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VOICES OF THE BROWN GENERATION: DESCRIPTION OF A PROJECT*

Mildred Wigfall Robinson**

I am one of the reasons for the *Brown* litigation. In 1954, I was enrolled in the fourth grade in the Berkeley County Training School in Moncks Corner, South Carolina. The Berkeley County Training School was the public school that educated all of the Negro children, grades one through twelve, who resided in that county.

I remember quite clearly the day that the *Brown* decision was handed down.¹ I recall the image of my father, the school principal, ringing a hand bell while standing on a little hill that was just outside of his office. He rang that bell daily to signal the beginning of the day's classes and the end of recess. We had been outside enjoying recess in the late spring sunshine and assumed that he was signaling its end. We quickly noticed that this was not his intent—he was beckoning us to him. We ran to him. He announced with great excitement that the Supreme Court of the United States had just held that segregated schools were unconstitutional. He explained to us that there were no longer to be separate schools for white and colored children. The decision was, of course, *Brown v. Board of Education*.² His

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** Henry L. and Grace Doherty Charitable Foundation Professor of Law, University of Virginia. I would like to thank the University of Arkansas at Little Rock's William H. Bowen School of Law for the invitation to participate in this symposium. I would also like to thank Russell Bruch, Michael Lee, and Michael Snow for their invaluable help as research assistants.

1. The anecdotes and essays referred to or included in this article are drawn from an unpublished manuscript, *Voices of the Brown Generation: Memories and Reflections of Law Professors*, presently being completed by the writer and her co-editor Professor Richard Bonnie, also of the University of Virginia School of Law.

2. 347 U.S. 483 (1954).

excitement was infectious and so we children all became excited. We ran around and generally acted out that excitement. We did not, of course, understand all of the ramifications of the decision. We could not know that widespread resistance to the appropriate implementation of the decision would ultimately lead to the firing of beloved teachers, the closing of facilities so much a part of life in black communities, and the fragmentation of the support and loss of protection that those communities provided to its young. On that day, we celebrated the decision.

I don't know what my father ultimately came to think about that decision. I can tell you that as desegregation was finally implemented in the South, like so many other black administrators and teachers, he was denied the opportunity to pursue the career for which he had prepared and that he loved.³ He was a talented teacher and administrator and was dedicated to and loved his students. In his later years, his work afforded him only tangential contact with everyday school life. I know that he deeply missed that contact.

My mother was not one of the hundreds of black administrators and teachers fired during that period.⁴ In fact, she

3. Switzon Samuel Wigfall, Sr., 1919-1982. B.A., South Carolina State College, Orangeburg, South Carolina, 1941; M.Ed., University of Michigan, Ann Arbor Michigan, 1947. He served as a principal in segregated schools in South Carolina and Georgia from 1953-1963. He spent two years as an Assistant Principal in Cocoa Beach, Florida, 1964-1966. He then secured non-public school employment.

Jacqueline Jordan Irvine reports that after 1954 there was a ninety percent reduction in the number of black principals in the South. She notes that many of these administrators were appointed as assistant principals or reassigned as classroom teachers or directors of special projects in central administrative offices. Jacqueline Jordan Irvine, *Black Students and School Failure: Policies, Practices and Prescriptions* 40-41 (Greenwood Press 1990). To underscore this point, Irvine cites the following sample data documenting the dramatic decline in employment of blacks as principals in a number of Southern states: Alabama—from 134 in 1964 to fourteen in 1970; Kentucky—from 350 in 1954 to thirty-six in 1970; Virginia—from 107 in 1964 to sixteen in 1970; and Delaware—from fifty in 1964 to sixteen in 1970. She also reports that as of 1987-88, only ten percent of all school principals were black. *Id.* at 41.

4. Mildred Mance Wigfall, 1923- . B.A. South Carolina State College, Orangeburg, South Carolina, 1943; M.Ed. North Carolina A&T University, Greensboro, North Carolina 1963 (Biological Sciences). In addition, she undertook graduate studies in guidance counseling between 1970 and 1988 at Georgia State University and Atlanta University, both in Atlanta, Georgia.

Irvine cites a study that estimates that in 1950, half of all black professionals in the United States were teachers, a fact influenced in large part by rampant segregation making teaching one of the very few viable professional opportunities for blacks in general and black women in particular. Irvine, *supra* n. 3, at 34. A second source that Irvine cites

spent her entire professional life in the public schools of South Carolina, Georgia, and Florida, first as a teacher and in her later years as a guidance counselor. However, she, too, experienced unanticipated and unwarranted pain.

The last years (1968-1989) of her long career as a teacher (1943-1944, 1951-1989) were spent in service in the public schools of Atlanta, Georgia. In one conversation with her about this project (more on the project in just a moment), I asked her what it was like initially to be assigned to teach in a formerly all-white school in Atlanta, Georgia. (She received this assignment for the 1969-70 academic year.) She described to me one early experience. She and one of her white colleagues (who in time became a very close friend) were standing in one of the school windows early in the school day. As they stood there, they watched school buses arrive, load white children and depart to take the children to other area schools that remained overwhelmingly white. I did not then inquire into the personal impact of that unfolding scene. Like my father, my mother was and remains a talented person of tremendous decency and integrity. I can only imagine the pain of watching those children depart fully aware that she was one of the reasons for that departure.

I will explore that point with her and share more of my story in the book that will be a product of the project that my friend and University of Virginia colleague Professor Richard Bonnie and I are jointly undertaking. The book will be entitled *Voices of the Brown Generation: Memories and Reflections of Law Professors*. I will describe the project to you today.

I shared my memory with my colleague and friend Richard Bonnie who is white. He recalled his own experiences while growing up in Norfolk, Virginia. He, too, will share his story in our forthcoming book. We agreed that the decision and its repercussions had a profound personal effect upon each of us.⁵

estimated "that between 1954 and 1972 at least 39,386 black teachers lost their jobs in seventeen southern states." These data reflect firings exclusively. *Id.* at 34-35.

Further, commenting on the profession's current inability to recruit and retain black teachers, she notes that from 1980 to 1984, the number of black teachers in ten Southern states declined by approximately six percent, or 5000 teachers, even as the total number of teachers employed in those states increased by 3300. *Id.* at 37.

5. There is little that is surprising in this observation. We know that children learn from their experiences—be they good or bad. Those experiences shape their world view.

Our conversations led to the project in which we are presently engaged—a project that grew out of our conviction that the lives of many of our contemporaries were also affected by *Brown*. We wondered what others of our generation, without regard to race or gender, could or would recall and would share. We conceived this project in an attempt to discover what we could about collective memory.

We believe that it is important to share these memories, for *Brown* continues to play a prominent role in the debate surrounding the role and contours of American public elementary and secondary education. One aspect of the decision is uncontroversial—that is, its assessment of the importance of education in day-to-day American life. The Supreme Court in *Brown v. Board of Education* may have best captured this important sentiment in this succinct statement: “education is perhaps the most important function of state and local governments.”⁶ Chief Justice Warren further observed that education

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.⁷

An education that is adequate by all measures is more critical than ever if the individual is to function effectively in everyday life.

The overt trappings of racial segregation in public schools have disappeared: Schools are no longer racially segregated as a matter of law. Nevertheless, the debate over the further meaning

Reported research across a range of disciplines establishes this irrefutably and even we, in the legal academy, have recognized it:

[W]e must remember that socialization during infancy, childhood and adolescence is likely to shape the orientations and values of students prior to law school, and thereby to create certain perceptions through which the law school and the legal profession may be viewed.

Law Schools and Professional Education 21 (ABA Spec. Comm. for a Study of Leg. Educ. 1980).

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

7. *Id.*

of *Brown* continues and rages on as the nation's schools become increasingly re-segregated. Further, in many ways, even in schools that remain facially diverse, practices that undermine equality in the opportunity for an adequate education by separating students pursuant to perceived academic ability persist. These practices, many of which were extant fifty years ago and in spite of this continued pernicious effect, were not unique to *de jure* segregation and were as a result unaddressed.

Continuing attempts to formulate effective societal responses to current public school re-segregation with its host of related issues could, Professor Bonnie and I believe, be beneficially informed by the experiences of the *Brown* generation. Such an effort should seek our views and assess *Brown's* effect upon us, for we—those initially affected by the decision—were at the heart of the maelstrom. In the final analysis, it is undeniable that in a variety of ways—both positive and negative—the decision catalyzed a major shift in the social paradigm that, unlike the Civil War, did not (initially at least) have a violent genesis. *Brown* affected day-to-day life across America in a manner unlike any other domestic peacetime event.

What *did* those children see and feel?

In order to proceed, we first had to define a manageable group. Further, that group had to share the critical common characteristic: elementary and secondary school education in American schools during the immediate post-*Brown* years.⁸ We ultimately settled on currently active legal academics with birth years between 1937 and 1954. We chose 1937 as the early parameter, believing that those with birth years of 1937 and after would define the group that had reached high school by 1954. We chose 1954 as the end year (candidly) because we couldn't agree on what the end year should otherwise be.

8. The Statistical Abstract of the United States for 1957 reports that in 1954 there were 28,836,052 children enrolled in the nation's public schools in grades one through twelve. Bureau of the Census, U.S. Dept. of Commerce, *Statistical Abstract of the United States 1957* at 121 tbl. 146 (U.S. Govt. Printing Off. 1957). The Statistical Abstract only has 1954 public school enrollment by race (African Americans and whites) for the eighteen states that officially had separate African-American and white schools. For those eighteen states, in 1954 there were 2,581,546 students enrolled in African-American schools and 8,401,389 students enrolled in white schools. *Id.* at 120 tbl. 144. This means that schools in these eighteen states enrolled thirty-eight percent of the nation's public-school populace.

While at first blush our target group may seem implausible, as is true of the legal profession in general there have been noticeable changes in the legal academy's professorial ranks. In 1954, but for the handful of law schools at historically black institutions of higher learning, the nation's law professors were almost certainly ninety-nine percent white male.⁹ By 2001-02, one-third, or about 3,000 of roughly 9,000 full-time faculty members in 185 law schools were women. Minority professors, of which there were 1138, comprised about fourteen percent of all faculty.¹⁰ As such, we thought the target group potentially to be acceptably diverse. In addition, mid-career law professors possessed the critical common characteristic: They had all received elementary and secondary school educations in American schools during the immediate post-*Brown* years. Finally, we thought it likely that this group would have personal insights into just what constitutes an education that is adequate by all measures.

I think it important to note that Professor Bonnie and I did not seek to limit contributors solely to those colleagues who are constitutional law scholars. Our contributors' intellectual interests span the full spectrum of possibilities. This rich mix of scholarly interests underscores *Brown's* universal relevance and importance.

SURVEY DESIGN

The survey was designed to elicit pertinent information as efficiently as possible—that is, in a one-page instrument. Besides basic information—name and law school provided at the option of the responder—we asked for ethnicity, gender,

9. In 1940, African Americans constituted less than one half percent of the nation's lawyers—a percentage that did not increase in any significant way until after the later 1960s. Women constituted about three percent of the profession during the same period. See Theodore Caplow, Louis Hicks & Ben J. Wattenberg, *The First Measured Century. An Illustrated Guide to Trends in America, 1900-2000* at 44, 45 tbls. (Am. Enter. Inst. Press 2001) (including tables entitled "Female Physicians, Lawyers, and Engineers" and "Black Physicians, Lawyers, and Engineers"). In light of these data, the image of the professoriate as a white male domain is quite accurate.

10. Richard A. White, *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions, 2001-2002* at tbl. 2A, tbl. 2B (Assn. of Am. L. Schs.) (available at <http://www.aals.org/statistics/20002001.html>) (accessed June 20, 2004; copies on file with Journal of Appellate Practice and Process).

date and place of birth, year of graduation from high school and grade during the 1953-54 school year. In addition, we asked for categorical responses to the following:

(1) Whether the responder specifically recalled hearing about the *Brown* decision when it was handed down. If so, what was recalled.

(2) What changes if any took place in the responder's school in the aftermath of the decision.

(3) Whether there were changes in specific events or practices as a result of the decision.

We also asked that the responder complete a table giving the location by city and state and racial composition of elementary and secondary schools attended by grade using a code to describe the racial make-up of the school.

Finally, we solicited expressions of interest in further participation in the project.

The surveys were mailed to approximately 4800 of our colleagues—slightly more than half of those holding academic titles in law schools in 2000-2001. We received almost 1000 responses. Our responders are about ninety percent white and eight percent black, thus roughly mirroring black/non-black representation in the legal academy. Males are seventy-one percent of the responders and twenty-nine percent are female, making the responding group a bit more male-dominant than is the professoriate itself.

We also have a breakdown by age: Thirty percent were less than five years of age when *Brown* was handed down, fifty-two percent were between the ages of five and twelve, and eighteen percent were between the ages of thirteen and eighteen. Approximately thirty percent of the responders report that they were born in states with *de jure* segregation. For this presentation, and in light of my preliminary review of the responses, this seems a reasonable proxy for state during schooling.

Finally, fifty of those who responded to the basic survey subsequently shared remembrances or insights through essays or letters; approximately twenty percent (ten of fifty) of those sending these contributions are non-white. The essays and letters describe variously what we—the *Brown* generation—heard,

saw, and lived during that period. Allow me to share a few of those memories with you.

IMPRESSIONS AFTER INITIAL ASSESSMENT OF RESPONSES

We all know of the strife that *Brown* engendered; deep societal divisions became undeniably obvious and fierce resistance to the Court's mandate ensued. To the extent that we had any illusions about a melting pot in this country, we were forced to confront the reality that a melting pot simply did not exist. Professor Carrington talked about that in his presentation. Let me add to what he has said.

Twenty-five percent of our responders indicated that they specifically recalled hearing of the decision. The stories shared by our colleagues presently serving on faculties in law schools all over the country tell of a region and a *nation* divided not only by race but also by ethnicity, class and—to some extent—religious beliefs. One responder in the group aged thirteen to eighteen reported that, as a staffer on the school paper in an Atlanta high school, he was allowed to take an unscientific poll of student reaction to *Brown*. He reports that, “to [his] amazement, the result was twenty-five percent favorable, twenty-five percent negative, and fifty percent didn’t much care.” He found the “size of the neutral bloc surprising.” Another responder in this group reported that he did not react to the news at all because he “thought that the decision would impact only schools in the south.” This responder was enrolled in a public school located outside of the South. Other responders from non-Southern states report a quite different reaction that I will describe below. Finally, several of the responders in this age group heard the news at school, including one writer whose “8th grade teacher announced in class that she would not continue teaching if the races were mixed.”

Indeed, a number of our responders report that they were reassured that in spite of the decision they needn’t worry because nothing was going to happen.¹¹

11. Responses from those aged thirteen to eighteen:

(1) (WM—1939): “Not a great reaction. I went to an all-white high school in an all-white NJ town and thought the decision would impact only schools in the south.”

(2) (WM—1941): “Yes. Surprise that until then school segregation had been legal

The largest number of responses came from contributors who were between five and twelve at that time. Many of our contributors reported that they learned of the decision in their homes. As one would expect their reactions were affected by the responses of the adults around them. A few reported that news of the decision ending state-mandated racial separation was favorably received in their homes. Many more recall adult expressions of outright hostility to the Court's mandate. One essayist, six years old at the time, reported that his father remained in a rage for weeks, talking incessantly of how awful "it" was going to be when "it" happened. He said that as a young child, he was in constant fear of "it" happening and feared that his life would indeed fall apart at that point. He reported that when desegregation finally occurred, "it" was quite anticlimactic. None reported adult expectations of immediate Southern compliance with the decision.¹²

and expectant that all schools would be quickly integrated."

(3) (WM—1937): Richmond—"Excitement; hope; optimism."

(4) (WM—1937): "I delivered newspapers in the eleventh and twelfth grades in Atlanta, GA, and kept up with developments in the *Brown* case to the extent they were reported. I [thought it was a wonderful event and] fairly danced along the paper route the day the banner headline declared the result in *Brown*. I also irritated a few friends and customers, who were kind enough to remember that I was immature. I was also a staffer on the school paper, the *Southerner*, and talked the staff and faculty adviser into taking an unscientific poll of student reactions to *Brown*. To my amazement, the result was 25% favorable, 25% negative, and 50% didn't much care. ... [T]he size of the neutral bloc was surprising."

(5) (WM—1939): "I was very pleased. Mentally, I cheered. My parents and grandmother were of the opposite view."

(6) (WM—1937): "As I recall, students had been told by school officials to expect the *Brown* result—and also told any immediate changes were not expected."

(7) (WM—1941): "In my 8th grade class in Starkville, MS the principal came in—obviously excited and flustered—and announced: 'the Supreme Court has outlawed segregation.'"

(8) (WM—1938): "Vindicated. I used to get into schoolyard fights (in Miami, FL) over desegregation issues."

(9) (WM—1941): "Ecstatic, excited, huge matter in my (KY) household."

(10) (WM—1940): "My 8th grade teacher in Tennessee announced in class that she would not continue teaching if the races were mixed. I was concerned for my school's survival."

(11) (WM—1941): "I speculate that my reaction was negative. I recall our Baptist Church's RA Leader, a civil libertarian and later chaplain at Vanderbilt telling us that we should not be concerned about the decision affecting our lives, since it would take so long to implement."

12. Responses for those aged five to twelve:

What of the reactions of the children themselves? This is a matter of primary interest for us; Professor Bonnie and I remain most interested in assessing to the extent possible the impact of the decision upon us personally. What power did this decision have on those who had no control over implementation but who may well have had some sense of the enormity of the *Brown* decision?

The range of personal emotions recalled by our contributors when they learned of the decision run the gamut: approval, elation, anger, fear, defiance, anxiety and even sanctimony. Interest in change and curiosity are also recalled: "What happens next?" "What will happen to my school?" "Will I be with my friends?" "What will it be like to be in an integrated classroom?"¹³ To our national shame the public intransigence—

(1) (WF—1944): "As guided by my parents (in Macon, GA), supportive but not optimistic."

(2) (WF—1942): "We were waiting for the decision. We lived in Gainesville, FL and knew the decision would be 'earth-shaking'—it *was* in the 'sleepy' southern town."

(3) (WF—1945): "My parents were outraged. It was considered an attack on the 'Southern way.'"

(4) (WF—1944): "I was just 6 days shy of age 10. I recollect discussions adults were having about how bad this was. I was living in Corpus Christi, TX."

(5) (WM—1947): "I remember the photos, probably in *Life* or *Look* of neatly dressed children being escorted by burly marshals. I was curious about what the marshals were for. My parents, both Mississippians, did not try to influence my perception, one way or the other."

(6) (WM—1945): "I recall that I was supposed to be terrified and that only bad things could follow."

(7) (WM—1946): "It was much discussed at home and among friends—there was a lot of uncertainty about what would happen at school."

(8) (WM—1942): "My parents were thrilled. When I went to school the next day (in VA) and mentioned their views, I was called a 'n*****-lover.' I didn't know exactly what it meant but I intuitively thought it was a bad thing to be."

(9) (WM—1946): "I recall living in a sea of ugly racist bigotry (in FL) and thinking it was normal."

(10) (WM—1942): "The adults I knew, including my parents, were outraged. I was uncertain."

13. The following are typical:

(1) (WM—1942) "Just general uncertainty about how school would change."

(2) (BM—1944): "I was extremely happy. I wanted to demonstrate that I was as intelligent as white kids my age."

(3) (WM—1944): "I was frightened because the school buildings (in Charleston, WVA) where black kids were educated looked so forbidding and I imagined going to school there. We moved [North] in 1955 and I went to integrated schools thereafter. It was a positive experience."

Professor Bonnie says “real lawlessness”¹⁴—so widespread in the *de jure* states in that first decade after *Brown* denied to most of us who were then schoolchildren an integrated experience. We remained overwhelmingly in segregated schools and were thus denied a supportive desegregated environment in which to deal constructively with those emotions and to formulate responses to those questions.

Because continued separation was the norm, several of our responders shared with us memories of that continued enforced separation.¹⁵ One responder wrote of “brown” children who

(4) (BM—1944): “My grade school teacher emphasized there was no such thing as a ‘white or black’ school (in St Louis, MO). They were all made of brick. But that there would be changes coming.”

(5) (WF—1947): (who had seen an African-American girl of her approximate age interviewed on television) “[P]uzzled or upset that black children should be treated less well than whites.”

(6) (WM—1943): “Very curious. I had very little awareness of segregation.”

(7) (BM—1943): “I wanted to know the fate for my school.”

(8) (BM—1944): “I felt that schools which had been off-limits to African-Americans would now be opened and available to all.”

(9) (BF—1942): “Like most naive folks I thought integrated schools would come soon [to Virginia]. . . . Ironically my class was the only one to graduate on time that year. White high schools had education disrupted. [S]chools were in the throes of ‘massive resistance.’”

(10) (WM—1944): “I was surprised and wondered what it would be like to be in an integrated classroom.”

(11) (WM—1946): “It was much discussed at home and among friends—there was a lot of uncertainty about what would happen at school.”

(12) (WM—1944): “I heard about *Brown* either the day it was decided (evening paper) or the day after (morning paper). My memory is that my first thought was that the few black kids I knew, who lived about a half a mile from us and with whom I sometimes played baseball, would soon be going to my school. I wasn’t positive or negative, just curious . . .”

(13) (WM—1945): “In about 7th grade (1957-58), I was surprised to learn that there were Black families living in my town (VA) . . . The children were apparently still being bussed to an all-black school. I felt ashamed. By then, I think I knew that the schools were supposed to be integrated. In any case, I knew it wasn’t right.”

14. Richard J. Bonnie, *Brown v. Board of Education: Righting an Unconstitutional Wrong*, U. Va. L. Sch. Rep. 18, 21 (Spring 1985).

15. These two responses illustrate the point:

(1) (WM—1944): Attended schools that remained segregated *de facto*. “I remember the superintendent of the school system urging compliance with *Brown* but the politicians rejected it.”

(2) (WM—1947) “The schools in Ark were closed in ‘57. . . . My brothers and I attended an integrated private high school in St. Louis in order to maximize our educational opportunity.”

“sometimes used one end of [her] school playground” though those children were not allowed to play with the white children and “certainly did not attend class with us.”¹⁶ Another described in detail initial resistance to the desegregation of his state’s separate schools for the blind.¹⁷ Several wrote of youthful irritation with policies that closed local swimming pools, thus making the pools unavailable to the children on hot summer days. The pools, of course, had been closed in order to avoid integration. This example is not a part of the educational experience *per se*, but it is nevertheless indicative of separation and the extent to which it dominated and controlled every phase of everyday life.¹⁸

Importantly, however, several of our responders were among the relatively few children attending desegregated schools in the first years after *Brown* was decided. From one who was a student in Little Rock—a comment on having the 101st Airborne on campus to enforce the order to desegregate. With typical high-school distance, he characterized the presence of the troopers as “interesting,” though having them on campus

16. (WF—1946): I started kindergarten in an integrated school in Michigan. The next year, my father was temporarily recalled into the Air Force and we were sent to Houston, Texas. As a result, I spent first grade in a segregated school. My memory is that there was a school for ‘brown’ children near by and that those children sometimes used one end of our playground—but were not allowed to play with us and certainly did not attend class with us. I remember asking my parents if there was something wrong with the ‘brown’ children. My parents told me that there was nothing wrong with the children. The problem was the stupidity of adults.”

17. (WM—1936): “I attended a segregated residential school for the blind, graduating in 1953. I recall that last-minute efforts were being made at that time to upgrade the ‘black academy,’ located a few miles away from the ‘white academy’ This was clearly recognized at the time as a belated attempt to address the ‘equality requirement’ of the ‘separate but equal’ doctrine.”

18. The pool comments:

(1) (WF—1946): “I remember 1955-60—all our public swimming pools were bulldozed because they were ordered to be integrated.”

(2) (WM—1944): “There was no busing in our community. Grade school and middle schools were only integrated if African Americans lived in their attendance boundaries. Though the schools were integrated fairly quickly, the community swimming pool, within sight of our house, was closed for two or three years to avoid integrating it. It’s hot in St. Louis during the summer, and I wanted to swim and did not understand why I couldn’t and was relieved when I could. I am aware of no big incidents at either the pool or schools once they were integrated.”

clearly made an impression!¹⁹ From another who was in a seventh grade class in Virginia desegregated by a lone black girl—concern for that student's reaction to white parental hostility and press attention.²⁰ And from Delaware, a report of harassment from white first grade classmates as a result of the writer's friendship with her lone black first grade classmate.²¹

Others write of penalties—both direct and indirect—societally imposed upon families who dared to cross the color line in ways that contravened local mores. For example, one writes of the treatment to which her family was subjected by the white community as a consequence of hiring a black registered nurse to provide care for an elderly relative. The caregiver had been subjected to economic sanctions as the consequence of choosing to send her daughter to a previously all-white school.²² Another writes of a black family threatened with harm and intimidated to such an extent that the family moved away from a California town in which they had lived for only six weeks.²³

These are disturbing vignettes but they share two important characteristics. First, each writer evidences concern for the "other." Second, in each instance, the shared experience took

19. (WM—1940): "Being a high school senior in Little Rock in 1957/58 with the 101st Airborne Division on campus to enforce the integration order was interesting."

20. (WF—1948): "I was in the 7th grade (1960-61) when the Richmond Public Schools were integrated. Press showed up. Some white parents kept kids home. One African-American girl was brought to school. I did not see demonstrations or hostility but do not doubt that Jane Doe did."

21. (WF—1954): "I made friends with an African-American girl in my 1st grade class (1960) and was severely harassed by my classmates. She came to my house to play, an event that I later learned had been orchestrated by the NAACP. My family received death threats as a result. My parents moved to Hawaii in 1963 to escape the scene and raise us in a more multi-cultural environment."

22. (WF—1942): "We employed a nurse for our grandmother. She was black and her daughter chose a previously all-white school. She could not obtain work. We were criticized for hiring her." This is yet more evidence of why "Freedom of Choice" plans simply did not and could not work.

23. (WF—1942): During my high school career in approximately 1957-58, one black student entered my high school. He was the son of professionals, his father having been appointed to officiate at a local church. I learned that his family was the first black family to reside in *** since the Civil War. The city of *** had attempted to secede from the State of California in order to secede from the Union; it retained a large Southern Baptist population and generally was inhospitable to blacks. In addition, my high school had a large Dutch Reformed contingent, many of whom were friends of mine. Although the responsible parties were never identified, the threats, sabotage and other incidents suffered by that student and his family resulted in their departure within 6 weeks."

place in circumstances characterized by very limited desegregation and relates no constructive adult intervention. In other words, the child was receptive to change and growth but was unable to proceed without guidance and support. Indeed, the idea of equality is one that resonates with children. Their concern for “fairness” is ongoing. The writers reacted to the ill treatment of peers.

The sense of normative fairness is underscored by the experiences of our few responders who were in environments attaining more extensive desegregation.²⁴ Several of these writers recalled important ways in which students themselves were occasionally able to identify and cooperatively address inevitable—sometimes difficult—transitional issues. One writer²⁵ reported that a group of students in his senior class came together and decided that the traditional senior party, annually held at a segregated community facility, could not take place in that first year of desegregation. The only issue was (successfully) persuading their classes that cancellation was the correct course of action. In retrospect, he wrote, it would have been preferable for all seniors acting inclusively to have reached a mutually acceptable resolution to the problem. However, in this context, the critical point is the emergent sensitivity to the

24. Comments from those who experienced actual desegregation:

(1) (WF—1947): “As I was in a small town in Kansas, the integration was swift. The ‘colored’ grade school was closed.”

(2) (BM—1953): “I began school at an all-black school. It was closed and the African-American students sent to previously all-white schools.”

(3) (WM—1946): “Montgomery County, Maryland seemed to move rather painlessly through desegregation. The opportunity to interact daily with black classmates (albeit only a few) was a formative and positive experience in my young life.”

(4) (WM—1947): “In the winter of 1954-55, my family moved from Wash. DC to New Rochelle, NY. Wash schools were being desegregated—New Rochelle schools were ‘integrated.’ Coincident with our move, a group of DC school kids went to visit the New Rochelle schools to see how school integration worked. There is a deep irony here—3 years later, the first successful northern desegregation case was brought in New Rochelle.”

(5) (WM—1952): “Integration came to Wichita, Kansas in 1956. That meant that I was able to attend the elementary school directly across the street from our house when I began kindergarten instead of being bused to the white school about 45 minutes away. Prior to desegregation the school across the street had been an all-black school, so none of the white kids in the neighborhood could go there. For me, desegregation meant I was not bused, and I could go to the neighborhood school with my friends who were both white and black.”

25. WM—1939.

need for inclusiveness and the willingness to confront prior discriminatory practices that had, to that point, gone unchallenged. A second example also comes from a writer's high-school experience.²⁶ In this case, the casualty was to be the Junior-Senior Prom. School administrators had mandated that the prom would not be held; socialization between the races in this fashion was deemed quite unacceptable. In the manner of teenagers, the students decided that they would organize and hold the prom anyway. A biracial group was organized for that purpose. The committee planned and held a prom that, he reports, was held without incident and hugely enjoyed by all in attendance.

Importantly, in each instance, desegregation involved more than simply having a handful of non-white children in previously all-white schools. In retrospect, reported sub-optimal outcomes were deemed less important than the opportunity to learn of and from each other. Included here are those instances in which teachers, administrators and parents contributed actively to the creation and maintenance of a positive, inclusive environment for all students. Without exception, these experiences were characterized as important lessons for life.

Of equal importance and in important contrast is the recognition of the significant costs exacted by the intransigence that foreclosed the opportunity for meaningful interchange. Professor John Boger of the University of North Carolina Law School spoke of this in an article published in 2000, noting that he grew up "when each school child could, and did, identify 'white schools' and 'black schools' simply by reference to the predominant race of the children attending them." He points out that this separation "worked a terrible evil":

Although I cannot speak for my African-American neighbors, since segregation foreclosed my opportunity ever to know them, it was a psychologically damaging and educationally destructive experience for my white friends and myself and, I venture, for millions of other children. It has taken literally decades for my generation to begin to shed the unconscious, but pernicious, grip of the segregated environments in which we were brought up, with all of the

26. BM—1953.

fears, suspicions, and misunderstandings that they created.²⁷

Brown, of course, did not address segregation's possible harm to white children. However, I find it unsurprising that a system denying personhood to African Americans simultaneously scarred white Americans who were also its victims. Ultimately white children benefited as much from *Brown*'s positive effect as did black children when the decision was fully implemented in good faith.

BEYOND THE SOUTHERN STATES

"Segregation" was no less real in many of the remaining states in spite of the absence of state mandate. As I noted earlier, our target group was nationally defined. Professors who were students in the public schools of New York, New Jersey, Ohio, and Michigan report that their academic classes remained segregated because of tracking, separation by perceived intellectual ability all too often resulting in classes defined disproportionately along racial lines.²⁸ Although there were a few exceptions,²⁹ other responders from this set of states reported that schools remained racially segregated because attendance zones accommodated neighborhoods that were

27. John Charles Boger, *Willful Colorblindness: The New Racial Piety and the Re-segregation of Public Schools*, 78 N.C. L. Rev 1719, 1794 (2000).

28. Comments about tracking:

(1) (WM—1941): "My sense is that there was a change of attitude as a result of *Brown*. My high school (in MI) tended to put minorities in a general education curriculum, with non-minorities. A white 'elite' was in a 'College Preparatory' curriculum. Internal segregation became controversial."

(2) (WM—1942): "There were few black students either in junior high or high school. . . . There was no significant school interaction. Classes were set up by GPA (or the like) so no black kids were in my classes. Had there been, that would have been perhaps something of significance."

(3) (WM—1948): "My (NY) junior high was 'tracked' with the result that my class of 30 was all white, while another was all minority."

29. Comments from those attending integrated schools:

(1) (WM—1945): "My school was integrated at the time, as were the housing patterns in my school district (West Mansfield, OH)."

(2) (WM—1944): "Reports no recall of the decision—attended an integrated school (in Summit, NJ at the time)—and notes that "[o]ne of my closest friends in elementary school was black and I don't recall ever discussing the case or anything to do with race—just kids' stuff."

themselves racially segregated—the result of discriminatory housing practices.³⁰ One responder commented on an early manifestation of white flight.³¹ Importantly, several responders wrote of the life-changing realization that discrimination was not always defined in terms of black and white. Those who suffered were Asian Americans,³² Latinos in Denver,³³ Hispanic Americans in New York City³⁴ and Sicilians in New Jersey who had the misfortune of being both immigrants and Catholic.³⁵ The following comment may best capture the impact of that realization:

30. Comments about residential segregation:

(1) (WF—1945): “Schools were ‘integrated’ but because of the residential patterns, Roxbury, MA schools were predominantly black and Brookline, MA schools were predominantly white.

(2) (WM—1947) “I have no recollection of minority classmates during these years. So I assume, but am not sure that my (NJ) school was segregated, at least *de facto*.”

(3) Several responders mentioned the *de facto* segregation in Chicago public schools. These comments included the following: (WM—1941) “I lived in an all-white suburb of Chicago. Housing segregation and price meant that there was no integration or possibility of integration”

31. (WM—1951): “About 1960, my neighborhood, far southeast DC, was threatening to become a stable, integrated neighborhood. I believe that was destroyed by the redevelopers who tore down the horrible slums of SW and put up little but luxury high-rises & the Arena stage leaving everyone from SW as well as folks coming north from the south, with no place to go but Anacostia & far southeast. By a couple of years after my family left in 1968, Ballou (HS) was *de facto* segregated.”

32. (WM—1939): “When I was in 6th grade a Chinese refugee came to town. What school should they go to? This was a matter of some debate. (The student was eventually assigned to the white school.)”

33. (WF—1947): “In Denver, the Hispanic minority was the most oppressed and the most underrepresented in school. I do not recall any impact on that minority.”

34. (WF—1944): “My parents sent me to a Catholic elementary school five blocks from our apartment (Riverside, NY), because the public school a block and a half away was either all minority or close to it. The Catholic school was all white, except for a few light skinned Hispanics. There were three in my class. There was one Black girl admitted to the school a few classes after me. Her mother was white, and the school didn’t know she was biracial until the first day of class. The year I graduated from the eighth grade, the school moved to Westchester. I was confused and upset, since there were a lot of Hispanic Catholics in the neighborhood. The order had a missionary school in Ghana and made a big deal about all souls are equal in the eyes of God.”

35. (WM—1950): “The salient division in my town was between Yankee Protestants and Polish and Sicilian Catholics. The few African Americans [were not] treated as different. The kids who seemed different and who were not socially well integrated were the Sicilians, many of whom were very recent immigrants and spoke little and broken English, and appeared distinctly poorer than other children.”

I wonder where you account for people like me who grew up in what later became the “rust belt.” My town had about 75,000-80,000 residents virtually none of whom were black or brown. Ethnicity meant Polish, Hungarian, Czech, etc. We all learned how to discriminate against others—just didn’t associate it with *color*!! Imagine the shock of confronting that mindset—it’s like being a Martian.³⁶

WHERE ARE WE NOW?

Overall, about sixty-one percent reported no change throughout the period of elementary and secondary education, twenty-eight percent reported changing from segregated to integrated schools, and seven percent reported changing from an integrated to a segregated school. These data suggest a level of success that simply had not been realized. Remember that our target group includes colleagues born as late as 1954. As such, some of our responders would have been in elementary and secondary schools after the 1964 Civil Rights Act began to take effect. They were more likely to experience desegregation than were those of us with earlier birth years.

In fact, *Brown*’s effect was much more muted than any of us could have imagined. I and my contemporaries in South Carolina—both black and white—remained in segregated schools and graduated eight years later from high schools that remained strictly segregated by race. Relatively few school districts desegregated their schools in compliance with the Supreme Court decision. One article reports that “[f]rom 1954 to 1958 [these school districts] numbered nearly 800. From 1958 to 1960, less than 100 joined their ranks.”³⁷ Data from the mid-1960s indicate that only 2.3 percent of the black children in eleven southern states attended desegregated schools.³⁸

Nonetheless, these early experiences recalled make two important points. First, many who were then children recognized

36. WM—1946.

37. Cheryl Brown Henderson, *The Legacy of Brown Forty-six Years Later*, 40 Washburn L.J. 70, 72 (2000).

38. Paul S. Hoff, Student Author, *The Courts, HEW, and Southern School Desegregation*, 77 Yale L. J. 321, 322 (1967) (citing a New York Times article from 1966).

the inherent “right” in *Brown*. Second, children viewing the world through *Brown*’s prism were able to identify the fault lines that, calcified, so effectively thwarted desegregation in the years prior to 1964. Indeed, initially successful efforts after 1964 to desegregate the schools have presently faltered—sabotaged by attitudes and societal barriers that existed then and persist to the present.

THE CIVIL RIGHTS ACT OF 1964—THEN AND NOW

The Civil Rights Act of 1964 accomplished what *Brown* did not. From 1964 to 1988, a recent Harvard study, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*³⁹ notes that the percentage of black students attending desegregated schools in the South rose to 43.5 percent from just over two percent.

However, the present trend toward re-segregation in public education is undeniable. In the 1990s, the Harvard study continues, the proportion of blacks attending majority-white schools declined thirteen percentage points, reaching the lowest level since 1968.⁴⁰ The most segregated group of students according to the report are white; they attend schools, on average, where eighty percent of the student body is white.⁴¹ Comparatively, on average black students attend schools that are fifty-four percent black, Latinos are in schools that are fifty-four percent Latino and Native Americans are in schools that are thirty percent Native American.⁴² Asians, who tend to be least segregated and most successful academically, are in schools that are twenty-two percent Asian.⁴³ The nation’s largest city school systems account for a shrinking share of the total enrollment and are, almost without exception, overwhelmingly non-white and

39. Erica Frankenberg, Chungmei Lee, & Gary Orfield, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* (Civil Rights Project, Harvard U. 2003) [hereinafter *2003 Study*]. Much of this material is replicated in Gary Orfield & Chungmei Lee, *Brown at 50: King’s Dream or Plessy’s Nightmare?* (Civil Rights Project, Harvard U. 2004) (available at <http://www.civilrightsproject.harvard.edu/research/reseg04/brown50.pdf>) (accessed June 15, 2004; copy on file with Journal of Appellate Practice and Process).

40. *2003 Study* at 6.

41. *Id.* at 27.

42. *Id.* at 27 tbl. 4.

43. *Id.*

increasingly segregated internally.⁴⁴ Many of the most rapidly re-segregating school systems since the mid-1980s are suburban.⁴⁵ The South remains the nation's most integrated region for both blacks and whites but is rapidly going backwards as the courts terminate many major and successful desegregation orders.⁴⁶ In short, segregated education—re-segregating education—is not a uniquely southern phenomenon; it is a national tragedy.

Public education is a public good utilized by more than ninety percent of all American children.⁴⁷ Re-segregation with its attendant misallocation of resources especially penalizes minority children for, as noted above, they remain very segregated and are most likely to be served by school districts experiencing the most difficult fiscal challenges.⁴⁸ Further, and equally important, all children are penalized. Accelerating re-segregation necessarily dictates the absence of a common, shared educational experience.

This re-segregation bodes ill for our expectations as a nation. The United States is thirty percent people of color today and it is moving toward being fifty percent people of color.⁴⁹ This transformation means that—unlike 1954—and as noted above, the racial divide is no longer along black and white lines. Rather, Americans range across the spectrum of human complexion and human cultural experience. An adequate diverse education for all children from the earliest years onward is of

44. See *id.* at 53-57.

45. See *id.* at 62-66.

46. *Id.* at 41 fig. 13.

47. Kendra A. Hovey & Harold A. Hovey, *CQ's State Fact Finder 2004: Rankings across America* 210 tbl. H-7 (CQ Press 2004) (showing number of students attending private schools during the 1999-2000 academic year).

48. Justice Ginsburg spoke to this in her concurring opinion in *Grutter v. Bollinger*: Despite a "strong" public desire for "improved education systems . . . , it remains the current reality that many minority students encounter markedly inadequate and unequal education opportunities." *Grutter v. Bollinger*, 539 U.S. 306, 346 (2003) (Ginsburg & Breyer, JJ., concurring).

49. In the year 2000, the United States had 282 million people, approximately seventy-nine percent of whom were white. By 2050, census trackers estimate that whites will account for approximately fifty percent of a population of 414 million. U.S. Census Bureau, *U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin* tbl. 1a. (Mar. 18, 2004) (table entitled "Projected Population of the United States by Race and Hispanic Origin: 2000-2050") (available at <http://www.census.gov/ipc/www/usinterimproj/>) (accessed June 15, 2004; copy on file with Journal of Appellate Practice and Process).

critical importance and the only meaningful option. It must become and must remain a national priority, for education is increasingly the sole national common denominator.

THE ROLE OF THE COURTS POST-*BROWN*

In 1955, the Supreme Court formulated its remedy: segregated schools were to be desegregated "with all deliberate speed."⁵⁰ *Brown II* left it to the lower federal courts to determine what constituted "all deliberate speed." On remand of one of *Brown's* companion cases, Judge John J. Parker demonstrated how the mandate of "all deliberate speed" would be met. Parker interpreted *Brown* as merely prohibiting government enforcement of segregation but not requiring integration.⁵¹ "Judge Parker's logic proved irresistible for other regional federal and state judges who were reluctant to enter any orders beyond cautioning school officials to comply with *Brown II*."⁵² This reasoning would be adopted by the Fifth Circuit.⁵³

In the ten years following *Brown*, the courts of appeals in the *de jure* states did little to advance desegregation of the schools in the South. The southern circuit courts simply barred segregation instead of mandating integration. With the command merely to end government enforcement of segregation, school districts and state governments devised schemes that produced no more than sham compliance with the *Brown* mandate. Two such schemes were pupil-placement statutes and "freedom of choice" plans. Pupil-placement statutes were struck down in the late 1950s. "Freedom of choice" plans were equally problematic. These plans diminished in importance as desegregation pursuant to the mandate of the Civil Rights Act of 1964 moved forward.⁵⁴

50. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955) (*Brown II*).

51. *Briggs v. Elliott*, 132 F. Supp. 776, 777 (E.D.S.C. 1955)

52. Steven J. Crossland, Student Author, *Brown's Companions: Briggs, Belton, and Davis*, 43 Washburn L.J. 381, 400 (2004)

53. *Avery v. Wichita Falls Indep. Sch. Dist.*, 241 F.2d 230 (5th Cir. 1957).

54. Under the early pupil-placement laws, local authorities were to assign students to schools, supposedly on the basis of non-racial criteria. However, the statutes were used to maintain segregation. Such laws proved to be "an ideal delaying device, a maze of administrative hearings and appeals through which Negroes on an individual basis had to wind before reaching federal court." J. Harvie Wilkinson, III, *From Brown to Bakke: The Supreme Court and School Integration 1954-1978* at 84 (Oxford U. Press 1979). On the

Judge Parker's interpretation of *Brown* was finally rejected in 1966 by Judge Wisdom of the Fifth Circuit. While *United States v. Jefferson County Board of Education*⁵⁵ still upheld a freedom of choice plan, a court of appeals finally declared that school districts had an affirmative duty to integrate. Wisdom declared, "*the only adequate redress for a previously overt system-wide policy of segregation directed against Negroes as a collective entity is a system-wide policy of integration.*"⁵⁶ To achieve such integration, federal courts required broad remedial powers.⁵⁷ "After *Jefferson*, federal courts became bold architects of school desegregation policy."⁵⁸ However, this bold step did not come until twelve years after *Brown*.

In 1968, the Supreme Court finally addressed what *Brown I* and *Brown II* required in *Green v. County School Board*.⁵⁹ As Judge Wisdom had declared in *Jefferson*, school districts had an affirmative duty to integrate "*now.*"⁶⁰ School districts were responsible for eliminating *de facto* desegregation with a *de jure* past.⁶¹ Importantly, *Green* discussed the remedial powers federal courts could exercise.⁶² Following the Supreme Court's decision in *Green*, the southern courts of appeals finally oversaw the integration of the South. Between December 1969 and

Fourth Circuit, Justice Parker upheld one such law in 1956. The following year, however, the Fourth and Fifth Circuits would affirm District Court decisions striking down more transparently segregationist statutes.

An approach that surprisingly fared better with the southern courts of appeals was the use of "freedom of choice" plans, which survived until the late 1960s. Under such plans, districts maintained dual school systems but students could choose—or more accurately, request—to be placed in the other school. In practice, what choice existed could not be characterized as "free." White students would not choose to attend black schools, while intimidation and administrative hurdles prevented black students from choosing white schools. Over ten years after the *Brown* decision, the Fourth and Fifth Circuits upheld freedom of choice plans. In 1965, the Eighth Circuit cautiously approved a freedom of choice plan, but acknowledged that such plans were "in an experimental stage," and therefore a wait-and-see approach was appropriate. Wilkinson, *supra* this note, at 108.

55. 372 F.2d 836 (5th Cir. 1966).

56. *Id.* at 869 (emphasis in original).

57. *Id.* at 866.

58. Wilkinson, *supra* n. 54, at 114.

59. 391 U.S. 430 (1968).

60. *Id.* at 439 (emphasis in original).

61. *Id.* at 437-38.

62. *Id.* at 442 n.6.

September 1970, the Fifth Circuit issued 166 opinion orders in school cases.⁶³

The Fifth Circuit has been the subject of considerable praise for its role in promoting civil rights.⁶⁴ In particular, four Fifth Circuit judges—John Wisdom, Elbert Tuttle, John Brown, and Richard Rives—have been singled out for praise.⁶⁵ Burke Marshall stated, “If it hadn’t been for judges like that on the Fifth Circuit, I think *Brown* might have failed in the end.”⁶⁶ The role played by these judges, while not definitive, was certainly important.

Presently, federal courts of appeal have a very limited role in school desegregation as the United States Supreme Court first thwarted lower court efforts. For example, in 1974, the Supreme Court held that federal courts lacked the power to impose interdistrict desegregation remedies.⁶⁷ Similarly, in *Board of Education v. Dowell*⁶⁸ the court held that judicial oversight could terminate if re-segregation is due to private housing and all “practicable” steps had been taken to eliminate segregation. The court has now effectively ended court oversight of many such efforts.⁶⁹

State courts have also been drawn into the fray surrounding the continuing quest for effective education of all children. For

63. Wilkinson, *supra* n. 54, at 120-21.

64. See e.g. Tony Freyer, *Individual Rights, Judicial Discretion, and Judge Frank M. Johnson, Jr.*, 39 St. Louis L.J. 523, 527 (1995) (“Recognized, too, was the vital support given the *Brown* decision by a small number of southern federal judges, most of whom sat on the Fifth Circuit Court of Appeals.”)

65. See e.g. Jack Bass, *Unlikely Heroes: The Dramatic Story of the Southern Judges of the Fifth Circuit Who Translated the Supreme Court’s Brown Decision into a Revolution for Equality* (Simon & Schuster 1981). However, these four judges were only part of the Fifth Circuit. From the *Brown* decision in 1954 until 1961, Wisdom, Tuttle, Brown, and Rives constituted four of the seven Fifth Circuit judges. Among the others was Benjamin Cameron, a vocal supporter of segregation. See Deborah J. Barrow & Thomas G. Walker, *A Court Divided: The Fifth Circuit of Appeals and the Politics of Judicial Reform* 18 (Yale U. Press 1988). The other two were Joseph Hutcheson and Warren Jones, characterized as strong believers in judicial restraint who would follow established precedent but were hesitant to set civil rights precedents. *Id.* at 15, 21. In 1961, two more judges—Walter Gerwin and Griffin Bell—were added to the Fifth Circuit, increasing the total number of judges to nine. *Id.* at 26-29.

66. Bass, *supra* n. 65, at 17.

67. *Milliken v. Bradley*, 418 U. S. 717 (1974).

68. 498 U.S. 237 (1991).

69. See e.g. *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305 (4th Cir. 2001) (finding that the Charlotte school system had achieved unitary status).

example, following *San Antonio Independent School District v. Rodriguez*,⁷⁰ litigation was undertaken in many state courts attacking school financing mechanisms that were deemed to result in under- or differential funding of public schools in ways that contravened state constitutional mandate. An extended discussion of this litigation is beyond the scope of this paper. It is clear however, that case outcomes have varied widely and unpredictably with some state supreme courts mandating a complete overhaul of school funding and other states finding no violation on the basis of similar constitutional language.⁷¹

Brown's ultimate legacy remains unclear at this point. The obstacles to once again realizing progress are formidable. According to the Orfield report, trends that have contributed to the re-segregation of schools include: a growing residential separation by race and income levels, a heavy reliance on neighborhood schools, lower immigration and birth rates for whites, and courts and policy-makers who oppose race-conscious decisions.⁷² Schools ostensibly desegregated continue to be internally plagued by practices that, as implemented, all too often separate students by race. Tracking, mentioned by several of our responders as one such practice extant fifty years ago, is only one of a number of such present concerns.

There is no way of knowing when or how courts will rule on many of these current issues. We can be sure however, that courts' ultimate involvement is inevitable.⁷³ This is as it must be. We are, after all, a nation peculiarly dependent upon the rule of law—and it is only within a structure of laws fairly conceived and implemented, and widely and deeply respected that the nation can survive. The recalled experiences of this generation can surely usefully inform what must be a continuing effort to make an adequate education, the base for this participatory democracy, a reality.

70. 411 U.S. 1 (1973).

71. For an overview of some of the issues in this area see, e.g., James Ryan, *Schools, Race and Money*, 109 Yale L.J. 249 (1999), M. W. Robinson, *Financing Adequate Educational Opportunity*, 14 J.L. & Politics 493 (1998).

72. 2003 Study at 16-17.

73. "Scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate." Alexis de Tocqueville, *Democracy in America* vol. I, 270 (Henry Reeve trans., Arlington House 1966).

CLOSING COMMENTS FROM THE VOICES

In closing, I will tell you that the *Brown* decision continues to have wide-ranging effects in our lives. I, of course, would not be teaching at the University of Virginia were it not for changes set in motion by that case. Others of our responders report the same effect. They speak of inspiration drawn from and aspirations spurred by *Brown*. The case continues to influence us without regard to race or gender as teachers, scholars, parents and citizens.

So we respond affirmatively to the question of whether *Brown* remains more broadly relevant in this troubled environment. The following comment utilizes powerful imagery in speaking eloquently to the continued importance of *Brown's* message.

I remember marches around [my private school's] ten-foot walls . . . and bullhorns projecting into middle school and, a few years later, high school classrooms. I remember being puzzled by the desire of some to gain entry into the environment that I hated. I remember the fear of the other that the environment engendered and the language that expressed that fear.

One of the turning points in my life occurred during my senior year in high school when I was .. sixteen or seventeen. A classmate and I were knocking a tennis ball around on the court behind the senior dormitory. An African-American boy, probably no more than eleven, climbed atop the wall from the outside to watch us. He didn't say a word; he didn't disturb us. But my classmate responded in a hostile way; and I remember not knowing what to do. I didn't join him, but I didn't have the fortitude to chastise. *I knew at that moment that there had been something terribly askew in the education I received in the eleven years behind the shelter of those walls.*⁷⁴

As though in response, Professor Boger independently made this observation in his 2000 article.

Indeed, school boards are well aware that while teachers are one important educational resource for achieving the school's mission, fellow students are another. As the world

74. WM—1945.

grows more racially and ethnically interdependent every year, reasonable educators might well conclude that every child has a compelling interest in learning more about children of other racial and ethnic backgrounds. From that exposure, children can see for themselves the role that racial background plays (or very often, does *not* play) in prompting a child to respond to good literature, to think about civic issues, to work in groups, and to create new solutions for contemporary problems. Indeed, the pedagogical objective in assuring racially diverse classrooms seems founded not upon some chimerical stereotype about what African-American children think or how Latino children behave, but on precisely the *opposite* view—that all children share many more things in common than they do differences and that the best device for overcoming lingering racial suspicions or prejudices is exposure, not separation.⁷⁵

The world that in which we now live differs radically from the world in which we lived as children:

I am still struck by the changes that have taken place in my home town in the nearly half century since *Brown*. When I go there, I see blacks and whites easily working together, shopping together, playing ball together, etc. I am amazed that most youngsters, both black and white, seem unaware of the depth of the struggle that occurred around *Brown*. Perhaps it is that the destruction of *de jure* segregation simply illuminates the persistence of racism and class hatred at many levels throughout American society.⁷⁶

Achieving and maintaining for every child the opportunity to have a publicly funded elementary and secondary education that is adequate⁷⁷ and diverse⁷⁸ remains a continuing monumental task of paramount importance. But the return on the investment of effort is likely to be no less monumental. In closing, I will share with you a part of an essay written by my

75. Boger, *supra* n. 27 at 1765, 1766.

76. WM—1947.

77. Recall Chief Justice Warren's powerful observation in *Brown* on the importance of education that is noted in the text accompanying note 7, *supra*.

78. "[N]umerous studies show that student body diversity promotes [better] learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'" *Grutter*, 539 U.S. at 333 (citations omitted).

older daughter in 1999 as a part of an admission process.⁷⁹ I use this with her permission:

[O]ur legal system has proven itself capable of fostering generalized social change over the long-term and for this reason I will always be in awe of its power. Growing up and living in Charlottesville, I have been sheltered from a great deal of racism. However, Charlottesville's history tells a very different story. In the years following *Brown v. Board*, Charlottesville public schools were closed for roughly one year to avoid integration. Some of my friends' parents were unable to graduate from Charlottesville's public high schools because the school system was shut down. The reaction of local city and state officials evidenced the widespread hostility that the Supreme Court's decision encountered in the south. And what local officials fought against vehemently then, my friends and I, both black and white, can still only look back [upon] in disbelief. It is this disbelief that I love. With regard to race relations, we differ so radically from our parents that we are unable to truly understand or appreciate the events of their lifetimes. And these differences run far deeper than a simple generation gap. *Brown v. Board* not only represented a legal change but for many residents of Charlottesville it catalyzed a social metamorphosis that has come of age in my generation. That is awe inspiring.

Brown "catalyzed a social metamorphosis that has come of age in my generation." That was one young person's view at a moment in time forty-five years after the *Brown* decision was handed down. I suspect that she speaks for many others—unfortunately, not all—but many others in her generation.

Brown has fallen short in many ways. Perhaps the greatest irony is that for all the good that the decision has done, education with its rampant re-segregation remains one of the most intractable problems. However, the idea of universal equality inherent in *Brown* remains a powerful one. It is an idea that continues to resonate compellingly.

79. BF—1976.

