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A Look at *Brown v. Board Of Education* in 2054

John C. Brittain[1]

> *It is crucial for a democratic society to provide all of its schoolchildren with fair access to an unsegregated education.*[2]

Brown v. Board of Education[3] was the greatest case decided by the United States Supreme Court in the twentieth century, and perhaps ever, because it altered a substantial part of the social fabric of American life. It is an icon, a symbol of something vintage and sacred. People merely say, "*Brown v. Board of Education*," and it represents a set of assumptions. However, *Brown* is not only a representation of the past; it concerns the present conditions in public schools.

This short article examines three time periods of *Brown's* legacy: the past, which encompassed periods of racial segregation, integration, and resegregation; the present, in which class has nearly replaced race as the new barrier to equal educational opportunities for high concentrations of poor schoolchildren; and the future, in which the population of racial and ethnic minorities will make them the numerical majority, rendering school integration a moot point by the golden anniversary of *Brown* in 2054.

THE PAST: *BROWN* IN 1954

What comes to your mind when you think about *Brown v. Board*? Is it Jim Crow segregation, the famous nickname for the domestic form of apartheid in this nation, which began in the post-Reconstruction era after 1890? Do you think that *Brown* sparked the civil rights movement that ultimately lead to the death of Jim Crow segregation? Does *Brown* represent a civil rights remedy known as desegregation in education?

Perhaps, *Brown* also stands for integration of all racial, and later ethnic, schoolchildren?

In the nineteenth century, the former African slaves gained their freedom by passage of the Thirteenth Amendment to the U.S. Constitution in 1865,[4] full citizenship by the Fourteenth Amendment in 1868,[5] and the right to vote by the Fifteenth Amendment in 1870.[6] Most of those gains for the "Negro," as African Americans were called then, disappeared by the beginning of the twentieth century when Blacks, particularly in the South, were subjugated in every facet of American life. The Negroes were separated by law, called *de jure* segregation, in which state and local governments enforced by criminal prosecutions in order to maintain separation in schools, buses, railroads, theaters, restaurants, court houses, hotels, even in the cemeteries, and between the books in the warehouses destined for the Black or White schools.[7]

In 1953, the late, great Thurgood Marshall was an attorney for the National Association for the Advancement of Colored People (NAACP) Legal Defense and Education Fund. Marshall argued the *Brown* cases before the U.S. Supreme Court.[8] In the first of two arguments, he said, "There is nothing involved in this case other than race and color."[9] Marshall repeated the moral dilemma articulated by W.E.B. Du Bois at the beginning of the twentieth century when he stated, "The problem of the twentieth century is the problem of the color line."[10] A unanimous Supreme Court responded to this argument, and in its decision, announced by Chief Justice Earl Warren, declared separation of the races by law inherently unequal and therefore unconstitutional.[11]

As a remedy for the unconstitutional *de jure* segregation, the courts required desegregation.[12] The "dual system" of separate White and Black schools eventually ended and an integrated educational experience produced advantages for non-White students.[13] Hence racial integration, due to *Brown*, became a nearly universal policy to promote racial tolerance and understanding. Unfortunately, White school authorities also closed many of

the Black schools and laid off a disproportionate percentage of Black teachers and administrators until the courts were called upon to fix the problem.

Brown represents a glass half-full or half-empty to most people. *Brown* is a glass half-full for expanding opportunities for non-White children to go to better schools with superior facilities and higher scholastic achievement than segregated schools. Remember, the goal of the architects of *Brown* was quality education for the Negro child. As the Harvard Law–trained pioneer lawyer and father of the *Brown* thesis, Charles Hamilton Houston set out to gain quality education for the Negro child by destroying segregation and opening the schools for all.[14] Many Black students have benefited from an integrated education, and Latino students have also reaped the windfall effects.

In addition, *Brown* had a profoundly positive impact on society. It ended *de jure* segregation not only in education, but also in transportation and accommodations in hotels, restaurants, and shops. *Brown* was further supported by the passage of the Civil Rights Act of 1964.[15] Ushering in an acceptance for racial and cultural assimilation, *Brown*'s message of equality under the law for all ignited the women's movement, the fight for equal protection for people with different physical and mental abilities, and the fight for rights of gays and lesbians in the succeeding decades. Ironically, May 17, 2004, was the day that same-sex marriages became legal in Massachusetts.[16] The Massachusetts Supreme Judicial Court ruled in favor of allowing same-sex marriages based largely on *Brown* and the right to equal protection.[17]

However, while *Brown* has many successes, it also symbolizes certain weaknesses in the field of education, and thus, a glass half empty. Civil rights experts such as Gary Orfield, head of the Harvard Civil Rights Project,[18] report that more racial and ethnic segregation in schools and in neighborhood-housing patterns exists today than in 1954.[19] Additionally, minority children lag behind their White counterparts in the achievement

gap.[20] The intransigence of race and caste exposes some of the limitations of judicial remedies.

THE PRESENT: *BROWN* IN 2004

The law of school desegregation has produced an irony today. *De jure* segregation is illegal, thanks to *Brown*, and no longer exists. Instead, *de facto* school segregation is prevalent across the country as seen in cities such as Boston, Miami, New Orleans, Houston, Los Angeles, Detroit, and Chicago.

Most medium to large urban school districts are beset by three layers of *de facto* segregation. First, there is extreme racial and ethnic segregation with more than 75 to 80 percent of minority students in the same school district population, and the same results occur with Whites in the nearly all-White schools.[21] Additionally, many schools within urban school districts are racially imbalanced. Second, urban schools contain a high concentration of students from poor families; in most cases, this poverty concentration is even more significant than the racial and ethnic segregation.[22] Third, the combination of extreme segregation and high poverty concentration has contributed to the very low achievement rates for African American and Latino schoolchildren in test scores, high school graduation, and college matriculation.[23]

De facto segregation is legal in virtually all jurisdictions, unlike *de jure* segregation. The problem with this is that there are no legal remedies for the unequal educational opportunities for minority school children. In 1996, the Connecticut Supreme Court rendered a decision in *Sheff v. O'Neill,*[24] which provided a notable exception to school desegregation law as it stands today. The *Sheff* case was based upon a unique provision in the Connecticut Constitution that expressly outlawed "segregation or discrimination in the exercise or enjoyment of [a person's] civil . . . rights," such as education, "because of . . . race [or] color."[25] As a result of this constitutional provision, a four to three majority of Connecticut's highest

court held the state liable for the extreme *de facto* racial and ethnic segregation regardless of whether the state caused the condition.[26] Only New Jersey and Hawaii have similar constitutional provisions, but neither state has tested these clauses in the courts for school segregation.[27]

The new "Jim Crow" dividing barrier is the urban and suburban boundary, which separates urban, mostly non-White, poor districts from more affluent, and overwhelmingly White, suburban districts. Only *Sheff* has declared this boundary line to be the cause of the segregation and has ruled it unconstitutional.[28] Within many large city school districts, these boundary lines have the same effect between schools.

High concentrations of poverty now equal or surpass racial segregation as the predominant factor causing educational disparities. The *Sheff* plaintiffs and their lawyers attempted to convince the court to address the poverty issue.[29] But the state high court limited its ruling to the *Brown* theory of extreme racial segregation, based upon the Connecticut constitutional provisions.[30] However, the court did acknowledge the harmful effects of the poverty rate on education in the impoverished Hartford School District.[31]

Federal courts, including the U.S. Supreme Court, have imposed legal standards that make it all but impossible to establish *de facto* segregation or win a remedy for maximum integration between urban and suburban school districts. *Sheff* solved this issue by ordering an inter-district remedy to mix students between the inner and outer districts.[32] Unfortunately, the federal government has not followed *Sheff's* guidance and has all but abandoned school desegregation and integration efforts.[33]

The choice of remedies to reduce segregation are simple: maximum integration or non-integration. The primary remedy for school segregation has been the maximum integrationist approach. Maximum integration offers significant advantages. Social science research shows that an integrated education is beneficial for minority children and has no detrimental effect on non-minority children.[34] The value lies in the

increased aspiration and broader horizons for minority students. Minority students in integrated schools have increased their graduation rates, have a higher college matriculation, more full-time employment, and higher rates of adequate housing in integrated settings than minority students who went to segregated schools.[35] In addition, integration promotes cross-cultural understanding and breaks down myths fueled by ignorance and prejudice.

Notwithstanding the advantages of integrated education, the remedy has produced some adverse effects. The civil rights movement did not expect White people to resist school integration so strongly. The U.S. Supreme Court had to issue an order one year after *Brown* to implement the decision with "all-deliberate speed."[36] History shows that federal, state, and local authorities placed more emphasis on "deliberate" than on "speed." It took fifteen to sixteen years to fully enforce the command of *Brown*, and the resistance continues today.[37]

Over the years, integration has created an unintended adverse effect. Many White families have either moved from communities with an increasing minority population in what is called "White flight," or have abandoned the public school system in favor of private schools.[38] These parents have had their children change schools for a mix of racial and non-racial motives. Some parents, with no racial motive, simply moved residences in order to gain access to a more effective school.[39] Neighborhood-school assignments, however, freeze school segregation by relying on residential housing patterns. This is done with legal impunity because the U.S. Supreme Court has enshrined the principle of neighborhood schools.[40] On the other hand, some people overtly exhibited the ugly face of racial prejudice against school integration. For example, in many school districts where courts ordered desegregation, the normal yellow school bus became the target of opposition with clear overtones of racial bias.[41]

The alternative remedy is non-integration, or what I describe in some instances as "self-segregation." The minority beneficiaries of school

integration have grown weary and frustrated with the slow pace of integration. Each anniversary of *Brown* seems to produce more converts from integration to non-integration. Non-integration is often a tradeoff: minorities abandon maximum integration in exchange for money to improve segregated schools attended by minority children. Today, other forms of non-integration are reflected in charter schools with a racial or ethnic cultural theme, minority magnet schools, or, single-sex schools such as the popular Black Wheeler Avenue Baptist Church Academy in Houston.[42] Such schools often also have creative educational programs to raise reading or math scores on state tests. Thus, it appears that non-integration is the default remedy, whether consciously selected or not, because of the lack of any effort toward integration.

In the past twenty-five years, three-quarters of the states have implemented some reform, by judicial holding or legislative initiative, to satisfy the state's constitutional obligation to provide equal funding for schools.[43] Additionally, equal funding cases have surfaced in Texas where wealthy school districts and their state legislative allies attempted but failed to repeal the "Robin Hood Law."[44] These equal funding cases have helped children of color in poorly financed school districts, but they have had little effect on integrated education.[45] Today, the remedies for school segregation emphasize voluntary instead of mandatory means and flexible, rather than fixed numerical percentages of racial and ethnic groups when measuring economic, racial, and ethnic integration.

THE FUTURE: *BROWN* IN 2054

By 2054, school integration trends will continue with modified voluntary integration methods that have elastic racial and ethnic percentage goals as a guide. This modest remedy, compared to the more aggressive fixed-percentage remedies of the past, will resemble the current state of affirmative action law as a result of the University of Michigan cases.[46] Urban schools will be filled with increasing numbers of poor and non-White

schoolchildren. The modification of school integration will be centered on magnet schools that have some allotment for local resident students, but also reserve space for students beyond the immediate boundary lines in order to promote racial, ethnic, economic, and regional integration.

The racial and ethnic imbalance in urban school districts will probably increase because of the demographics of the population. As middle-class minorities follow their White counterparts to the suburbs in search of better housing and better schools, the inner-city schools will become large warehouses for poor kids, which will exacerbate the problem of racial and ethnic imbalances. A look at the census data demonstrates this point: according to Harold "Bud" Hodgkinson, a renowned demographer particularly on student populations, Whites will become a numerical minority of the U.S. population by the year 2054.[47] Latinos will be the largest plurality subgroup, followed by African Americans.[48] For the first time in American history since Thomas Jefferson took the initial census in 1790, the largest minority group will not be a race, it will be an ethnic group from which people of various races (Black, White, or Asian) can identify themselves as Latino. The percentages of births to pregnancies in racial and ethnic groups show that for every 1,000 pregnancies, 60.8 percent of white pregnancies are carried to term; 62.9 percent of black pregnancies are carried to term; and 84 percent of Latino pregnancies are carried to term.[49] Abortions account for the largest factor in the differing ratios between pregnancies and births.[50]

From a *Brown* perspective, the effect of the increasing number of mixed-race children presents a sociological uncertainty. In *Plessy v. Ferguson*, the case overruled by *Brown*, Homer Plessy claimed he was seven-eighths White, but the court ruled against him.[51] Already, there is disagreement on how to count children of mixed races, and no one is quite sure if society will react to them with bias or non-bias. In addition, the racial and ethnic composition of states will become increasing dissimilar. Sixty percent of America's population growth in the next twenty years will be in the Latino

and Asian populations.[52] However, the vast growth will be in states that have three-fourths of the Latino and Asian populations now, such as California, Texas, and Florida.[53] Will *Brown* apply in the future to Latinos that have historically used bilingual and bicultural remedies to obtain equal education? Ten states now contain one-half of the U.S. population, and one-third of the people live in only nine metropolitan areas.[54] The racial and ethnic distribution between states will be very unequal.

Moreover, the lack of collaboration between suburbs and cities will mean more power for suburbs. Outer-ring suburbs in large metropolitan regions will become more integrated, including the schools, by the natural minority migration to predominantly White neighborhoods. For instance, in the Washington, D.C.-Maryland metropolitan region, the Atlanta counties of Fulton and DeKalb, or the Houston metropolitan area of Harris and Fort Bend Counties, the Black middle class has formed wide pockets of majority-Black middle-class neighborhoods, notwithstanding the racial imbalance in the schools.[55]

On the one hundredth anniversary of *Brown* in 2054, the racial and ethnic demographics of this nation will comprise a majority of people of color. The future numerical majority of people of color in the United States will make school integration obsolete in the most heavily populated minority communities; thus, integration of public schools will become a moot point in terms of the integration inherent in *Brown's* legacy.

CONCLUSION

I leave the reader with four perspectives. First, school desegregation of the past vintage will end by 2054 at the time of the hundredth anniversary of *Brown*. Second, the poverty concentration of students in public schools will become the new form of a "Jim Crow" barrier to equal education. Only time will tell whether courts will recognize the inequality due to class in the same way they recognized the inequality due to race. Some legal principles grant low-income people remedies for the denial of fundamental rights,

such as the access to legal counsel when accused of a crime[56] or obtaining a divorce.[57] Thus far, there is no successful legal theory to attack different treatment based upon social class as a denial of equal protection.

Third, integration in education will remain worth pursuing in the future for the same well-established reasons such as educational benefits and moral value to society. Yet at some point the burdens of integration may outweigh the benefits.

Fourth, and this is the penultimate analysis in the debate about school integration and *Brown*, a child of color enrolled in a school district with extreme racial and ethnic segregation, high concentrations of poverty, insufficient financial support, and low academic-achievement rates, cannot obtain an equal educational opportunity. Some may argue that a child in these poor districts can obtain an equal education because all children can learn if given the proper tools. In fact some poor children, but not most, do rise above their adverse conditions to meet the minimum academic standards. Pockets of success do exist in racially segregated classes, special programs, and even some schools. Yet, there are no poor and racially balanced school districts successfully meeting the states' expected standards of achievement.

Until the benefits of a segregated education match the benefits of higher aspirations from an integrated exposure for children of color, I will continue to support some form, even modified, of the integrationist remedy. So far, the fifty-year history of *Brown* has shown that integration alone will not achieve full equality of educational opportunity for minority schoolchildren. The deadly combination of trends in resegregation, increasing concentrations of poor children in disadvantaged schools, and the rising population of racial and ethnic minorities in the future certainly pose substantial obstacles to fulfilling the ideals of *Brown*. However, if history is any guide, a new generation of creative and determined civil rights activists and a compassionate dominant culture may overturn the current plight of

inequality in education in the way that *Brown* overturned the legacy of *Plessy* for a brief period in the 1970s and 1980s.

To successfully integrate schools, society must summon the will to act. People often perform with more urgency when a need is based on economic rather than moral imperatives. Generally, integrated education is considered a moral value; thus, until society views educational equality as an economic necessity, the nation will not begin to pursue real racial and educational equity for children of color. The Connecticut Supreme Court in *Sheff* succinctly made the important link between equal education for all children and the economic prosperity of the nation:

> Economists and business leaders say that our state's economic well-being is dependent on more . . . well-educated citizens. And they point to the urban poor as an integral part of our future economic strength. . . . So it is not just that their future depends on the State, the state's future depends on them.[58]

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[2] Sheff v. O'Neill, 678 A.2d 1267, 1289 (Conn. 1996).

[3] Brown v. Bd. of Educ., 347 U.S. 483 (1954) [hereinafter *Brown I*].

[4] U.S. CONST. amend. XIII.

[5] U.S. CONST. amend. XIV.

[6] U.S. CONST. amend. XV.

[7] *See generally* A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS (1978) (analyzing case history which articulated the doctrine of *de jure* segregation); C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (1955) (studying the history of Jim Crow laws).

[8] In the year following *Brown I*, the Court decided *Brown v. Board of Education*, known as *Brown II,* in which the Court held that lower courts have jurisdiction to see that the Court's order in *Brown I* was carried out with all deliberate speed. Brown v. Bd. of Educ., 349 U.S. 294, 300–301 (1955) [hereinafter *Brown II*].

[9] *Brown v. Board of Education (1954 & 1955)*, *in* LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL LAW 339 (Phillip B. Kurland & Gerhard Casper eds., 1975).

[10] W.E.B. DU BOIS, THE SOULS OF BLACK FOLK 3 (1903). Du Bois first made this statement in his address to the Pan-African Congress in London, July 1900. W.E.B. DU BOIS SPEAKS: SPEECHES AND ADDRESSES 1890–1919 125 (Phillip S. Foner ed., 1970).
[11] *Brown I*, 347 U.S. at 495.
[12] *See, e.g.*, *Brown II*, 349 U.S. at 299.
[13] Desegregation was later measured by the numerical percentage of integration of White and non-White pupils in schools. *See, e.g.*, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971) (citing percentages of race composition suggested as goals by the district court); Wright v. Council of Emporia, 407 U.S. 451 (1972).
[14] *See generally* GENNA RAE MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS (1983) (discussing the life and times of Houston).
[15] Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e-2(a)(2) (2000)).
[16] Pam Belluck, *Setback Is Dealt to Gay Marriage*, N.Y. TIMES, Mar. 30, 2004, at A1.
[17] Opinions of the Justices to the Senate, 440 Mass. 1201, 1209–1210 (2004) (finding the Massachusetts Senate's proposed bill regarding civil unions, in response to *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003), unconstitutional because the proposed bill violated the equal protection and due process requirements of the Massachusetts Constitution).
[18] The Harvard Civil Rights Project tracks the most comprehensive data on school integration and segregation. Harvard Civil Rights Project, *at* http://www.civilrightsproject.harvard.edu/.
[19] *See, e.g.*, Gary Orfield & Chungmei Lee, *Brown at 50: King's Dream or Plessy's Nightmare?*, THE CIVIL RIGHTS PROJECT, Jan. 2004, *at* http://www.civilrightsproject.harvard.edu/research/reseg04/brown50.pdf (last visited Nov. 14, 2004); Gary Orfield & Susan E. Eaton, *Back to Segregation*, THE CIVIL RIGHTS PROJECT, Mar. 3, 2004, *at* http://www.civilrightsproject.harvard.edu/research/articles/reseg.php (last visited Nov. 14, 2004).
[20] *See id*.
[21] Erica Frankenberg et al., *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*, THE CIVIL RIGHTS PROJECT, Jan. 2003, at http://www.civilrightsproject.harvard.edu/research/reseg03/AreWeLosingtheDream.pdf (last visited Nov. 23, 2004).
[22] *See, e.g.*, Kathleen Vail, *The Social Challenge*, *in The Urban Challenge: Against the Odds in City Schools*, AM. SCH. BD. J., Dec, 2003, http://www.asbj.com/specialreports/1203Special%20Reports/S3.html (last visited Nov. 23, 2004).
[23] *See, e.g.*, *Keeping the Promise of "No Child Left Behind": Success or Failure Depends Largely on Implementation by the U.S. Department of Education: Hearing on No Child Left Behind Act of 2001, Pub. L. No. 107-110 Before the U.S. House Comm. on Educ. and the Workforce Oversight Hearing on the Implementation of the No Child Left Behind Act*, 107th Cong. (2002), http://www.civilrightsproject.harvard.edu/policy/testimonies/House_Hearing_NCLB_TestimonyEdley.pdf (last visited Nov. 23, 2004).

[24] 678 A.2d 1267 (Conn. 1996). I was one of the lead counsel in *Sheff*. I became an attorney for the case due in part to Charles Hamilton Houston: Houston trained Thurgood Marshall and Herbert O. Reid. Herb Reid was a law professor at Howard University Law School and co-counsel in one of the five companion cases decided with *Brown*, namely, *Bolling v. Sharpe*, 347 U.S. 497 (1954), involving school segregation in the District of Columbia, a federal enclave. Reid became my mentor in civil rights law. When I graduated from Howard Law School in 1969, I went to Mississippi as a civil rights lawyer. I filed my first school desegregation case in Oxford, Mississippi, in 1969, the home of the University of Mississippi where James Meredith had integrated the university earlier in the decade. Twenty years later a team of lawyers, including me, commenced a major school desegregation case, *Sheff,* in my home state of Connecticut, which would become a landmark case. The so-called distinctions between the South and the North had become blurred. The Yankees up North were aghast that African Americans, Puerto Ricans and other Latinos, and Caucasians would accuse the state of Connecticut of fostering school segregation. *See generally*, John Brittain, *Why Sheff v. O'Neill Is A Landmark Decision*, 30 CONN. L. REV. 212 (1997) (articulating the implications of *Sheff*).

[25] CONN. CONST. art. I, § 20, *amended by* CONN. CONST. amend. XXI.

[26] *Sheff*, 678 A.2d at 1283.

[27] *See* HAW. CONST. art. I, § 9; N.J. CONST. art. I, ¶ 5; *Sheff*, 678 A.2d at 1281 n.29.

[28] *Sheff*, 678 A.2d at 1280.

[29] *Id*. at 1267.

[30] *Id.* at 1288–89.

[31] *Id.* at 1273.

[32] *See* Milliken v. Bradley, 418 U.S. 717, 733–745 (1974) (for the court to order an urban and suburban interdistrict school desegregation remedy, the plaintiff must first prove the suburban district caused the inner-city segregation); Bd. of Educ. v. Dowell, 498 U.S. 237, 237 (1991) (establishing the standards for dissolving court ordered school desegregation on grounds that the remnants of de jure segregation had ended); Jenkins v. Missouri, 515 U.S. 70 (1995).

[33] *See generally* No Child Left Behind Act, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified in scattered sections of 20 U.S.C.).

[34] Gary Orfield, *Schools More Separate: Consequences of a Decade of Resgregation*, THE CIVIL RIGHTS PROJECT, July 2001, *at* http://www.civilrightsproject.harvard.edu/research/deseg/Schools_More_Separate.pdf (last visited Nov. 23, 2004).

[35] *Id. See also* Gallup Poll, *Social Audit of Black/White Relations in the U.S.*, 1999, www.gallup.com/poll (last visited Nov. 23, 2004).

[36] *Brown II*, 349 U.S. at 301.

[37] *See generally* Carter v. W. Felicaina Parish Sch. Bd., 396 US 290 (1970) (reversing appellate court decision to permit deferral of desegregation plan); Singleton v. Mun. Sch. Dist., 396 U.S. 290 (1970), *rev'g* 419 F.2d 1211 (5th Cir. 1960).

[38] Paul E. Peterson, *'Brown' Decision was Great - Except for Schools*, AUGUSTA CHRON., Aug, 31, 2004, at A5; s*ee* Frankenberg, *supra* note 21.

[39] *See* Frankenberg, *supra* note 21.

[40] *See* Bd. of Educ. v. Dowell, 498 U.S. at 237.
[41] *See, e.g.*, Jami Bernard, *A Bus Ride to a 'Mini UN': News Writer Recalls Third-grade Adventure*, N.Y. DAILY NEWS, Sept. 19, 2004, at 22; Christina S. N. Lewis, *Brown v. Today: Panel Assesses Civil Rights Progress*, STAMFORD ADVOC., May 18, 2004, at A1.
[42] *See generally* Melanie Markley, *Where the Boys Are: After Rocky Start, Educators Encouraged Single-Sex School Will Succeed*, HOUSTON CHRON., Sept. 23, 2003, at A13.
[43] *See generally* William S. Koski, Symposium, *Of Fuzzy Standards and Institutional Constraints: A Re-examination of the Jurisprudential History of Educational Finance Reform Litigation*, 43 SANTA CLARA L. REV. 1185 (2003).
[44] *See, e.g.*, Edgewood Indep. Sch. Dist. v. Meno, 917 S.W.2d 717 (Tex. 1995); Janet Elliott, *School Funding Fight Goes to Court / Districts Will Cite Dropout Rates, Test Scores to Argue That State is Failing*, HOUSTON CHRON., Aug. 7, 2004, at B1. The term "Robin Hood" refers to an educational cost-sharing policy in which school districts with a richer property base, in order to raise funds for local education, relinquish a portion of state funds due them and allow the funds to go to other school districts with a poorer taxable property base. *Id*.
[45] *See generally* Abbott v. Burke, 693 A.2d 417 (N.J. 1997); Horton v. Meskill, 376 A.2d 359 (Conn. 1977) (known as *Horton I*); Horton v. Meskill, 486 A.2d 1099 (Conn. 1985) (known as *Horton II*). *See also* Koski, *supra* note 43.
[46] Grutter v. Bollinger, 539 U.S. 306 (2003); Gratz v. Bollinger, 539 U.S. 244 (2003). For further discussion of the effects of the Michigan cases, see John C. Brittain, *Affirmative Action Survives the Test:Racial and Ethnic Diversity a Benefit to Higher Education*, THE HOUSTON LAW., Jan.–Feb. 2004, at 18.
[47] Harold L. Hodgkinson, *The Uneven Spread and Blurring of Student Diversity*, AM. ASS'N SCH. ADMIN., Dec. 1999, *at* http://www.aasa.org/publications/sa/1999_12/hodgkinson.htm (last visited Nov. 14, 2004).
[48] *Id*.; U.S. CENSUS BUREAU, P25-1130 POPULATION PROJECTIONS OF THE UNITED STATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1995 TO 2050 (Feb. 1996), *at* http://www.census.gov/prod/1/pop/p25-1130/p251130.pdf (last visited Nov. 14, 2004) [hereinafter POPULATION PROJECTIONS].
[49] Harold L. Hodgkinson, *Unfinished Business: Keeping the Promise of Brown v. Board of Education*, Lecture Hosted by the Institute for Educational Leadership, the Century Fund, and the Center for American Progress (May 10, 2004) (notes on this lecture on file with author).
[50] *See* Hodgkinson, *supra* note 47.
[51] Plessy v. Ferguson, 163 U.S. 537, 541 (1896). *Id*. at 552.
[52] Hodgkinson, *supra* note 47.
[53] *Id*.
[54] *Id.*
[55] *See generally* Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729 (2001).
[56] Gideon v. Wainwright, 372 U.S. 335, 339 (1963).
[57] Boddie v. Connecticut, 401 U.S. 371, 380–81 (1971).

[58] *Sheff*, 678 A.2d at 1290 (quoting Abbott v. Burke, 575 A.2d 359, 392 (N.J. 1990)).