Brown Did Not Fail America, America Failed Brown

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ESSAY

Brown Did Not Fail America, America Failed Brown

PATRICIA A. BROUSSARD*

The problem of the twentieth century is the problem of the color line.

—W.E.B. Du Bois

INTRODUCTION

The problem of race in America has a self-sustaining quality that has kept this country mired in de facto segregation, legal battles, and continuing myths and stereotypes, which linger just on the edge of our culture like the proverbial elephant in the room. From Plessy v. Ferguson through Brown v. Board of Education and now Grutter v. Bollinger, the courts have zigzagged on the issue of race. Indeed, a form

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2. 163 U.S. 537 (1896). Plessy, a transportation case, gave us the infamous “separate but equal doctrine,” which colored life in America for the greater part of the twentieth century. Id. at 537, 544 (emphasis added).
3. 347 U.S. 483 (1954). Brown held that segregation deprived Black children of equal protection of the laws as guaranteed by the Fourteenth Amendment of the U.S. Constitution. Id. at 495. The Court also noted “education is perhaps the most important function of state and local government.” Id. at 493. It is this acknowledgment that makes it clear to me that America has known for a long time that the stakes are high and that it was and is the government’s responsibility to slay the dragon of racism and to bury the ashes of Plessy. Lastly, as we celebrate Brown, it must be said that the “success” of this case was made possible by laying the groundwork by litigating a flurry of cases that positioned Brown at the right place and the right time. See McLaurin v. Okla. State Regents, 339 U.S. 637 (1950); Sweatt v. Painter, 339 U.S. 629 (1950); Sipuel v. Okla. State Regents, 332 U.S. 631 (1948); Cumming v. County Bd. of Educ., 175 U.S. 528 (1899).
4. 123 S. Ct. 2325 (2003). Grutter found Blacks and minorities once again on their knees begging the Supreme Court and the court of public opinion to recognize that more time was needed to finish the job started by Brown. It is ironic to me, for I believe that if America had...
of schizophrenia emerges when one analyzes the rationales behind many of the court decisions of the last 100 years. And, although the late 1980s saw the term "race" replaced with the more palatable word "diversity," the real problem, as articulated by W.E.B. Du Bois, is race. More specifically, the problem is how race influences the way we interact or fail to interact with each other in the most important areas of our lives.

The unanimous Brown decision offered America a grand opportunity to adjust its attitude about race and to give Americans the much-needed social interaction that had been lacking for centuries in this country. Notwithstanding the negative views that have always surrounded the Brown decision, and the more recent ones that have been expressed on the fiftieth anniversary of this case, Brown gave many White Americans their first glimpse into the post-slavery lives of Blacks. It also presented Whites and Blacks with their first opportunities for meaningful social interaction with one another. Moreover, the implementation of the Brown rule of law and the subsequent legislation held the promise of, if not erasing the color line, at least minimizing its effect on the culture as a whole. The architects of Brown understood from whence the path of power flowed and they knew that it was not from a substandard three-room schoolhouse. Likewise, the implementers of these laws and policies were not naïve and realized that desegregation would meet great resistance and come at a cost.

done its job in fully implementing and protecting the Brown plan, there probably would not have been a Grutter case. The continuation of "separate but equal" on a much more sophisticated level has placed us on an affirmative action track with miles to go.

5. Just one of those critics is Ellis Washington, J.D. In a letter to the Detroit News reporter Kimberly Hayes Taylor, in response to her article, Judge Keith, Governor Host Fund-raiser on Saturday, DETROIT NEWS, May 16, 2003, at 1C, Mr. Washington asserted:

There is not a single judicial precedent in the Brown opinion; The Brown opinion was based on the political pressure of the day, not on universal principles like the Rule of Law, Natural Law, morality, equality, justice truth; The Brown opinion was based on the false social science of racial relativism (all people are equal no matter what they do) and radical liberalism (separation of morality from public policy).


6. This message was also clearly stated in Grutter by Justice Sandra Day O'Connor who pointed out that the Amicus Curiae Brief for the Association of American Law Schools stated, “A handful of these schools account for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges.” Grutter, 123 S. Ct. at 2341.

7. THE BLACK AMERICANS: A HISTORY IN THEIR OWN WORDS 1619-1983 (Milton Meltzer ed., 1987). Meltzer wrote, “There was jubilation at first. Millions of Blacks rejoiced that at last-
Nonetheless, a "just do it" attitude seemed to prevail, and desegregation became the new American standard, at least in theory.\(^8\)

Indeed, because of that "just do it" attitude, the last fifty years have produced some legal successes in the area of race relations and equality.\(^9\) In addition to the \textit{Brown} decision, Congress passed the Fair Housing Act\(^10\) and the Civil Rights Act of 1964,\(^11\) just to name a few. Likewise, colleges and universities implemented affirmative action plans and programs and actively recruited Black students.\(^12\) Not to be outdone, corporate America deemed "diversity" a valued commodity, and a respectable number of African Americans were hired in positions that up until now, were reserved for Whites.

In spite of these apparent legal victories, something has gone terribly awry. Many in the Black community remain at the bottom of American society and exist in pre-\textit{Brown} segregation.\(^13\) David R. Carlin, Jr., makes this point in an article in which he concludes that integration has been a failure.\(^14\) Carlin asserts that Blacks, who remain at the bottom of the society, are probably less integrated than their forebearers of fifty years ago.\(^15\) He further contends that even well educated Blacks who have "made it" have a feeling that they really have not made it, for if you are Black in America, your personal achievements remain subordinate to your membership in a racial category.\(^16\)
In recent years, I have had many discussions with friends on the subject of race in America. I am always amazed when I talk with other Blacks and they opine that Black people had a higher quality of life during segregation. They posited that Blacks had a “real” community, where doctors, lawyers, teachers, preachers, and sharecroppers lived on the same block, and Black teachers held Black children to very high standards. I have found it useless to counter this rose-colored picture of segregation by mentioning the fact that those Blacks had no other choice on where they could live, eat, and sleep; therefore, they had to live together in the same community. Blacks were bound by the parameters of a racist society and therefore, limited in every aspect of their lives.\(^7\) And, although I believe that Blacks are not where they should be as a nation in terms of race relations,\(^8\) I certainly do not advocate for the good old days of segregation.

It is my belief that the failure of \textit{Brown} and the continuing problem of race in America stems from the fact that America never took ownership of the promise of \textit{Brown}, and instead, viewed the decision purely in terms of desegregation, as opposed to integration. Consequently, integration has remained a concept instead of an action item.\(^9\) Implicit in this notion of desegregation is the idea that the

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\textit{We are now in the third great period in the American history of White-Black relations. The first was the age of slavery, which lasted from the seventeenth century to the 1860s. Next came the era of racial segregation, which lasted from just after the Civil War until the 1960s. Since the late ’60s we have been living in an era which, as yet, has no definitive name. When it first began, we thought this third age would be called “the age of integration.” But we now see, after thirty years of a bitter and disappointing experience, that it can hardly be called that.}

\textit{\textit{Id.} at 6.}


\textit{We have waited for more than 340 years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jet-like speed toward the goal of political independence, and we still creep at horse and buggy pace toward the gaining of a cup of coffee at a lunch counter.}

\textit{\textit{Id.}}

\textit{18. See Patterson, \textit{supra} note 9, at 24. Patterson states:}

\textit{The rise of a genuine Black middle class over the past quarter of a century is another cause for celebration, although no group of persons is less likely to celebrate it than the Black establishment itself.}

\textit{... And yet it is also no exaggeration to say that, both subjectively and by certain objective standards, these are among the worst of times, since the ending of Jim Crow, for the African American population.}

\textit{\textit{Id.}}

\textit{19. It is not the intent of this Essay to delineate the reasons why America did not fulfill the promise of \textit{Brown}, but I must add, as an aside, that sometimes I feel that the job of integration was a task that America was just not up to. I conclude this from just a glimpse at the timeline of history: decades of slavery, followed by eighty years of Jim Crow, and finally \textit{Brown} in 1954. A}
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races sit next to one another, while the concept of integration carries with it a much heavier burden. It appears that the races have never made a personal investment in each other and thereby have fallen short of meeting the high standard that true integration demands. In fact, over the years pundits and scholars alike have eschewed the idea that in order to have meaningful integration, we must know each other and interact outside of the school and work environment. I understand that America cannot legislate social interaction, however, we have never had a serious, national debate on the issue. Moreover, since America has never experienced full engagement of the races, many White Americans have no personal investment in integration and are therefore willing to see the progress made by Brown evaporate. Moreover, America’s inertia with respect to finding a workable solution to Black-White relations has resulted in continued discrimination and the deconstruction of many of the gains made towards integration post-Brown.

Therefore, in the final analysis, I am left to conclude that the theory of the case behind Brown and the resulting legal decisions were sound and continue to be meritorious, but the true failure of Brown lies in its implementation and the massive resistance to it that existed twenty-two years later, the Court released many school districts from their desegregation plans. It does give one cause to ponder. See generally Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976). The Court held that:

[W]here subsequent failure of school officials to meet the [desegregation] plan was not due to any actions on their part but rather to normal shifts in population patterns,... [the] district court exceeded its authority by enforcing its order... [requiring] there be no school with a majority of minority enrollment... Id. at 434.

20. Professor Derrick Bell states, "[T]he fact of slavery refuses to fade, along with the deeply embedded personal attitudes and public policy assumptions that supported it for so long." DERRICK A. BELL, JR., FACES AT THE BOTTOM OF THE WELL 3 (1992).

21. Professor Cornel West proffers the following, “To engage in a serious discussion of race in America, we must begin not with the problems of Black people, but with the flaws of American society...” CORNELL WEST, RACE MATTERS 6 (1993).

22. Paul Ruffins, What Ever Happened to Integration?, 15 BLACK ISSUES IN HIGHER EDUC. 18, 18 (1999). The title of the article was inspired by the question posed by Julian Bond. Bond wondered aloud, “What ever happened to the '60s idea that the mere fact that Blacks and Whites could be friends, hold hands, and attend the same churches and schools, said something good about the society?” Id. Ruffin commented that “Bond was expressing a sorrow felt by many older activists — a sorrow grounded in the belief that many people, including many African Americans, seem to have given up on the idea that integration is a positive social good.” Id.

23. A Washington Post January 18, 2004 headline declared, U.S. School Segregation Now at '69 Level. The article quoted a study by The Civil Rights Project at Harvard University, which found that “schools are almost as segregated as they were when the Rev. Martin Luther King, Jr. was assassinated.” Michael Dobbs, U.S. School Desegregation Now at '69 Level, WASH. POST, Jan. 18, 2004, at A10.

24. “Massive resistance” was the tactic that many places in Virginia took to avoid desegregation. In Prince Edward County, the school system closed down to avoid integrating Black
isted for many years. So, as we celebrate the fiftieth anniversary of Brown, we must also acknowledge the fifty years of resistance to it. The failure lies not within Brown or the spirit behind it, but rather in America’s lack of commitment to full implementation of its principles in a manner that weaves integration into the fabric of our culture. The narrator of a PBS special on the subject of Brown put it aptly when he stated, “Brown v. Board of Education may be a new birth of freedoms, as the Washington Post calls it, but the baby is having a hard time feeling free.”

I believe that one of the key areas of American life, which evidences how America failed Brown, is how we continue to educate our children. I further contend that most Americans are still “practicing segregationists” in the key areas of our everyday lives. Moreover, I believe, as does Carlin, that many in White America are quite satisfied with that arrangement. Carlin posits, “Worse than White bigotry, however, is White indifference: by and large, White Americans have lost interest in the troubles of their Black fellow citizens. They have stopped listening, and they have largely stopped caring in any but a ritual manner.” Would Carlin have been able to reach such a conclusion had White America attempted to have done more than merely sit Black bodies next to White bodies in our schools and places of work? I do not believe that he would have been able to do so.

Indeed, I am loathed to observe, that if W.E.B. Du Bois were alive today, the extremely senior citizen, reviewing his own one hundred year old quote might be forced to amend it to read: “The problem of the twenty-first century is also the problem of the color line.” In short, the impact of Brown has started to fade like some heirloom daguerreotype because America never fully embraced it and has done little or nothing to implement integration in a meaningful way.


25. “Across the nation all-White suburbs begin to develop, where White children can be educated separately from Blacks.” Id.

26. Id.

27. “Some parents start by saying race doesn’t matter, but end up conceding that ultimately it could.” Steve Farkas & Jean Johnson, Does School Integration Work? Parents Speak Out, USA TODAY MAG., Jan. 1, 2000, at 50.

28. Farkas and Johnson go on to say that “[f]or all the strong sentiments integration triggers, few American parents have actual experience with it.” Id. at 51.

29. Carlin, supra note 13, at 8.
I. A LOOK BACK

The Brown decision prohibited segregation of children in public schools on the basis of race. It also held that segregation deprived Black children of equal educational opportunities from their White counterparts. In addition, the court noted that segregation affected the hearts and minds of Black children by generating "a feeling of inferiority." It is this last observation by the court that has been given the least value and attention and consequently has eroded Brown. Some White Americans view Black children as unworthy, non-contributing members in the school environment.

There is no question that Brown laid the groundwork for unprecedented strides in the American public school system. For the first time in many classrooms across the South, White students sat in classrooms with Black students, and the country appeared to be on a path to healing. Desegregation plans were quickly implemented in some southern states, while other states resisted. In fact, North Carolina, South Carolina, Mississippi, Virginia, Georgia, Alabama, and Florida did not integrate until the mid 1960s. The great Commonwealth of Virginia chose to close down the Prince Edward County School System rather than integrate. Nonetheless, America was able to keep up the illusion of desegregation for a few good years. As a matter of fact, from the mid 1960s through the mid 1980s, segregation declined dramatically. By the mid 1980s, segregation had hit a brief plateau before it began to rise again.

By and large, desegregation was accomplished by closing predominately Black schools and busing those students to schools that had been all White. From the beginning, White parents resisted busing and the responsibility for actualizing desegregation has been pre-

31. Id. at 494.
32. Id.
33. Historian John Hope Franklin, in discussing educational opportunities, posited that "There was the persistent, not so subtle argument that the presence of 'inferior' [b]lacks merely diluted the rigorous educational programs designed for [w]hites." JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS 617 (Alfred A. Knopf, 8th ed. 2000) (1947).
37. Id.
38. Kusimo, supra note 34.
dominately borne by rural Black children. Busing, as the chief means to facilitate desegregation, has been a source of contention from the beginning.

Notwithstanding the subsequent passage of the Civil Rights Act of 1964, victories in the area of desegregation have been hard-won, tenuous, short-lived, and always positioned to be challenged. If as a nation we valued integration, it would seem to me that our collective voice would have been loud and outraged that much of the progress towards desegregation in our public school system has been reversed. Unfortunately, on a national level, the silence has been deafening.

It is no secret that the post-Brown era revealed evidence that White parents immediately found ways to circumvent the decision. Although the blatant refusal of eight states to desegregate and the subsequent action of the government forcing them to do so may be viewed as America’s commitment to desegregation, little has been done throughout the years to counteract the erosion of the gains that have been made. Blacks from around the country with whom I have spoken in my role as a school board member report that they feel that they have been viewed as paranoid for scrutinizing and questioning many of the educational practices and policies that have arisen over the past fifty years sans their input or imprimatur.

They further believe that some of these educational practices and policies that have been adopted by local school systems are merely institutionalized attempts to thwart integration and are indicia of continued resistance. Likewise, some of these same Black parents also believe that many White parents, who see little or no value in integration, are behind these practices and policies which further segregation. They believe that the government has endorsed these practices and policies by assent or silence. For the sake of indulging in a bit of my own paranoia, I will survey some of the practices in public education that many Blacks deem suspect.

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39. "Data indicate[s] that a very large percentage of rural African Americans were still undereducated in 1990." Id.
40. Id.
41. See Milliken v. Bradley, 418 U.S. 717 (1974). Although the twenty years between Brown and Milliken cannot be characterized as "immediately," it is clear that White parents were vigilant and found an opportunity to challenge Brown as soon as they could.
42. On July 14, 1999, Thomas Payzant, the superintendent of the Boston public schools, decided to abandon the attempt to maintain racial balance in the school system. This decision followed many years of acrimonious battles to integrate the Boston public school system and led to a system where Black children were bused to the suburbs. See Patricia J. Williams, Turning Back Time, THE NATION, Aug. 9, 1999, at 9.
II. MY PRIVATE WHITE ACADEMY PARANOIA

After local jurisdictions took steps to enforce the Brown decision, many communities "resisted" by establishing private schools and academies that were meant to serve only White students.43 As I mentioned earlier, at least one school district in the Commonwealth of Virginia chose to shut down their public schools and establish White academies to avoid compliance with Brown.44 The most tenuous battle was probably fought by the Prince Edward County School system, which avoided desegregation for ten years.45 White families relied upon earlier Supreme Court cases, which assured them the right to educate their children in a private school environment.46 Many times, private schools received public funding for tuition and books.47 In addition, these academies qualified for tax-exempt status.48 Black children had no public schools to attend, and to add insult to injury, their parents' tax dollars were used to support the private White academies from which they were barred.49

In 1964, ten years after deciding Brown, the Court held in Griffin v. County School Board of Prince Edward County, that the action of the county school board in "closing the Prince Edward schools and meanwhile contributing to the support of the private segregated White schools that took their place denied [Negro school children] the equal protection of the laws."50 It took another nineteen years before private White academies lost their tax-exempt status.51

I am a child of the Brown era. I have vivid memories of being in the fourth grade in an all-Black neighborhood Catholic "missionary" school in Chicago and hearing that our school would have to close for financial reasons. Letters went home which informed our parents of the closure and plans were made to send all 180 of us to a nearby all-

44. Rowan, supra note 35.
47. Griffin, 377 U.S. at 223.
48. Id.
49. Kusimo, supra note 34 (explaining that these arrangements were maintained for decades).
50. Griffin, 377 U.S. at 232.
White, Catholic elementary school. I later learned, from a White parent who was disgusted with the behavior of her neighbors, that over fifty percent of the families at the new school moved their children to other schools, many far out of the neighborhood, to prevent them from attending school with other Catholic, and I emphasize Catholic, Black children. What is most amazing to me about the entire incident is that the Cardinal, when confronted by the threat of the departure by the White parents, responded with a loud and resounding “good bye.”

It was only as an adult that I recognized the courage that it took to stand up to the entire community in the name of justice. It was an especially bold stance because most of the Black students could not afford the entire tuition at the new school. This courageous act took on a new dimension when I understood the economic ramifications behind the decision. I am sure that there are other stories of individual courage that can be told, however, such acts of determination were the exception and not the rule when dealing with accepting groups of Black children into the White fold. For every enlightened person with the power to make the Brown decision a reality, there were a thousand who were determined to block integration at any cost.

I am not suggesting that all private schools and academies were established to circumvent desegregation or that Black students have not been accepted, but I do believe that the vestiges of racism and resistance still linger. Moreover, I do believe that data will show that Black students have flourished at many such private schools and academies. Notwithstanding these facts, I believe that the rancorous resistance to desegregation of the past fifty years, makes many Black parents suspect about these schools’ real desire to have a racially diverse student body.

52. This fact came out in a meeting that was held at the old school before the move was made. That fact, coupled with the knowledge that we were not welcomed at the new school made fifth grade a very difficult year for me.

53. In a study funded by the National Institute of Mental Health, research demonstrated that “[r]acism in today’s society often takes a subtle and more covert format, involving stereotyped thinking and diminished or lowered expectations for Black students.” Edith G. Arrington et al., The Success of African-American Students in Independent Schools, INDEP. SCH. MAO., (Summer 2003), available at http://ww.nais.org/pubs/ismag.cfm?file-id=2791&ismag-id30. Thus, it is difficult to envision a situation where a “qualified” Black student would not be welcomed with open arms.

54. Author Gary Orfield states that “[s]egregation is so deeply sewn into America’s social fabric that the media rarely see it. And policy-makers, social thinkers, pundits and ‘education reformers’ steer around the fact of segregation as if it were heaven-ordained, without insidious cause or acceptable cure.” See Orfield, supra note 37, at 5.
of Black students that they wish to educate,\textsuperscript{55} thereby precluding many Black children who could especially benefit from the assets that these schools possess.\textsuperscript{56} Consequently, many private schools and academies remained in the exclusive domain of White students and parents.\textsuperscript{57} I believe that commentators Jeffery R. Henig and Stephen D. Sugarman summed up my feelings when they wrote, "Nonetheless, this experience with open racism in private education continues to make many people nervous about non-public schools. Indeed, racial, religious, and social class exclusivity—three things that private schools have stood for at various times in our history—are exactly what they see themselves as fighting against."\textsuperscript{58}

III. ABILITY GROUPING AND TRACKING

Another well-known practice that was deemed a useful educational tool, but wrecked havoc when placed under the guidance of White resistance was ability grouping also known as tracking.\textsuperscript{59} Although grouping and tracking were initially different concepts, in recent years, the terms have been used interchangeably.\textsuperscript{60} Ability grouping is not a new concept and has been a practice, in some form, in the American public school system for the last forty years.\textsuperscript{61} The advent of the twentieth century and the further industrialization of the nation caused educators to change course, and high schools started accepting all students, not just a privileged few.\textsuperscript{62}

\textsuperscript{55} Many Blacks in the African American Book Club of Washington D.C. believe that in the minds of Whites, there is a "right" kind of Black and a "wrong" kind of Black. 'Making that determination is a little like deciding if something is pornography: they may not be able to define a "good" Black person, they just know one when they see her.

\textsuperscript{56} Denise C. Morgan, \textit{The Devil is in the Details: Or, Why I Haven't Yet Learned to Stop Worrying and Love Vouchers}, 59 N.Y.U. ANN. SURV. AM. L. 477 (2003). "The Black community simply continues to be interested in the same thing that we have been interested in throughout American history: high quality education for our children. \textit{Id.} at 481.


\textsuperscript{59} The dictionary defines ability grouping as: 1. The practice of placing students with others with comparable skills or needs, as in classes or in groups within a class. 2. See tracking. \textit{American Heritage Dictionary of the English Language} (4th ed. 2000).

\textsuperscript{60} \textit{Id.}


\textsuperscript{62} \textit{Id.}
In the latter half of the twentieth century, ability grouping and tracking regained popularity. Proponents argued that ability grouping and tracking were positive tools to ensure high standards and academic rigor. Shannon Peters Talbott proffers that the tracking movement was America's attempt to outpace the Soviet Union's space advances by assembling the brightest minds in the country for our own use in the space race.

Unfortunately, in many instances, this seemingly benign and sound educational practice has become an instrument that supports school systems that are not fully committed to integration. Magically, the lower tracks of some of these school systems are populated with Black students, while White students enjoy the upper echelon of the curriculum. Carla O'Connor, a participant at the University of Michigan's 2002 symposium on race said, "[W]e know the track placement is based not only on academic considerations but non academic factors such as counselors and teachers recommendations, parents, students and teachers preferences . . . ." It is this acknowledgment that troubles me the most because I see this as an opportunity for those with more sinister motives to maintain segregated classrooms, in so-called integrated schools.

I agree with Roslyn Arlin Mickelson who stated, "[S]ome of the most widespread and harmful sources of racially disparate educational processes and outcomes are racially segregated schools and classrooms segregated by tracking." In the late 1970s, I volunteered in my daughter's elementary school. I was assigned to assist students at

63. Id.
64. Id.
65. Carla O'Connor, a participant in a symposium at the University of Michigan on the status of the American public schools stated:

We already know about the direct academic consequences of tracking, and how they play out against the subject of race. We know that students in higher track classes encounter higher teacher expectations, have greater access to knowledge, more engaging learning experiences, and privileged exposure to educational resources. And it is generally the opposite scenario for children in the lower track classes. We also know that poor and minority students are underrepresented in high track classes, and over represented in low track classes, even after we have controlled for achievement and proxies of ability.

66. Id. at 254.
a special "Reading is Fundamental" event.68 I arrived at her school for the first class of the day and stayed until time for dismissal. I was positioned in the library and charged with helping students select books. I was shocked to discover that all of the classes that visited the library in the morning were all White, with all White teachers. I was instructed to steer those morning classes towards higher-level books because they were "very bright." Conversely, I was told that the afternoon classes would require more help because they were "slow" and not reading at their grade level. I was told that they were to be guided to the tables with the easier books. Needless to say, the afternoon classes were all Black, as were their teachers.

I discussed my distress over what I had witnessed with several of my Black friends who had children in the same school system, but different schools, and was told that the situation was the same at their children's schools. My distress turned to anger when I realized that the most troubling aspect of this scenario was the fact that the practice was accepted without question. I soon discovered that those Black parents who did question the arrangement were subjected to the same treatment as Black students by being labeled as disruptive and ill-behaved.69

Surely, my one negative experience with one school system could not be used as evidence to indict the entire public school system and charge it with using ability grouping and tracking to circumvent desegregation. As one would suspect, however, my experience was neither rare nor isolated. The positive result of this discovery was that it heightened my awareness, which prompted me to become involved in the school system on a level that I probably would not otherwise have been. My involvement eventually led to a seat on the local school board where I had many opportunities to discuss the issue of tracking with colleagues around the country. I attended local and national conferences where this issue was debated. In addition, my views of the detrimental effects of tracking caused a stir in my school district.70

68. Reading is Fundamental (RIF) is a national literacy program for children. The program was founded in 1966 by former teacher Margaret McNamara. RIF's initial goal was to provide books and reading materials to poor White children in Washington, DC. It has since grown into the nation's largest children's literacy program. Reading Is Fundamental, at http://www.rif.org (last visited Mar. 6, 2004).

69. To provide some historical context to this personal tale, the events herein occurred in 1979, twenty-five years after the Brown decision.

70. A debate ensued over homogeneous grouping versus heterogeneous grouping. Some school board members read the terms to serve as code words for Black and White.
In my capacity as a school board member, I have endorsed certain programs that by their nature may be categorized as ability grouping or tracking. Specifically I am referring to language immersion programs, English as a second language classes, and Title I programs. I believe that the distinction between tracking for the purposes of many special programs and tracking as employed by many school systems is the issue of mobility, that is, the ability to move from a lower group to a higher one. Ostensibly, ability grouping within some government-mandated programs is aimed at promoting mobility by preparing Black and Latino students to compete with their peers by successfully completing the government program. Whereas, under a general ability grouping scheme, as practiced by many school systems, the result has been the maintenance of the status quo, where once Black students are placed in a lower “track,” a gap develops and grows as students move through the educational system. Traditionally speaking, the lower tracks have received fewer resources, and less skilled teachers, which have resulted in lower test scores. Thus, the lack of accomplishments of the all or mostly all Black, lower tracked classes creates a self-fulfilling prophecy that seems to justify a large number of Black students being taught separately from White students.

As a result of the ability grouping and tracking practices of many school systems, dual school systems have been created in one schoolhouse. White students could conceivably attend a school that is fifty percent Black, but share no classes and have little or no contact with Black students. Again, it is the implementation of what appears to be a sound educational practice that makes Black parents, like myself and those whom I have encountered, skeptical and inclined to believe that many staunch advocates of ability grouping are still resisting the Brown decision.

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73. Symposium, supra note 65, at 253.
74. Id. at 251.
75. Id. at 252.
IV. TALENTED AND GIFTED PROGRAMS

First cousins to ability grouping programs are the revered talented and gifted programs. Even more troubling than ability grouping is the use of talented and gifted programs to segregate Blacks and Whites. Talented and gifted programs operate in a few different ways. Some, but not all, require some form of testing to qualify for admission. Others allow parents and teachers to recommend students into such programs. There are certain non-academic factors that govern whether a student is deemed talented and gifted. One factor that plays a major role is behavior. I have witnessed many brilliant Black boys and girls being denied entrance to a talented and gifted program based on behavior. One misstep and that brilliant Black student will end up in another kind of special program with a label that many are all too often willing to believe. Another factor that contributed heavily towards students' entrance into talented and gifted programs is parental attitude. Many White parents appear to be better informed about talented and gifted programs and utilize them to the maximum.

I reviewed a survey ordered by the Chancellor of New York City, on the subject and produced by the New York ACORN School Offices on programs serving talented and gifted students. The survey found that children of color were dramatically underrepresented in gifted programs throughout the system. More disturbing were the numbers emerging from individual schools. One school had a population that was 41% African American, 42% Latino, 13% White, and

76. For example, in the Alexandria City Public Schools, students who show some “ability” are tested to see if they qualify for the talented and gifted program. This recommendation can come from self, peers, parents, other staff, or community members. ALEXANDRIA CITY PUBLIC SCHOOLS, LOCAL PLAN FOR THE EDUCATION OF THE TALENTED AND GIFTED 2 (Sept. 2002).
77. Symposium, supra note 65, at 254.
78. Id.
79. Id.
80. RICHARD J. HERRNESTEN & CHARLES MURRAY, THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE (1994). In their joint venture, Herrnstein and Murray advance their theory that Whites are more intelligent than Blacks. Id. They also conclude that intelligence is inherited, immutable, and fixed. Id. Their tome was a best seller. I rest my case.
81. Carla O'Connor maintains that “[t]here are the privileged, usually [W]hite and middle class, who have it, or have a lot more of it... so there’s a fight over denying them access... they’re afraid that their children will lose out... And fight to make sure that their children have an advantage relative to other children.” Symposium, supra note 65, at 264.
82. ACORN stands for the Association of Community Organizations for Reform. It has over 150,000 members and chapters in sixty cities around the country. See ACORN.org, at http://www.acorn.org (last visited Feb. 27, 2004).
White students comprised the largest single group in the talented and gifted program; 88% of the White students were in the talented and gifted program. It is no wonder that the authors of this survey chose to entitle it, Secret Apartheid III. How many school districts are replicating these statistics around the country? If we know that the end result of many of these programs is in-house segregation, why have we not taken corrective action?

In many ways, talented and gifted programs epitomize the ultimate ability grouping scheme. Once you are declared talented and gifted, you can forever wear the crown. I know of a school that had a population that was 30% White and 70% Black. Virtually all of the White students were enrolled in the talented and gifted program and not one of them attend any classes with Black students. It would appear to the rational mind that it would be statistically impossible for that scenario to play out in a school with the demographics that I described. I know first-hand, however, that it is true at that school, just as it is true at hundreds of schools around the country. Generally speaking, these programs have more resources, better teachers, and are committed to exposing students to a wider range of experiences. It is a case of those who have the most getting the most. Unfortunately, just as the image that one conjures up when envisioning the face of a low-performing student is Black, the face of the student in the talented and gifted program is lily-White. Once again, a seemingly benign practice in the hands of those in America who are sleeping puts yet another nail in the coffin of Brown.

84. Id.
85. Id.
86. My source for this is confidential information that I decline to cite. Suffice it to say, my numbers come from a school district to the south of Washington, DC.
87. Symposium, supra note 65, at 251.
89. Dr. Martin Luther King, Jr., said:
One of the great liabilities of history is that all too many people fail to remain awake through great periods of social change. Every society has its protectors of the status quo and its fraternities of the indifferent who are notorious for sleeping through revolutions. But today our very survival depends on our ability to stay awake, to adjust to new ideas, to remain vigilant, and to face the challenge of change.

V. VOUCHERS

My view of vouchers is influenced greatly by my knowledge of the history of private White academies and my views on the American public school system. I believe that one of the hallmarks of a great democracy is a great public school system. I strongly concur with commentator Denise C. Morgan who stated:

Public schools are one of the few institutions in the United States where people from different backgrounds come together to negotiate common values and to determine the course of our shared future. It is public spaces, such as those schools, that give meaning to citizenship—because it is in those spaces that we are all equal.90

I see the widespread use of vouchers as an instrument that will sound the death knell on the American public school system. I strongly believe that the American school system needs to be fixed. I would never argue otherwise. However, I do not believe that the solution lies in vouchers. I would go one step further and posit that vouchers will undo Brown once and for all.91

I believe that Black parents are fed up with the status of the public school system and are groping for an alternative to it.92 I am a parent, and my children’s education was the center of my existence for twenty-five years. Therefore, I know first-hand that Blacks want, and deserve, quality education systems.

Many parents who advocate for vouchers fail to understand that a voucher is not a tuition waiver. Rather, it is a set amount of money that a family can use towards tuition.93 Without the resources to supplement the voucher, most Black families are steered towards religious schools, less prestigious private schools, or schools especially created to receive students with vouchers.94 All of these schools pos-

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91. “The largest growth in private education over the past 30 years has been among the ‘Conservative Christian’ schools, which enroll around 14% of all private school pupils in 1995-96.” Henig & Sugarmann, supra note 59.

92. Morgan, supra note 56, at 481-82. Morgan observes that:

The Black community simply continues to be interested in the same thing that we have been interested in throughout American history: high quality education for our children. By that I mean schools that enhance intergenerational mobility—giving children access to greater social, political and economic power than their parents have.

Id.

93. Id. at 477; see also, Dumas, supra note 43.

94. Proponents of vouchers believe that “new high quality for-profit ‘schools of choice’ will spring up as soon as state subsidies for education are available.” Morgan, supra note 56, at 489.
sesh the ability to pick and chose their student body. In addition, the acquisition of a voucher does not guarantee one admission to a private school. Students must still fulfill the entrance requirements, notwithstanding the voucher.95

Moreover, each voucher that is issued depletes the budget of the public school where the recipient would have attended and some public schools would have even less money to teach those left behind.96 In a published fact sheet on the issue, the American Association of University Women (AAUW) opposes vouchers and states: “Vouchers disproportionately help families with children already in private schools.”97 AAUW further asserts, “Private and religious school voucher programs weaken the public school system by diverting already scarce funds needed for teacher training, smaller class sizes, expanded support services, and improved facilities.”98 If fifty percent of a school’s population were to opt to take vouchers, the school would be decimated and the remaining fifty percent of the student body left between the proverbial rock and a hard place.

In addition, there are many unanswered questions that impact my distrust of the voucher system and cause me to conclude that it is potentially yet another tool of those who have resisted integration. I wonder what will happen to the school that is left depleted of its best students. Has anyone proposed a solution for the large number of students who will not be privy to a voucher?99 I also question how parents can afford to pay tuition if the voucher is for less than the full tuition amount? How can proponents of vouchers legally justify limiting vouchers to a certain class of students and survive constitutional

95. Earnest Dumas adds:
Though voucher advocates talk about private schools, they are really beside the point. Tuition and other costs at private schools are beyond the reach of poor children, even with the assistance of vouchers from the state school fund and even if private schools accepted them. Nearly all the few thousand children participating in the celebrated voucher experiments in Milwaukee and Cleveland use the vouchers to attend religious schools.
Dumas, supra note 43.
98. Id.
99. This is especially troubling to me because I still envision the majority of poor, Black urban students falling through the cracks if governments fail to adequately fund public schools, while those that already have access to improved education will benefit immensely. “I do not doubt that vouchers will improve educational opportunities for some small number of children.” See Morgan, supra note 56, at 487.
scrutiny when some angry middle-class White parent asserts a right to a voucher?

The most troubling problem for me is that I believe that the widespread use of vouchers will result in the erosion and demise of the American public school system. Denise C. Morgan posits that voucher plans, as currently set up, will not seriously challenge the reasons that public schools fail.\textsuperscript{100} I agree. Earnest Dumas wrote, "The philosophical premise behind vouchers is that private schools are better than public ones because the free market always produces better results than public investment."\textsuperscript{101} Has anyone bothered to ask who will regulate these schools, which will be the true beneficiaries of a widespread voucher movement?

Lastly, I am troubled because it signals that America has given up on poor Black children. Who will educate those children who are not privy to a voucher? Voucher programs are indeed Trojan horses, and "I fear the Greeks, even bearing gifts."\textsuperscript{102}

If America had taken \textit{Brown} to heart, it would have invested in our schools and in Black children. We must ask ourselves how we ended up in this position of desperation where Black parents are looking anywhere and everywhere for a quality education for their children.\textsuperscript{103} What caused Americans to squander an opportunity of a lifetime for meaningful integration of the races? Denise C. Morgan concluded:

We have to start by facing facts: Americans like the inequality in our education system. At the same time that most Americans believe that children are entitled to the kind of educational opportunity that will allow them to succeed or fail on their own merits, we just as firmly believe that their parents should be rewarded for their hard work and success. And as Jennifer Hochschild has said: "One has not really succeeded in America unless one can pass the chance for success on to one's children."\textsuperscript{104} So, while we have a strong egalitarian tradition in the United States, we also have a strong tra-
dation that points in the opposite direction—towards replicating hierarchies.\(^{105}\)

VI. NEIGHBORHOOD SCHOOLS AND HOUSING PATTERNS

Lastly, we arrive at the neighborhood school and the role that it plays in the continuing saga of segregation in America. Although neighborhood schools do not fall into the category of "practices", there are policies adopted by school systems, which promote the idea of neighborhood schools. Good neighborhood schools are the dream of all parents, Black and White alike. Sadly, many neighborhood schools are as segregated, as are the areas in which they exist.\(^ {106}\)

Housing patterns, illegal lending practices, and racism coupled with the birth of the suburbs, the growth of the suburbs, and the exodus from the inner cities, have resulted in segregated neighborhoods around the country.\(^ {107}\) One cannot discuss the role of the neighborhood school and segregation without also addressing discrimination and segregation in housing. How we live and the failure of America with respect to finding legitimate methods to fully integrate neighborhoods, further evidences the lack of will to fully integrate. However, that is another essay.

CONCLUSION

So, what is the point of this essay? In brief, it is to say unequivocally that America missed a marvelous opportunity to level the playing field and create a culture of acceptance and integration. In addition, America continues to aid the resisters by refusing to closely scrutinize and monitor practices, which although benign on the sur-

\(^{105}\) Morgan, *supra* note 56.

\(^{106}\) Professor Sheryll D. Cashin asserts:

Currently, with each passing decade, we as a nation are becoming increasingly segregated by income. And our progress in racially integrating neighborhoods is proceeding at a glacial pace. Segregation persists at very high levels for African Americans. The national index for segregation of Blacks from Whites is sixty-five. This index value, known by demographers as "dissimilarity" is the percentage of one group that would have to move to achieve an even racial distribution. In other words, 65% of Black people would have to move in order for them to be represented throughout America in proportions reflecting their percentage to the population.


\(^{107}\) *Id.* at 598-601.
face, continue to contribute to the resegregation\textsuperscript{108} that many school systems are currently experiencing. Lastly, I believe that resistance has a new modus operandi. It is not covered in a White sheet or symbolized by a bullhorn; resistance is disinterest, apathy, and lack of passion for integration. Integration looks good on paper, but please don't let my daughter sit next to your son.\textsuperscript{109}

As we celebrate this fiftieth anniversary of \textit{Brown}, let us do so mindful of the fact that there are new battles to come. And let us all acknowledge that \textit{Brown} did not fail America, but America failed \textit{Brown}. Let us call for a national dialogue on race and lastly, let us be mindful of the words of poet Langston Hughes when he said:

\begin{quote}
What happens to a dream deferred?
Does it dry up
like a raisin in the sun
Or fester like a sore-
and then run?
Does it stink like rotten meat?
Or crust and sugar over-
like a syrupy sweet?
Maybe it just sags
Like a heavy load.
Or does it explode?\textsuperscript{110}
\end{quote}

\textsuperscript{108}. According to Michael Dobbs, the research of The Civil Rights Project at Harvard University concluded that “most schools in this country are overwhelmingly Black or White.” Dobbs, \textit{supra} note 24. The article quoted Elise Boddie, head of the education department of the NAACP Legal Defense and Educational Funds Inc., who said, “We still have not committed ourselves as a country to the mandate of Brown versus Board of Education. If these trends are not reversed, we could easily find ourselves back to 1954.” \textit{Id}.

\textsuperscript{109}. An actual message left on my answering machine while I served on the Alexandria, Virginia school board.


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