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## Brown at Fifty: Fulfilling the Promise

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# ***Brown* at Fifty: Fulfilling the Promise<sup>†</sup>**

Hillary Rodham Clinton<sup>††</sup>

This fiftieth anniversary gives us a chance to measure whether the promise of *Brown*<sup>1</sup> has been fulfilled, to take stock of the progress we've made toward racial equality, and yet recognize, unblinkingly, the important work that we still have to do. Without a doubt, the impact of *Brown* has been so profound that it is hard to imagine how things could have been otherwise. We witness the effects of *Brown* when we ride a train, eat at a restaurant, or go to the beach. Thanks to the Civil Rights Act of 1964<sup>2</sup> (which was the codification of *Brown*), our workplaces are some of the most racially integrated spaces in our society.<sup>3</sup> But *Brown* itself was a case about public schools, so today I'd like to focus on education, which the Supreme Court rightly regarded as the most important institution we have for sustaining our democracy.<sup>4</sup> Fifty years after *Brown* declared a right which must be made available to all on equal terms, it is time for us to reconsider not only the promise, but whether we have been true to that promise.

It's telling that we are here at a *conference* on *Brown*, not a celebration. We

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† This Perspective is an edited version of Senator Clinton's closing address at The Legacy of *Brown v. Board of Education: The Last Fifty Years* conference, delivered on April 3, 2004 at Yale Law School.

†† United States Senator (D-NY); J.D., Yale Law School, 1973. I would like to thank Dean Tony Kronman and Dean Harold Koh for their continuing friendship and for so warmly welcoming me back to Yale. In addition, I applaud the dedicated students, staff, and faculty who organized and participated in this conference, both at Yale and at Howard University. I am particularly grateful to Prof. Goodwin Liu, a product of Yale Law School, now at Boalt Hall at Berkeley, for his work on education and civil rights and for the help and assistance he has given me over the years as I have spoken out on a number of issues, and today with this address. Finally, I owe a tremendous personal debt for the education, inspiration, and friendships that I received and nurtured here at Yale, at a time when the civil rights movement was in full stride, when the promise of *Brown* was beginning to become a reality, and when the study of law and the pursuit of justice were in many respects one and the same.

1. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

2. 42 U.S.C. § 2000e.

3. See, e.g., CYNTHIA ESTLUND, *WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY* (2003).

4. See *Brown*, 347 U.S. at 493:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

can applaud *Brown* and we should. We can hear the wonderful stories from those who were actually part of shaping the strategy and of preparing the lawsuit, and from those who were themselves the plaintiffs in that suit or participants in other important moments in the civil rights movement. And yet, as we do so, we would dishonor their work and the memory of so many others if we did not recommit ourselves to fulfilling that promise so that every child in our country receives an equal and excellent education.

A recent report by Gary Orfield and the Harvard Civil Rights Project shows that our schools are actually more segregated—not less—than they were decades ago.<sup>5</sup> In the South, we've actually taken a step backwards toward more segregation. There, the percentage of black students in a majority white school has fallen below the percentage in 1970.<sup>6</sup> In the past fifty years, we've gone from an educational system that was divided by rule to one that is divided by routine, reality, and resources. There are political and socioeconomic reasons for the division we see, but there also legal reasons. Over the past fifty years, we have seen erosion in the meaning of *Brown* and the erosion has happened by dilution of *Brown's* promise, one decision at a time.

I came to Yale three years after the federal government began requiring segregated school districts to integrate public schools as a condition of receiving federal funds,<sup>7</sup> and one year after a unanimous Supreme Court, in *Green v. New Kent County School Board*, ordered southern school boards to come forward with a desegregation plan that “promises realistically to work and promises realistically to work now.”<sup>8</sup> I shared the hope that the promise of *Brown* held out that, certainly by the end of that century, just thirty years off, the problems that had plagued us, the unfinished business of race, particularly with respect to schools, would be part of our history. Two years into my time at Yale, a unanimous Court, in *Swann v. Charlotte-Mecklenburg Board of Education*, authorized busing to create integrated schools.<sup>9</sup> For a brief moment, it looked as though whatever one thought about the remedy, most eminent judges and elected officials would stand behind a vision of racial integration in public education and provide the lead to make that vision a reality, looking as to how best to implement that vision. Instead, as we all remember, we spent the better part of a decade in pitched battles about busing, and it wasn't just in the South. It was just as vitriolic in the North as anywhere else. People made their local political careers, maybe not standing in a schoolhouse door, but leading

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5. Ericka Frankenberg, Chungmei Lee, and Gary Orfield, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*, available at [http://www.civilrightsproject.harvard.edu/research/reseg03/reseg03\\_full.php](http://www.civilrightsproject.harvard.edu/research/reseg03/reseg03_full.php) (last visited Sept. 20, 2004).

6. *Id.* at 19.

7. See OFFICE OF EDUC., U.S. DEP'T OF HEALTH, EDUC. & WELFARE, GENERAL STATEMENT OF POLICIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 RESPECTING DESEGREGATION OF ELEMENTARY AND SECONDARY SCHOOLS (1965); OFFICE OF EDUC., U.S. DEP'T OF HEALTH, EDUC. & WELFARE, REVISED STATEMENT OF POLICIES FOR SCHOOL DESEGREGATION PLANS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (1966).

8. 391 U.S. 430, 438 (1968).

9. 402 U.S. 1 (1971).

demonstrations in their communities against this remedy known as busing.<sup>10</sup>

With the election of Richard Nixon as President and the appointment of four new Justices in less than three years,<sup>11</sup> we saw an abrupt change in the commitment of the leadership, both in the executive branch and in the judicial, even to the vision and the promise of *Brown*. In 1974, the Supreme Court refused to order desegregation across district lines in *Milliken v. Bradley*.<sup>12</sup> The decision was five to four. Justice Marshall offered a chilling prophecy in his dissent: "In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities—one white, the other black—but it is a course, I predict, our people will ultimately regret."<sup>13</sup> Three decades after *Milliken*, black school children in Detroit continue to receive a separate and unequal education despite their proximity to wealthier, whiter suburban communities.<sup>14</sup> Justice Marshall was proven right. The *Milliken* decision provided a touchstone for retrenchment from the project and promise of school integration.

By the late 1980s and early 1990s, the Supreme Court was all but ready to end desegregation, even though many school districts had spent far more years since *Brown* resisting desegregation than actually trying to figure out effective strategies and plans that could implement the goal.<sup>15</sup> For more than a decade now, segregation in public schools has been increasing and eroding past gains.<sup>16</sup> The notion that *Brown* meant integration has been slowly undermined. So if the meaning today of *Brown* is not integration, then doesn't it at least mean equality of resources between predominantly minority urban schools and their predominantly white suburban counterparts?

The Elementary and Secondary Education Act of 1965 was an important first step toward increasing educational resources for minority school children.<sup>17</sup> But eight years later in the *Rodriguez* case, the Supreme Court refused to find a constitutional right to school finance equality.<sup>18</sup> After that, the battle ground for equality moved to state courts, and increased funding for segregated schools was aided by the Supreme Court's decision in *Milliken II*.<sup>19</sup>

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10. See generally J. ANTHONY LUKAS, *COMMON GROUND* (1985); RONALD P. FORMISANO, *BOSTON AGAINST BUSING* (1991).

11. Between 1969 and 1972, President Nixon appointed Chief Justice Warren Burger and Justices Harry Blackmun, Lewis F. Powell, Jr., and William H. Rehnquist to the Supreme Court. For a discussion of how these appointments altered the Court's disposition towards issues surrounding race and education, see CASS SUNSTEIN, *THE SECOND BILL OF RIGHTS* (2004). See also THOMAS BYRNE EDSALL & MARY D. EDSALL, *CHAIN REACTION* 74-98 (1992); GARY ORFIELD & SUSAN E. EATON, *DISMANTLING DESEGREGATION* 9-13 (1996).

12. 418 U.S. 717 (1974).

13. *Id.* at 814-15.

14. See Goodwin Liu, *Brown, Bollinger, and Beyond*, 47 *How. L.J.* 705, 707 & n.14 (2004).

15. See *id.* at 732-34 (discussing the difficult path of desegregation in *Board of Education v. Dowell*, 498 U.S. 237 (1991), *Freeman v. Pitts*, 503 U.S. 467 (1992), and *Missouri v. Jenkins*, 515 U.S. 70 (1995)).

16. See Frankenberg et al., *supra* note 5.

17. 20 U.S.C. 6301.

18. 411 U.S. 1 (1973).

19. 433 U.S. 267 (1977).

But since the *Jenkins* case in 1995,<sup>20</sup> *Milliken II* remedies have all but come to an end, and greater equality in school finance, while achieved in some states, has foundered on the politics of others.<sup>21</sup> In many places, equality of resources has proven to be near impossible to achieve. I have long considered the *Rodriguez* case an especially egregious effort to undermine the promise of *Brown*, and until 2000, I thought it was the worst case decided during Chief Justice Rehnquist's tenure on the Court.

By the late 1980s, integration and equality had given way to a third concept: educational adequacy.<sup>22</sup> The notion is that even if not all students have a right to an education at Stuyvesant or Lowell or Boston Latin, they are at least entitled to an education that prepares them to function productively as voters, jurors, workers, and citizens. In many ways, these court cases are our generation's *Brown* litigation. As my friend and City Council Member Robert Jackson explained yesterday, the New York Court of Appeals issued such an adequacy holding in June of last year.<sup>23</sup> Now the decision did not say that schools must be equalized or integrated and it did not address racial issues. Rather, the court, finding that tens of thousands of students were placed in overcrowded classrooms, taught by teachers of unequal quality, and provided with inadequate facilities, concluded that these students were being denied a sound, basic education. The court ruled that New York's system must be reformed to ensure that every city school has the resources necessary to provide that sound, basic education. It was a good decision in that it found the current system inadequate. But the bar had been set at adequate.

Let's think for a moment about that notion of adequacy. The term itself conveys how far we have lowered our sights. Is that what *Brown* was all about—adequacy? And yet even adequacy has not fully permeated our implementation of education policy. We are currently in the midst of a political battle in New York over implementing the decision that clearly calls for increased resources for New York City schools, primarily, but also for other poor, urban schools in cities throughout New York. The outcome of that political battle will determine whether or not we even believe in adequacy in New York.

On the federal level, we see a comparable struggle being enacted because of the legislation known as No Child Left Behind.<sup>24</sup> Consistent with *Brown*,

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20. 515 U.S. 70 (1995).

21. See NAT'L RESEARCH COUNCIL, MAKING MONEY MATTER: FINANCING AMERICA'S SCHOOLS 76-81, 107-11 (Helen F. Ladd & Janet S. Hansen eds., 1999) (describing varied state responses to school finance equity and adequacy movements); Melissa C. Carr & Susan H. Fuhrman, *The Politics of School Finance in the 1990s*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 136, 155-65 (Helen F. Ladd et al. eds., 1999) (comparing and contrasting school finance reform efforts in Kentucky, Alabama, New Jersey, and Texas).

22. See generally William H. Clune, *Educational Adequacy: A Theory and Its Remedies*, 28 U. MICH. J.L. REF. 481 (1995). See also James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 258-72 (1999) (describing educational adequacy as a "diminished goal" of litigation efforts to improve public education).

23. Campaign for Fiscal Equity, Inc., v. State, 801 N.E.2d 326 (N.Y. 2003).

24. Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified at 20 U.S.C. §§ 6301-6578).

Democrats like me supported the No Child Left Behind legislation because we wanted to make sure that schools focused on the educational achievement of every child. By measuring educational outcomes for subpopulations, including students of color and other groups, the law forces schools to focus on the needs of all children. However, we cannot expect schools to succeed, especially those serving the most disadvantaged children, without significant new investments in preschool programs, afterschool programs, academic enrichment, opportunities for professional development for teachers, and better school infrastructure.

In New York City, for example, the chancellor and the mayor have really tried to implement No Child Left Behind in the sense that if a school is labeled as failing because both the population in general and the subpopulations are not reaching a certain level of achievement on various tests, then a child can transfer out of that school. And approximately 7000 children have been transferred out of New York City schools.<sup>25</sup> Where do they transfer to? They transfer to schools that are not labeled as failing, overcrowding the classrooms, stretching the resources, and making it very difficult for those schools that are not failing to continue to provide an adequate education. And yet there is no support in this administration or Congress for doing anything about the inadequate facilities that confront large urban school districts such as New York's. So, as we look at the challenges posed by No Child Left Behind, we can only conclude with Stanford professor Larry Cuban that shame and coercion, together with a few pennies, are not enough to improve our nation's lowest performing schools.<sup>26</sup>

So what are we to do? How do we make sure that *Brown*, fifty years later, does not become just a symbol, rather than a substantive call to action on the part of our society? *Brown* is an important icon both in American law and around the world, but we cannot let it be an icon and nothing more. Our job must be to make *Brown* a living, breathing, and evolving part of our nation's most fundamental values and commitments. Because *Brown* is also an icon on the other side of the political debate. The Federalist Society, which started some twenty-plus years ago and has tremendous influence within this administration regarding the nominating and vetting of judicial candidates, has a number of leaders in its ranks who refer to the moment that the Warren Court decided *Brown* as the time in which our Constitution went into exile. The aim of the Federalist Society is to fill our courts with judges who will bring the pre-*Brown* constitution out of exile. It would also bring the pre-*Miranda*,<sup>27</sup> the pre-*Roe v. Wade*,<sup>28</sup> the pre-"you name it" out of exile. So there is a political agenda

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25. Elissa Gootman, *Fewer Accept Offers to Attend Better Schools*, N.Y. TIMES, Nov. 11, 2004, at B1 (noting that 7000 New York City public school students transferred schools during the 2003-04 school year and approximately 140 students had transferred as of Nov. 11, 2004; many fewer are expected to transfer in the 2004-05 school year than transferred in the 2003-04 school year.)

26. See Larry Cuban, *The Contentious "No Child" Law I: Who Will Fix It? And How?*, EDUC. WEEK, Mar. 17, 2004, at 58.

27. *Miranda v. Arizona*, 384 U.S. 436 (1966).

28. 410 U.S. 113 (1973).

that is clearly motivated by the iconic status of *Brown* and the role that *Brown* played in forcing our society to deal with segregation in our schools and elsewhere.

In response, we have to revisit *Brown*, as you have done at this conference, and think about what it really intended and how we can best achieve its goals. The bedrock principle was clearly stated in *Brown* itself. Educational opportunity “is a right which must be made available to all on equal terms.”<sup>29</sup> And again, Justice Marshall, in his eloquent dissent in *Milliken*, reminded us why desegregation remains a national imperative. He wrote, “[U]nless our children begin to learn together, there is little hope that our people will ever learn to live together.”<sup>30</sup>

And lest we think of that as some kind of hyperbole or some sort of feel-good sentiment that sounds nice but we know in the real world it’s not possible: I am often reminded of a series of meetings I held in Northern Ireland around the time that the Good Friday agreement was signed, trying to give the sectarian communities in Northern Ireland a roadmap they could follow to create a self-sustaining governance system, move toward a point where they would no longer be under British rule and domination, and move much closer to their counterparts on the rest of the island in the Republic. I went to a large meeting of young people, Catholic and Protestant, who met in a new beautiful waterfront hall that had been completed and motivated in large measure because of the peace process. And after listening to them talk, it became clear that they had never been in a room together. They had never had any kind of conversation with someone from the other group. And I said to them, “What is the single priority in your mind that could be pursued which would more likely than not guarantee a peaceful future for you?” To a person, they said “Create schools that enable us to go to school together.” Because of course, there is the ultimate voucher system in Northern Ireland—Catholic children go to Catholic schools, Protestant children go to Protestant schools,<sup>31</sup> then they encounter one another in university but they have spent twelve years separate and apart. And, in their view, this segregation was a crippling problem that would only continue to affect their opportunities to live peacefully together. More than anything, they wanted a desegregated school system. In place after place that I have been privileged to travel, I have been told time and time again that the American public school system, even with all of the flaws that I can enumerate, is such an example of what others are attempting to achieve within their own societies.

In many ways, the Supreme Court’s decision last year upholding the affirmative action program at the University of Michigan law school shows that the basic principles of *Brown* are alive and well.<sup>32</sup> Racial integration in higher

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29. *Brown*, 347 U.S. at 493.

30. *Milliken v. Bradley*, 418 U.S. 717, 783 (1974) (Marshall, J., dissenting).

31. See generally Alan Smith, *Religious Segregation and the Emergence of Integrated Schools in Northern Ireland*, 24 OXFORD REV. OF EDUC. 559 (2001).

32. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

education, the Court said, is important in fostering racial understanding, breaking down racial stereotypes, and preparing students for work and leadership in a multicultural society.<sup>33</sup> The Court reaffirmed *Brown's* central thesis that education is the very foundation of good citizenship and observed that for this reason, "the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity."<sup>34</sup> The Court went on to say, "Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized."<sup>35</sup> These are powerful words and ideas for building a just and inclusive democracy. But I cannot help but notice an irony in the Michigan case and the irony is this: fifty years after *Brown*, the spirit of that decision has found its most robust doctrinal expression in a case about affirmative action in higher education, a policy made necessary by our failure to fully redeem the promise of *Brown* in elementary and secondary schools.

When the President announced his support for the plaintiffs in the Michigan cases, I wrote him a very long letter, asking him to reconsider because he had, on numerous occasions in the past, seemed to suggest that he was not hostile to traditional affirmative action. He had championed a proposal in Texas, the Ten Percent Plan, which, although it has a lot of problems,<sup>36</sup> was certainly a recognition of the problem that we face. Nevertheless, the administration took a position against affirmative action, and by doing so, attempted to knock out the policies that the Court so resoundingly upheld, policies that try to make up for the absence of commitment and dedication in dealing with public education before the university level. The Supreme Court's opinion painted in broad strokes an attractive vision of a diverse, inclusive, and fair society. But if racial integration is a compelling interest for higher education, then how can it be anything less than a vital, first-order imperative for elementary and secondary schools? What institution in America could be more appropriate or more influential than public schools in cultivating the habits of respect, tolerance, and open-mindedness so essential to the peace and progress of our multiracial society? To use a technical legal term I learned here at Yale, this issue is a no-brainer. So even though the Michigan decision was a crucial victory at a time when such victories at the Court have become increasingly rare, we must be careful not to let the affirmative action debate distract us from the unfinished work of *Brown*.

*Brown*, let us not forget, was about an eight-year-old girl who felt she had a right to a decent third-grade education at the all-white elementary school four

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33. *Id.* at 330 (noting that the benefits of diversity in higher education are "substantial," and include promoting "cross-racial understanding," helping to "break down racial stereotypes," and "enabl[ing] [students] to better understand persons of different races").

34. *Id.* at 331.

35. *Id.* at 332.

36. The Ten Percent Plan guarantees all students who graduate in the top ten percent of their high school classes admission to a Texas public university. See Sara Hebel, 'Percent Plans' Don't Add Up, CHRON. HIGHER EDUC., Mar. 21, 2003, at A26.

blocks from her home in Topeka, Kansas. Today, conservative judges across the country have been terminating desegregation orders in Dallas, Texas, Baton Rouge, Louisiana, Fulton County, Georgia, and other large urban areas, even though we know that desegregation has not been achieved and, in fact, in many cases resegregation has occurred.<sup>37</sup> What is troubling to me is that as court-ordered desegregation has ground to a halt, we have heard little in the way of political leadership and public sentiment in favor of racially integrated public schools. Indeed, our resignation to the fact of segregation explains our sense of surprise about the Connecticut Supreme Court's decision in 1996 finding de facto segregation in the Hartford school system unconstitutional under state law.<sup>38</sup> The state has now begun a four-year initiative to bridge the gap between Hartford and its surrounding suburbs. The success of that desegregation program needs leadership and community support. Connecticut may be unique in its reading of state law, but even if most courts today will not require desegregation, they should not stand in the way of desegregation plans voluntarily adopted by local school boards. As Ted Shaw<sup>39</sup> and others here can attest, efforts to integrate K-12 schools as a matter of educational policy remain an active area of litigation today, which is a remarkable fact given the Supreme Court's unanimous statement in *Swann*, thirty years ago, that school authorities have broad, discretionary power to conclude that in order to prepare students to live in a pluralistic society, each school should have a racial composition reflecting the composition of the district as a whole.<sup>40</sup>

Courts, legislators, and the American people, working together, can reinvigorate the promise of *Brown*. Public skepticism toward integration is perhaps rooted in divisive images of Roxbury and Little Rock from the past, or in more recent images of problems in urban schools, but we must not forget that integration has worked in many communities across America. Many districts in border states such as Maryland implemented *Brown* quickly and peacefully after it was announced.<sup>41</sup> Cities like St. Louis and Boston have long had inter-district transfer programs with community support.<sup>42</sup> Communities as diverse as Louisville, Kentucky, Seattle, Washington, Charlotte, North Carolina, Berkeley, California, Hillsboro County, Florida and Lynn, Massachusetts have all voluntarily adopted integration plans that deserve our praise and support. Indeed, I know that my classmate and friend, District Judge Nancy Gertner, has spoken on this issue here at the conference.<sup>43</sup> She issued last year an eloquent, seventy-two-page opinion upholding the voluntary

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37. See ORFIELD & EATON, *supra* note 11, at 19-22.

38. Sheff v. O'Neill, 678 A.2d 1267 (Conn. 1996).

39. Director-Counsel and President, NAACP Legal Defense and Education Fund, Inc.

40. Swann, 402 U.S. at 25.

41. See JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY 75-76* (2001).

42. For a look at the history and effects of Boston's METCO voluntary school desegregation program, see SUSAN E. EATON, *THE OTHER BOSTON BUSING STORY: WHAT'S WON AND LOST ACROSS THE BOUNDARY LINE* (2001).

43. Judge, United States District Court for the District of Massachusetts.

integration plan in Lynn.<sup>44</sup> Echoing *Swann*, Judge Gertner wrote, "To say that school officials in the K-12 grades, acting in good faith, cannot take steps to remedy the extraordinary problems of *de facto* segregation and promote multi-racial learning is to go further than ever before to disappoint the promise of *Brown*."<sup>45</sup> Judge Gertner deserves a special place in the legacy of *Brown* because she issued this opinion one month before the Supreme Court's decision in the Michigan cases. It took a lot of courage and broke some new ground for her to do so.<sup>46</sup>

We must also remember that the black-white test score gap among elementary school children in the South narrowed significantly during the 1970s, at the same time that desegregation was being aggressively enforced and disparities in school funding were less severe and less politically difficult to rectify.<sup>47</sup> Moreover, the graduates of integrated schools are, unsurprisingly, more likely to live and work in integrated settings and to have more interracial friendships in life.<sup>48</sup> We as a nation stand little chance of realizing our full potential so long as our children and our schools remain divided by race. I know that there are many explanations for the continuing achievement gap and I think that probably every researcher has something important and interesting to say. There are cultural reasons, there are psychological and emotional reasons, there are family-related reasons, there are all kinds of reasons for the achievement gap where, basically, the responsibility falls on the individual. But let us not forget there are structural reasons, there are economic reasons, political reasons, and systemic reasons that no individual or family alone can undo.

Finally, let me say this. In enforcing *Brown*, a unanimous Supreme Court in 1968 envisioned a time in America when our school system would be without "a 'white' school and a 'Negro' school, but just schools."<sup>49</sup> I have no illusion that this time will come soon. We have miles to go and elections to hold before the repudiation of separate but equal gives way to integrated schools. While some may disagree and others have given up, I still think this is a vision worth pursuing. Whether we get there or not, I think everyone would agree that the repudiation of separate but equal in *Brown* was never meant to give way to a regime of separate and unequal in our country, which unfortunately describes

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44. *Comfort v. Lynn Sch. Comm.*, 283 F. Supp. 2d. 328 (D. Mass. 2003).

45. *Lynn*, 238 F. Supp. 2d. at 391.

46. It troubled me to learn, after I gave this speech, that Judge Gertner's opinion in *Comfort* was reversed and remanded on Oct. 20, 2004 by the First Circuit Court of Appeals. See *Comfort v. Lynn Sch. Comm.*, No. 03-2415, 2004 U.S. App. LEXIS 21791 (1<sup>st</sup> Cir. Oct. 20, 2004).

47. See Marshall S. Smith & Jennifer O'Day, *Educational Equality: 1966 and Now*, in SPHERES OF JUSTICE IN EDUCATION: THE 1990 AMERICAN EDUCATION FINANCE ASSOCIATION YEARBOOK 53 (Deborah A. Versteegen & James Gordon Ward eds., 1991).

48. See JOMILLS H. BRADDOCK II & JAMES M. MCPARTLAND, MORE EVIDENCE ON SOCIAL-PSYCHOLOGICAL PROCESSES THAT PERPETUATE MINORITY SEGREGATION: THE RELATIONSHIP OF SCHOOL DESEGREGATION AND EMPLOYMENT SEGREGATION (Johns Hopkins Univ. Ctr. for Soc. Org. of Sch. Report No. 338, 1983); Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 REV. OF EDUC. RES. 531 (1994).

49. *Green v. County Sch. Bd.*, 391 U.S. 430, 442 (1968).

the condition of public education in many of our great cities today. At a minimum, *Brown* means equality of educational opportunity, and there is nothing equal about educational opportunities offered in Compton compared to Beverly Hills, in Edgewood compared to Alamo Heights, in Detroit compared to Grosse Pointe, or in Chappaqua, New York compared to Yonkers, or New York City, or Buffalo.

Whenever anyone says it's not a money problem, they're talking about somebody else's money and somebody else's child. If it weren't a money problem, why do people, if they can afford it, flock to areas where they spend an enormous amount of their own money, through property taxes, to support schools that they feel good about sending their children to attend? It is true that children can achieve in very different and difficult circumstances, but it is also true that we maximize the potential achievement of the greatest number of children if we provide them with qualified teachers in adequate, if not better, facilities, and provide the kind of attention, discipline, and guidance that individual children crave and need. If we cannot integrate our cities and our suburbs in the short run, then at the very least, we must achieve some semblance of equality in the opportunities offered to children where they live. And this requires more investment. As I said about No Child Left Behind, it offered on paper the promise of doing just that. The promise is being undermined to some extent because the administration has not fulfilled its commitment to provide the funding that was promised and needed and, of course, we are now facing a \$500 billion deficit which will severely impact our domestic investments, including education. But if one is honest about the needs of the most impoverished children in our nation, they are the ones who most deserve the highly qualified teachers, they are the ones who most require the smaller classrooms, they are the ones who go to schools to which you or I would never think of sending our own children.

When Bill became Governor of Arkansas, before many of the students here were born, education was a high priority. And one of the things we did, starting in 1979, his first year as Governor, was to invite all the valedictorians and salutatorians from the entire state and their parents to come to the Governor's mansion. And we stood in line and shook every person's hand and we asked every young person who was graduating at the very top of the class what was in his or her plans for the future. And we expected to hear, being products of this institution, that every one of them would be going to college. About half of them said they were going to college. Of the half that weren't, for some it was just a dream that seemed impossible, for others it was because of financial reasons or family reasons, but for a significant number, the schools that they had attended, that they had worked hard to achieve in, from which they were so pleased to be graduating at the top of their classes, were so inadequate in every respect that they were not prepared to go to college. I remember one young man from east Arkansas. I asked him, "Well, what are your plans?" He said, "Ma'am, I'd like to be a doctor, but I applied to the university and they told me that the courses I had taken were just not good enough, so they said maybe I should find someplace to go to a fifth year of high school." Unfortunately,

that's not just a problem of the past. We have young people graduating from high schools throughout New York today who have worked hard, who have played by the rules, who have stayed in school, who have done what they're supposed to do, and they too are finding it hard to compete against their counterparts who went to better schools with better teachers and higher standards. So we have to be willing to make more investment and we have to learn what works and apply it with more commitment.

There are many public schools succeeding in educating disadvantaged minority children. Yesterday, you heard about the remarkable results at the Amistad School here in New Haven.<sup>50</sup> Another example is the Maya Angelou Charter School in Washington, D.C., our nation's capital, where half of all kids don't even finish high school.<sup>51</sup> But at the Maya Angelou School they have small classes, a full-day program with breakfast, lunch, and dinner, an army of volunteer tutors and mentors, and almost all of the students earn a high school diploma, with seventy percent going on to college. Now, achieving those results costs about \$28,000 per student, a figure that echoes a recent study of New York City public schools finding that large, central city districts must spend two to three times as much as the average district to reach the same performance standards.<sup>52</sup> Progress has a price and we are kidding ourselves and our children if we believe that real equality can be bought on the cheap. But the price is worth paying. We have come too far to go back now. Because investments in education are repaid in productivity, economic growth, good citizenship, harmony, tolerance, respect, and unity. And the alternatives—unemployment, crime, and incarceration—are even more costly to individual lives and to society.

The principle of equal opportunity in *Brown v. Board of Education* requires that we recognize the reality and redouble our commitment to making it possible. Fifty years after *Brown*, the principles of that remarkable decision still animate the imperative of providing all children of all races an education that any child of any race would feel lucky to have. If we can meet this imperative with commitment, sacrifice, and hard work, then I'm hopeful that in the fullness of time, we will no longer have black schools, or brown schools, or white schools, but just schools, integrated schools and good schools where we would be proud to send our own children.

In 2004, as in 1954, I think *Brown* is still the most important continuing challenge that we face as a nation. The Dean started his introduction by talking

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50. See Elissa Gootman, *Five Charter Schools to Open*, N.Y. TIMES, July 21, 2004, at B8 (noting that Amistad Academy plans to open five charter schools in New York City modeled after the "high-performing" Amistad in New Haven, where the students, "most of whom are poor, perform far better than their peers statewide.").

51. See *The NewsHour with Jim Lehrer: School for Success* (PBS television broadcast, Dec. 29, 2003), transcript available at [http://www.pbs.org/newshour/bb/education/july-dec03/charter\\_12-29-03.html](http://www.pbs.org/newshour/bb/education/july-dec03/charter_12-29-03.html) (last visited Dec. 10, 2004).

52. William D. Duncombe & John M. Yinger, *Performance Standards and Educational Cost Indexes: You Can't Have One Without the Other*, in *Equity and Adequacy in Education Finance: Issues and Perspectives* 260, 261 (Helen F. Ladd et al. eds., 1999).

about hope and I think there isn't any more important commodity in an individual's life or in a nation's. America was built on hope, we have lived on hope, we have sacrificed today to make a more hopeful future, we have had presidents who said "the only thing we have to fear is fear itself," we've had another who has said "I still believe in a place called Hope." Hope is the American creed. To lose hope in the possibility that we can make progress toward fulfilling our ideals and living up to our values is to turn our back on America. Fifty years after *Brown*, we have made progress for which we should celebrate, but we have by no means achieved the vision of equality and justice that *Brown* holds out. Now it is up to a new generation to seize that hope, to act on it, and to use the tools of the law and politics to make sure that hope lives in the life of every child and that we as a nation continue to believe in the hope that we can, and will, do better. Congratulations on this conference and for bringing all of us the message of not just the legacy, but the hope, of *Brown v. Board of Education*.