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IN SEARCH OF EDUCATIONAL E/QUALITY FORTY-SIX YEARS AFTER *BROWN V.* *BOARD OF EDUCATION**

Drew S. Days, III**

INTRODUCTION

I am quite pleased to be back at SMU and am truly honored to have been invited to deliver this year's Irving L. Goldberg Lecture. Judge Goldberg stands properly among the ranks of great American jurists of the 20th Century, having made important contributions to the development of the law in a number of fields and advanced the cause of justice, not only in the Judicial Circuit in which he sat, but throughout the entire United States. I hope that what I have to say to you this afternoon will resonate with the spirit of Judge Goldberg's path-breaking opinion in the case of *Rodriguez v. San Antonio Independent School District*¹ in which he held that education was a fundamental right. That the Supreme Court reversed Judge Goldberg by a 5-4 vote² was understandably lamented by the Judge;³ it should be mentioned that he has been joined in that lamentation, quite properly in my estimation, by several decades of constitutional scholars.⁴

Amidst all the complexity and confusion currently surrounding the question of who will be the next President of the United States, let us not

* 347 U.S. 483 (1954).

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1. 337 F. Supp. 280 (W.D. Tex. 1971).

2. 411 U.S. 1 (1973).

3. Lawrence J. Vilardo & Howard W. Gutman, *With Justice from One: Interview with Hon. Irving L. Goldberg*, Vol. 17, No. 3 LITIG. 16, 20-21 (1991).

4. See, e.g., Mark Tushnet, "And Only Wealth Will Buy You Justice"—Some Notes on the Supreme Court 1972 Term, 1974 WIS. L. REV. 177; Peter B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1, 32-36 (1987).

forget that education was a critical issue between the candidates such that in the last few days before the election, Gov. Bush and Vice President Gore devoted themselves to debating the merits of a recent educational study⁵ by the Rand Corporation entitled, "What Do Test Scores in Texas Tell Us."⁶

On a personal note, I first encountered Judge Goldberg sitting with all the other judges in an 1969 en banc hearing in Houston.⁷ It was my first appellate argument ever. It was a school desegregation case. And I won.

I

I have decided upon the topic for my lecture not only as a natural consequence of my academic interests but also because *Brown* and issues of school desegregation have been central to both my personal and professional life for the past fifty-three years.

For the first twelve years of my life, I lived in the South, where I experienced all the features of its racially-dual society. I was assigned to an all-black elementary school. For much of my first six years, I was bused past all-white schools closer to home to all-black schools on the other side of town. My mother, a public school teacher, was also assigned by race to teach only in all-black facilities. A year before *Brown* was decided, my family and I moved to the North, to New Rochelle, New York, a suburb of New York City. To my parents' and my surprise, we learned a few years after settling there that a school desegregation suit was being brought against the local school board. It was among the first, if not *the* first, Northern school suit based upon *Brown*. The board was ultimately found to have acted unconstitutionally and ordered to desegregate using various means, including busing, to achieve that end.⁸

In 1969, I joined the NAACP Legal Defense Fund where I was assigned, among other matters, a docket of school desegregation cases in Florida, including one against my prior home, Tampa (Hillsborough County), Florida. For several years I litigated the Hillsborough County⁹ case, and several other Florida cases, achieving final desegregation orders in each.¹⁰ As Assistant Attorney General for Civil Rights in the Carter Administration, I was responsible for overseeing the prosecution of government school desegregation litigation nationwide and personally argued the *Dayton* and *Columbus*¹¹ cases before the United States

5. Debra Viadero, *Candidates Spar Over Test Gains in Texas*, EDUC. WK., Nov. 1, 2000, at 30.

6. Available at <http://www.rand.org/publications/IP/IP202/>.

7. *Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211 (5th Cir. 1969).

8. *Taylor v. Bd. of Educ. of City Sch. Dist. of New York*, 191 F. Supp. 181 (S.D.N.Y. 1961).

9. *Mannings v. Bd. of Pub. Instruction of Hillsborough County, Fla.*, 306 F. Supp. 497 (M.D. Fla. 1969), *rev'd*, 427 F.2d 874 (5th Cir. 1970).

10. See Drew S. Days, III, *The Other Desegregation Story: Eradicating the Dual School System in Hillsborough County, Florida*, 61 FORDHAM L. REV. 33 (1992).

11. *Dayton Bd. of Educ. v. Brinkham*, 443 U.S. 526 (1979); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979).

Supreme Court. During my stint as Solicitor General in the first Clinton Administration, I was responsible for determining what the United States government's position would be before the Supreme Court in the *Jenkins* (Kansas City, Missouri) school case.¹²

What I would like to do this afternoon is talk about my reactions—the reactions of one who has been involved for over half a century with the issue of school desegregation—to the state of affairs with respect to matters of educational equality and quality education in America during this first year of the 21st Century. But first, let me describe the changing legal landscape I confronted as both a public interest and federal government lawyer over the period of my direct involvement.

II

Upon joining the staff of the NAACP Legal Defense Fund, I was given responsibility for school desegregation cases, some of which had been originally filed by Thurgood Marshall almost fifteen years earlier. What I encountered was a consistent pattern, from county to county, of stark racial segregation of students, faculty and staff in the public school systems. Black schools were visibly and appreciably inferior to white schools in terms of physical plant, books and supplies, buses, sports equipment and musical instruments. I arrived on the scene a year after the Supreme Court had declared unconstitutional freedom-of-choice plans that were no more than paper promises by school boards to dismantle the racially-dual systems of public education.¹³ Such plans had produced little real change in large part because black children and their parents were frankly intimidated by the thought of entering into an all-white school where the environment was likely to be hostile.

Much has been written about the motivations and philosophies that drove civil rights lawyers like me to pursue school desegregation litigation with vigor. It was certainly not my view, nor that of anyone I worked with, that desegregation had to be pursued because of a belief that black students needed to sit next to white students in order to learn. First, and foremost, we were enforcing the law and the Constitution as interpreted by the Supreme Court. Second, the approaches we took were commonsensical, such as, for example, urging local federal judges to order that the school district permit children living in close proximity to one another to attend the nearest school, irrespective of their race. Third, there was a pragmatic consideration: schools with both black and white students, unlike previously all-black schools, were likely to receive ample financial and other support for their programs.

In the late 1960s and early 1970s, the Supreme Court issued a number of opinions on school desegregation, declaring that the “all deliberate speed” timetable for compliance announced in its *Brown II*¹⁴ decision

12. *Missouri v. Jenkins*, 515 U.S. 70 (1995).

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

14. *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

had passed,¹⁵ ordering faculty desegregation¹⁶ and the extensive use of busing.¹⁷ The Court also found, for the first time, that a northern school district, Denver, Colorado,¹⁸ had unconstitutionally segregated its public school students by race. Similar determinations were made later with respect to Dayton and Columbus, Ohio.¹⁹ There was one decision that pointed, however, in the opposite direction. In a case involving Detroit, the Court put a halt, for all intents and purposes, to the notion of metropolitan desegregation remedies.²⁰ During the same period the Court also recognized the appropriateness of educational enhancements for black students who had been forced to attend inferior, racially-segregated schools.²¹ The 1970s were also years when extensive litigation was ongoing in the lower federal courts where we attempted to obtain relief in the face of successive waves of school board obstructionist tactics, even where busing was not an issue: gerrymandered attendance zones, manipulation of school capacities and threats to close perfectly sound schools in black neighborhoods in retaliation for black community demands for further desegregation. That wrangling continued well into the 1980s.

In the 1990s, however, we learned a memorable lesson about the impact of time on the staying power of structural injunctions like school desegregation orders. Responding to major population shifts and increased residential segregation, the Court made clear its unwillingness to continue to hold school districts responsible and answerable to federal district judges for the resegregation of public schools. In cases involving Oklahoma City²² and DeKalb County, Georgia,²³ the Court signaled to school districts and lower federal courts alike that the time for judicial supervision had come to an end.

One other important development in public school desegregation has surfaced only in the last couple of years and continues to be a subject of litigation and intense public policy debate. One of the most popular educational reforms and desegregation measures has been the development of magnet schools.²⁴ These schools offer a range of unique, high-quality educational programs in the sciences or the arts, for example. To ensure that the benefits of these schools are widely distributed and that they do not promote resegregation, many school districts have used race-conscious admissions policies. These policies have increasingly been the subject of constitutional challenges.²⁵ In effect, these cases are the place

15. *Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19 (1969).

16. *U.S. v. Montgomery County Bd. of Educ.*, 395 U.S. 225 (1969).

17. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

18. *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 413 U.S. 189 (1973).

19. *See Dayton Bd. of Educ.*, 443 U.S. at 526; *Columbus Bd. of Educ.*, 443 U.S. at 449.

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

21. *Milliken v. Bradley*, 433 U.S. 267 (1977).

22. *Bd. of Educ. of Okla. City v. Dowell*, 498 U.S. 237 (1991).

23. *Freeman v. Pitts*, 503 U.S. 467 (1992).

24. GARY ORFIELD & SUSAN EATON, *DISMANTLING DESEGREGATION, THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION* 265-71 (1996).

25. Jeffrey Rosen, *The Lost Promise of School Integration*, N.Y. TIMES, Apr. 2, 2000, § 4 (Magazine), at 1.

where school desegregation techniques and affirmative action law seem to be on a collision course. The desegregation scenario is one where first, there is a finding of a constitutional violation. Magnet schools may be included as part of the remedy for that violation. An effort is made by the school district to maintain a racial balance in such facilities relative to system-wide racial ratios.

Affirmative action law, in contrast, holds that the constitutionality of any racial classification must satisfy the highest level of scrutiny: one that is narrowly-tailored to promote a compelling governmental interest. Remedying discrimination is viewed as a compelling governmental interest. What about achieving racial diversity, a goal that school districts have often asserted? Lower federal courts have generally rejected such arrangements either because they deny that achieving diversity can be a compelling governmental interest or, assuming, *arguendo*, that it is such an interest in the abstract, that the factual record did not support the diversity claim. As a consequence, racial balance arrangements have been either barred by court order or resolved by way of settlement in San Francisco;²⁶ Boston;²⁷ Arlington, Virginia;²⁸ Charlotte-Mecklenburg, North Carolina;²⁹ and Buffalo,³⁰ among others in the face of challenges by white students denied admission to magnet schools in order to maintain racial balance.

I do not intend to launch here into a discussion about the current debate over the constitutional sufficiency of diversity as a justification for race-based admission criteria in higher education framed by the Supreme Court in *Bakke*³¹ and the Fifth Circuit's *Hopwood*³² decision, involving the University of Texas Law School's admissions program. Rather, I want merely to point out how, at the elementary/secondary education level, blacks are inclined to see a bit of irony in these decisions on magnet schools: black parents sue to achieve desegregation and win, but efforts by school authorities to ensure their children's meaningful access to programs offering high quality instruction are barred by the courts.³³

26. San Francisco NAACP v. San Francisco Unified Sch. Dist., 59 F. Supp.2d 1021 (N.D. Cal. 1999).

27. Wessmann v. Gittens, 160 F.3d 790 (1st Cir. 1998).

28. Tuttle v. Arlington County Sch. Bd., 195 F.3d 698 (4th Cir. 1999).

29. Capacchione v. Charlotte-Mecklenburg Bd. of Educ., 57 F. Supp.2d 228 (W.D.N.C. 1999).

30. Caroline Hendrie, *Buffalo Settles Case Challenging Racial Preferences*, EDUC. WK., May 13, 1998, available at <http://www.edweek.org/ew/1998/35buff.h17>.

31. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

32. Hopwood v. State of Tex., 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 518 U.S. 1033 (1996).

33. For a comprehensive discussion of the impact of these elementary/secondary racial balance plans, see John Charles Boger, *Willful Colorblindness: The New Racial Piety and the Resegregation of Public Schools*, 78 N.C. L. REV. 1719 (2000).

III

Having described the course of school desegregation litigation up to the present, I want to address the question of what we know about the effectiveness of those efforts. It is not an encouraging picture, although I am not alone among civil rights litigators in believing—and having facts to reinforce that belief—that our work made life and learning appreciably better for large numbers of black, white and Hispanic students.³⁴ The Civil Rights Project at Harvard University issued a report in June of last year that identified four trends with respect to school desegregation:

- 1) resegregation in the South, after two and a half decades in which civil rights law broke the tradition of apartheid in the region's schools and made it the section of the country with the highest levels of integration in its schools;
- 2) continuously increasing segregation for Latino students who are rapidly becoming our largest minority group and have been more segregated than African-Americans for several years;
- 3) large and increasing numbers of African-American and Latino students enrolled in suburban schools but serious segregation within these communities, particularly in the nation's large metropolitan areas; and
- 4) rapid ongoing change in the racial composition of American schools and the emergence of many schools with three or more racial groups: all racial groups except whites experience considerable diversity in their schools but whites are remaining in overwhelmingly white schools even in regions with very large non-white enrollments.³⁵

In May of this year, moreover, the media reported that the Kansas City, Missouri School District was denied accreditation, despite the inversion of more than \$2 billion to enhance educational programs and school facilities in connection with a long-running desegregation suit.³⁶ Additionally, this year a controversial study of twelve cities, representing all regions of the United States, found that black students in public schools

34. For studies on the effects of school desegregation, see A. Reynaldo Contreras & Leonard A. Valverde, *The Impact of Brown on the Education of Latinos*, 63 J. NEGRO EDUC. 470 (1994) (arguing that *Brown* led to the implementation of the educational initiatives, including a change in school funding allocations, Title I programs, magnet schools, and bilingual and multicultural education, which have had positive effects on the educational outcomes of Latinos); Marvin Dawkins & Jomills Henry Braddock, II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. NEGRO EDUC. 394 (1994) (arguing that school desegregation has had a positive impact on the career attainment of African Americans, and has led to increased interracial contact and increased the quantity of desegregated housing). See also Bradley W. Joondeph, *Skepticism and School Desegregation*, 76 WASH. U. L.Q. 161 (1998) (arguing that recent skepticism about school desegregation is unwarranted given the success of school desegregation efforts at increasing black academic achievement).

35. Gary Orfield & John T. Yun, *Resegregation in American Schools*, THE CIVIL RIGHTS PROJECT, HARVARD UNIVERSITY (1999), available at <http://www.law.harvard.edu/civilrights/publications/resegregation99.html> (password required).

36. Dirk Johnson, "F" for Kansas City Schools Adds to District's Woes, N.Y. TIMES, May 3, 2000, at A16.

across the country are far more likely than whites to be suspended or expelled and far less likely to be in gifted or advanced placement classes.³⁷ A 1997 opinion poll found that only about a third of blacks and less than 40% of Hispanics expressed satisfaction with their local public schools. Over 60% of whites were satisfied.³⁸ And last year, the National Center for Educational Statistics (NCES) released a thirty-year assessment of American student performance in reading, mathematics and science. At the time of the report's release, the vice-chairman of NCES' independent governing panel stated: "The average scores of black students have remained well below those of whites, and at age 17, the reading achievement of black students was lower last year than it was in 1988 - a depressing reversal of the gains made over the previous two decades."³⁹

A 1998 report underscored, moreover, the complexity of attitudes of African-American parents towards integration. It concluded, and I quote:

For African-American parents, the most important goal for public schools—the prize they seek with single-minded resolve—is academic achievement for their children. These parents believe in integration and want to pursue it, but insist that nothing divert attention from their overriding concern: getting a solid education for their kids. And despite jarring experiences with racism over the years, their focus is resolutely on the here and now. They want to move beyond the past and prepare their children for the future.⁴⁰

Faced with these assessments, the old civil rights litigator, in the quiet of first light has to ask himself sometimes: Did we press too hard for broader and tougher desegregation remedies? Were we insufficiently sensitive to the negative consequences that the desegregation process was having on the black community, the unequal burdens it was forced to bear?⁴¹ Did our efforts help trigger the demographic shifts that caused the Supreme Court to turn away from aggressive enforcement of desegregation mandates? The answers to these questions are largely unknown and, perhaps, unknowable. But that does not mean that they cannot or will not or should not be asked.

IV

Given the foregoing circumstances, what are the alternatives to the status quo? Clearly improvement of schools where the students live seems

37. Tamar Lewin, *Study Finds Racial Bias in Public Schools*, N.Y. TIMES, Mar. 1, 2000, at A14.

38. David A. Bositis, *Race Relations*, JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES 1997 NATIONAL OPINION POLL, available at http://www.jointcenter.org/selpaper/poll_ra.htm.

39. David J. Hoff, *Gap Widens Between Black and White Students on NAEP*, EDUC. WK., Sept. 6, 2000, available at <http://www.edweek.org/ew/ewstory.cfm?slug=01NAEP.h20>.

40. Steve Farkas & Jean Johnson, *Time to Move On*, PUBLIC AGENDA FOUNDATION (1998).

41. See, e.g., Drew S. Days, III, *Brown Blues: Rethinking the Integrative Ideal*, 34 WM. & MARY L. REV. 53 (1992).

obvious. There is no mystery about what components increase the likelihood of creating a high quality educational environment: small classes, trained teachers, sound facilities, among others. Recent government reports contend that "millions of young people are trying to learn in schools where roofs are leaking, ceilings are falling down and basic safety features are absent. It will take an estimated \$127 billion in spending to repair, renovate and modernize school buildings in such terrible condition. They need to be fixed."⁴²

But there are two others that merit a brief discussion. The first is school vouchers, an idea that was launched by the economist Milton Friedman in a 1955 essay.⁴³ Public voucher programs have been proposed in numerous states. Such programs have been implemented, however, in only two major cities, Cleveland, Ohio⁴⁴ and Milwaukee, Wisconsin,⁴⁵ having weathered vigorous legal challenges on both state and federal law grounds. At the last general election, moreover, voucher plans were defeated in both Michigan and California. In California, voters rejected by 71% to 29% a voucher measure, known as Proposition 38, which would have provided families at least \$4,000 per child to attend private or religious schools. Students already in private schools would be phased into the program. In Michigan, its voucher proposal, Proposal 1, would have given \$3,000 vouchers to parents whose children were enrolled in school districts that graduated fewer than two-thirds of their students.⁴⁶ Support for school vouchers for use in public, private or parochial schools is strong and, by one poll, substantially increasing since 1996 among African-Americans to 60% in 1999. It swells to 72% among those earning less than \$15,000 a year.⁴⁷ A Gallup Poll report released earlier this month found that 56% of Americans support the idea of giving parents government-funded school vouchers to pay for tuition at private schools.⁴⁸ Moreover, two recent studies of privately, not publicly, funded voucher programs that allowed black students to switch to private schools in four cities assert that the students' academic performance increased significantly when compared to that of students who remained in

42. Laurie Lewis et al., *Condition of America's Public School Facilities: 1999*, U.S. DEP'T OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, available at <http://nces.ed.gov/pubs.2000/20000032.pdf>.

43. Milton Friedman, *The Role of Government in Education*, in *ECONOMICS AND THE PUBLIC INTEREST* (Robert A. Solo ed., 1955). See also, JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS AND AMERICA'S SCHOOLS* (1990).

44. *Simmon-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999). The Ohio Supreme Court rejected the federal constitutional claims and all but one state claim. The Ohio legislature thereafter re-enacted the Cleveland voucher program, having cured the state constitutional problem.

45. *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998).

46. Mark Walsh, *Voucher Initiatives Defeated in Calif., Mich.*, *EDUC. WK.*, Nov. 15, 2000, available at <http://www.edweek.org/ew/ewstory.efm?slug=1vouch.h20>.

47. Jodi Wilgoren, *Young Blacks Turn to School Vouchers as Civil Rights Issue*, *N.Y. TIMES*, Oct. 9, 2000, at A1.

48. Wendy W. Simmons & Frank Newport, *Issue Referendum Reveals Mix of Liberal and Conservative Views in America Today*, *THE GALLUP ORG.*, Nov. 1, 2000, available at <http://www.gallup.com/poll/releases/pr001101.asp>.

public schools.⁴⁹

Despite their attractiveness to children trapped in failing or underperforming schools, vouchers raise several concerns. One persistent fear is that the introduction of readily available vouchers would encourage private schools to increase their tuition to account for the added funding to parents. In doing so, the schools would capture much of the benefit of higher rates without driving away their current students. Under this scenario, the only families that would benefit from the program would be those at the margin of being able to afford private education without the vouchers, since lower income students would be priced out of the market. Although this problem might be alleviated by restricting tuition hikes by schools accepting vouchers, states may be unwilling to take control of the management functions of private, often religious institutions.⁵⁰

Another concern often expressed about the distributional effects of vouchers is that parents with the best information, likely to be the most affluent, will be the ones most likely to enjoy the advantages of the subsidy.⁵¹ Proponents of vouchers, however, suggest that such arguments underestimate the ability of parents to assess the relative quality of schools. Finally, opponents suggest that those families who value education highly are likely to take advantage of any voucher plan. Proponents argue, however, that this "creaming effect" would not occur because the most successful students would be those most satisfied with their current schools.⁵² In any event, proponents of vouchers do not assert that such programs would reach all children in need. At present, only 12,000—in Cleveland, Milwaukee and Pensacola, Florida—of the nation's 52 million school children use public money to attend private schools.⁵³

Nor does the final alternative, black independent and private schools, offer much promise. As of 1996, there were over 400 independent black schools nationwide.⁵⁴ The schools are located primarily in large urban centers. There are at least 55 black independent schools within the New York metropolitan area alone.⁵⁵ In Atlanta, there are at least 20 such

49. Darcia Harris Bowman, *Privately Financed Vouchers Help Black Students, Two Studies Find*, EDUC. WK., Sept. 6, 2000, available at <http://www.edweek.org/ew/ewstory.cfm?slug=01vouch.h20>.

50. See generally, James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 309-314 (1999).

51. James S. Leibman, *Voice, Not Choice*, 101 YALE L.J. 259 (1991).

52. David Ruenzel, *What's Brewing in Milwaukee*, TCHR. MAG., Sept. 1995, available at <http://www.edweek.org/tm/1995/01choice.h07>.

53. Wilgoren, *supra* note 47, at A1.

54. Joan Davis Ratteray, *Don't Overlook Black Independent Schools*, USA TODAY, Oct. 4, 1996, at 13A.

55. Valerie Burgher, *It Takes a Nation: Dozens of African American Prep Schools Dot the City. Is this the Beginning of "Black Flight" from City Schools?*, VILLAGE VOICE, Aug. 13, 1996, at 8.

schools;⁵⁶ in Pittsburgh there are at least 11 black independent schools;⁵⁷ in Houston, there are at least 10 black private schools;⁵⁸ and in South Central Los Angeles alone, there are at least 10 black private schools.⁵⁹ Most of these schools were founded within the last twenty years, a majority of those within the last decade. Within the last ten years, black independent schools have been opened in Charlotte, North Carolina;⁶⁰ Tampa, Florida;⁶¹ and Phoenix, Arizona,⁶² among other large cities. Between 1990 and 1995, the number of black students enrolled in black independent schools increased from approximately 52,000 to over 70,000.⁶³

By all accounts, several factors have influenced this "movement" in black educational patterns in the post-*Brown v. Board of Education* period. Perhaps the most significant is the growing dissatisfaction in the black community with the failure of public schools successfully to educate black school children. There is also a weariness among some blacks with the failures and costs of integration; parents seek to reclaim the best of segregated school systems in order to help black students achieve.⁶⁴ Finally, there has been a significant increase in the number of Christian schools within the black community, which have been embraced as an alternative to what has been seen as the "valueless" education of the public schools. Parents sending their children to such schools seek to integrate religious (most often Christian) values and traditions into their children's education.⁶⁵ As with vouchers, black private schools, whatever their other merits, cannot answer the educational needs of the vast majority of African-American children.

CONCLUSION

Thank you for giving me this opportunity today to reflect on my past involvement in school desegregation efforts and to wonder aloud about where we are and where we are headed in the 21st Century with respect

56. *Local Clergy Study Black Christian Schools in Atlanta*, CHATTANOOGA FREE PRESS, Sept. 24, 1995.

57. Carmen J. Lee, *Trying for the Best of Both Worlds: Area's Black Private Schools Offer Safe Environment*, *Cultural Focus*, PITTSBURGH POST-GAZETTE, Apr. 21, 1996, at A15.

58. Norma Martin, *Separate, Private and Black*, HOUSTON CHRON., July 23, 1993, at 29.

59. Ronald W. Powell, *Miracles Amid L.A.'s Ruins: This Black School is a Study in Learning*, SAN DIEGO UNION-TRIB., May 4, 1993, at A1.

60. C.J. Clemmons, *Parents Praise Predominantly Black Schools for Academic Excellence, Sense of Heritage it Gives Children*, CHARLOTTE OBSERVER, Apr. 21, 1996, at B6.

61. Tracie Reddick, *Private Schools Attracting Black Kids*, TAMPA TRIB., Apr. 6, 1997, at 1.

62. Julia Lobaco, *Black Private School Offers Students a New Perspective: "Voluntary Separation" Puts Focus on Culture*, HOUSTON CHRON., Mar. 20, 1994, at 4.

63. Lee, *supra* note 57, at A15.

64. Lise Funderburg, *Montclair, New Jersey, Is Known for Its Racial Diversity and Good Public Schools. So Why Are Students of Color Lagging Behind? Race in Class, After Integration*, NATION, June 5, 2000, at 26.

65. David J. Dent, *A Mixed Message in Black Schools*, N.Y. TIMES, Apr. 4, 1993, § 4A, at 28.

to race relations in public education. What is clear is that the search for educational e/quality goes on unabated in the African-American community forty-six years after *Brown*.

I do not presume to have the answers to those questions. But I am convinced that we should be guided in seeking solutions to our current problems by an abiding truth pronounced by Chief Justice Earl Warren for the Supreme Court in *Brown*; one that Judge Goldberg also quoted in his *Rodriguez* opinion:

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.⁶⁶

Thank you.

66. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

