, 2000) and the editor of *Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States* (NYU, 1997).

CATHERINE PRENDERGAST

(cprender@uiuc.edu) is a Fulbright scholar and associate professor of English at the University of Illinois, where she teaches in such areas as literacy, rhetoric, and English education. She is the author of *Literacy and Racial Justice: The Politics of Learning after* Brown v. Board of Education (Southern Illinois University, 2003), which won the 2004 W. Ross Winterowd Award. Currently, she is partnering with the Urban League and area underserved schools to improve teacher preparation programs.

GERALD ROSENBERG

(g-rosenberg@uchicago.edu) is associate professor of political science at the University of Chicago, where he teaches in such areas as civil rights and liberties and race and American politics. He is the author of *The Hollow Hope: Can Courts Bring about Social Change?* (University of Chicago, 1991).

CHRISTINE ROSSELL

(crossell@bu.edu) is professor of political science at Boston University, where she teaches in such areas as public policy and the politics of education. She has written widely on school desegregation; she is co-author of *School Desegregation in the 21st Century* (Praeger, 2002) and author of *The Carrot or the Stick for School Desegregation Policy: Magnet Schools or Forced Busing* (Temple, 1990). She has served as a consultant to parties and/or expert witnesses in dozens of school desegregation and bilingual education cases and has helped design a number of voluntary desegregation plans.

VANESSA SIDDLE WALKER

(vwalker@learnlink.emory.edu) is Winship Distinguished Research Professor of Educational Studies at Emory University, where she teaches in such areas as research methods and the history of African-American education. She has written widely on education and schools and is the author of *Their Highest Potential: An African-American School Community in the Segregated South* (University of North Carolina, 1996) and *Race-ing Moral Formation* (Teachers College Press, 2004).

JOSEPH WATRAS

(joseph.watras@notes.udayton.edu) is professor in the Foundations of Education Program of the School of Education at the University of Dayton, where he teaches in such areas as the relation of schools and society. He has written widely on race, poverty, and education and is the author of *Politics, Race, and Schools: Racial Integration, 1954–1994* (Garland, 1997).

AMY STUART WELLS

(asw86@columbia.edu) is professor of educational policy at Columbia University Teachers College in the Department of Sociology and Education. She has written widely on race and educational policies, including school desegregation. She is co-author of *Stepping over the Color Line: African-American Students in White Suburban Schools* (Yale, 1997) and editor of *Where Charter School Policy Fails: The Problems of Accountability and Equity* (Teachers College Press, 2002).

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Brown v. Board of Education (II) 349 U.S. 294 (1955)
Freeman v. Pitts 498 U.S. 1081 (1992)
Green v. County School Board of New Kent County 391 U.S. 430 (1968)
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Keyes v. Denver School District No. 1 413 U.S. 189 (1973)
Lassiter v. Northampton County Board of Elections 360 U.S. 45 (1959)
McLaurin v. Oklahoma State Regents for Higher Education 339 U.S. 637 (1950)
McNeese v. Board of Education 371 U.S. 933 (1963)
Milliken v. Bradley 418 U.S. 717 (1974)
Missouri v. Jenkins 515 U.S. 70 (1995)
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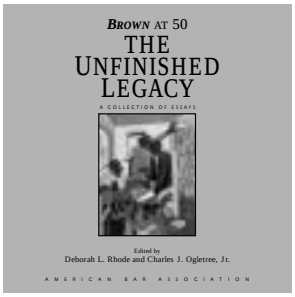
Riddick v. School Board of the City of Norfolk, Virginia 784 F2d 251, 4th Cir., 1986
San Antonio Independent School District v. Rodriguez 411 U.S. 1 (1973)
Shelley v. Kraemer 334 U.S. 1 (1948)
Sweatt v. Painter 339 U.S. 629 (1950)

New ABA Book Examines *Brown*'s Legacy

In *Brown at 50: The Unfinished Legacy*, the ABA Commission on the 50th Anniversary of *Brown v. Board of Education* brings together attorneys who were involved in the *Brown* litigation, two Supreme Court justices, legal scholars, historians, and social scientists to discuss the meaning of the Court's 1954 opinion that called for an end to segregated public schools.

Co-editors Deborah L. Rhode of Stanford Law School and Charles J. Ogletree, Jr., of Harvard Law School have organized the book into three sections: "The Case," "The First 50 Years," and "The Future." The first section explores the role of the lawyers and courts involved in *Brown*. In the opening essay, ABA President Dennis W. Archer focuses on the civil rights attorneys who struggled "to win equality by law." United States District Court Judge Robert Carter, one of the lawyers in *Brown*, offers a personal account that shows how school segregation was a symbol of a broader national system of subordination. History Professor Genna Rae McNeil of the University of North Carolina chronicles the contributions of Charles Hamilton Houston, co-editor Deborah Rhode focuses on Thurgood Marshall, and Chief Justice William H. Rehnquist examines the role of former Chief Justice Earl Warren.

Part II of the collection evaluates *Brown*'s legacy in historical context. New York University Law Professor Derrick A. Bell, Jr., crafts a hypothetical alternative opinion that makes clear the limitations of the *Brown* holding. ABA president-elect Robert J. Grey, Jr., recounts



the experience of massive resistance in Prince Edward County, Virginia, and Harvard Law Professor Lani Guinier explains why many of the problems that lawyers thought the Court had addressed through *Brown* are still deeply embedded in our society. Anthony Lewis reminds us that *Brown* was more than a legal decision—it was "the beginning of a social and political revolution." University of Chicago Law School Professor Cass R. Sunstein highlights the decision's continuing contributions and constraints, and Professor Mark Tushnet of Georgetown Law School explains his assessment that *Brown* was an ambiguous holding because its objective was "legally simple but politically problematic."

Part III of the volume looks to the future. Supreme Court Justice Stephen G. Breyer begins by observing that we have yet to fulfill one of *Brown*'s chief objectives: "equal quality education irrespective of race." Columbia University Law Professor (and former *Brown* lawyer) Jack Greenberg provides a sobering reminder of the courage of those involved in the early civil rights campaigns, as well as the distance we still need to travel. Co-editor Charles J. Ogletree, Jr., then reviews proposals that might bring us closer to the racial equality that *Brown* envisioned but could not realize. Finally, Harvard social scientists Gary Orfield and Erica Frankenberg present concrete remedial strategies for realizing *Brown*'s vision.

Taken together, these timely essays are, in the words of the co-editors, "an occasion to celebrate our progress, confront our failures, and reassess our strategies."

The book is available through ABA Publication Orders, P.O. Box 10892, Chicago, IL 60610-0892 — $35 hardcover (PC 2350212); $20 paperback (PC 2350213); ABA member and bulk rate discounts are available. To order, call 1.800.285.2221 or go to: www.abanet.org/abapubs/order.html.

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