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ABSTRACT

The 1954 Brown Vs. Board of Education decision went beyond legal analysis to demonstrate the cruelty and immorality of discrimination against black children. It was asserted in the Brown decision that separate education cannot be equal education, and that segregation has a particularly detrimental effect upon black children. The negative impact of segregated schooling was found to be especially critical, given that education is one of the fundamental values in American society. In small cities and rural areas there has been definite progress made toward school integration. In large urban areas, however, the contrary is true. In addition to increasing disparities between racial composition of city and suburban schools, there is also the fact that within cities minority and non minority students tend to be separated from each other in terms of school assignments. While the legal system plays an important role in any ultimate solution to the problem of racial segregation in the schools, the courts cannot provide complete and permanent relief. We as a society must be willing to make desegregation in public education a national priority. (Author/GC)

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SPEECH

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The Immorality of Racial Isolation

Bank Street College is an urban institution that has been dedicated since its founding to making education meaningful for children who must learn and live in our cities. It seemed fitting to me, therefore, that I address my remarks on this occasion to the subject of urban education.

As a starter, however, let me define my terms. In the plain speech that President Carter requires of federal officials, what I mean by "urban education" is segregated education. What I mean by "urban education" is inferior education. What I mean by "urban education" is dead end education.

I hope by this express indication of what urban education means to me to avoid what has often characterized discussions of this subject; namely, a refusal to acknowledge that we are confronted, at root, with a moral, not a legal, problem; a moral, not a pedagogical, problem.

You have every reason to question what in my background prepares me to discuss the morality of anything. Though I suspect that some lawyers would have you believe that passing the bar examination is just another form of ordination, the doctrine of separation of church and

state still has vitality in our legal system, I am compelled to report.

I would answer, instead, that reading Brown v. Board of Education was my preparation.

Brown was primarily concerned with the question of whether southern and border states could segregate by law black and white children in systems of public education. But Brown, in holding that state-imposed segregated systems of education were "inherently unequal" and violative of the fourteenth amendment said much more. I think that three central points were made in that decision which have served as the theoretical basis for education litigation since 1954 and will continue to serve as guideposts for any education litigation in the future.

The first principle I have already made reference to. It is the most famous. Let me quote the Court:

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

This inherent inequality existed because of intangible factors: racial segregation of children by state law "generates a feeling (in black children) of

inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

The second principle can also be best communicated by quoting directly from Brown, which was quoting in turn from the decision of the trial court:

" Segregation of white and colored children in public schools has a detrimental effect upon the colored children ... "

The quotation went on to reinforce an earlier statement by the Supreme Court that segregation by law has an even greater impact upon black children since it is interpreted as denoting their inferiority which affects their motivation to learn and retards educational and mental development. This finding was based upon certain psychological and sociological studies and expert testimony introduced at trial. Dr. Kenneth Clark is undoubtedly the most well-known and most frequently mentioned of those experts associated with this phase of Brown. Because of the language that follows the quotation I read earlier which embodies what I have called the second principle in Brown, the principle bears rephrasing. What the court said, in effect, was that any racial segregation in public schools (not just segregation imposed by state law) had a detrimental

effect upon black children.

The third principle was articulated, I contend, in the following language from Brown:

"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."

To paraphrase, education is one of the fundamental values in our modern American society. Brown, therefore, went beyond mere legal analysis to lay bare for all America

to see the "wrongness," baseness and cruelty of invidious discrimination against innocent black children. It identified and articulated, as well, important societal values bound up in racial integration and equal educational opportunity.

Legal developments since 1954 have moved us farther and farther away, in my estimation, from the moral lessons Brown taught. Instead, we now have been told that segregation in public education does not produce cognizable harm in the absence of state action. We also have learned from the courts that education is not a fundamental right; hence, disparities among school districts within the same state in terms of per pupil expenditures do not bear a heavy burden of justification. To the extent that state action is found to have caused racial segregation in the schools, the courts have told us to prove that the school board was the agent of the state in this regard and that its acts were taken with an intent to discriminate. Only where the effects of the discrimination can be presumed or proven to have system-wide consequences, do the courts say that the remedy can be system-wide. And remedies involving more than one district are permissible, under present judicial standards, only upon a showing that unconstitutional segregation within one had a "significant segregative

effect" within another.

While these principles have not served to impede unduly meaningful desegregation in small cities and rural areas, the contrary is true with respect to large urban centers. Brown talked about racial isolation, the impact upon the "hearts and minds" of black children from being subjected to "ghettoized" education and the way in which desegregation prepares our children to live in a pluralistic society. Yet we witness the ever-growing segregation of our schools -- largely black and other minorities in the cities, primarily white in the suburbs. In 1974, the Chicago and Detroit systems had more than 70% minority enrollment; Philadelphia and New York were more than 60% minority; and Los Angeles was 50% minority. These five largest school systems in the nation contained 18% of all black students and 22% of all hispanic students in the United States. And these statistics have risen steadily since then.

In addition to the increasing disparities between the racial composition of city and suburban schools, there is also the fact that within cities minority and non-minority students tend to be largely separated from each other in terms of school assignments. I was struck in this regard by a recent article in The New York Times on

the proposed desegregation of Andrew Jackson High School in Queens. A black student questioned by the Times reporter about this prospect commented, "I have never, never had the opportunity to be in a class with a white person, except the teacher -- not in elementary school, not in junior high, not here. I think it's about time." Furthermore, Brown pointed out the fundamental role of education as a key to further advancement and opportunity. Yet we watch our cities going bankrupt, unable to provide their black and hispanic children with educational programs that non-minority students in the suburbs take for granted. Hence, Detroit first-graders had to go on half-day two years ago because of cut-backs in funding for the system. And in Cleveland, the schools may run out of funds before the next academic year is over.

The courts provide a convenient scapegoat for those purporting to favor either more or less desegregation. But I am convinced that we have experienced for a number of years a national ambivalence about desegregation. We continue to wonder whether it is worth the cost and disruption. And we have left the courts to function in this value vacuum as best they can. Chief Judge George Edwards of the United States Court of Appeals for the Sixth Circuit only a few years ago in a speech about school desegregation said as follows:

"The most dangerous fact in America today is that concern about the problem of race in

America is centered almost solely in the Judicial Branch of the government. The Executive and Legislative Branches are studiously looking the other way -- and at times it would appear -- any other way."

Courts, lawyers and the legal process do have important roles to play in any ultimate solution to the problems I have just described. But the courts cannot provide complete and permanent relief, i.e., desegregation in a viable educational environment, without vigorous support from other branches of government. As Judge John Dooling, when questioned about a remedy in the Andrew Jackson case, remarked, "the steady change in the ethnic composition of the school population has made the concept of integration difficult, challenging even the concept of integration that is relevant to the city school district today."

We as a society must be willing to affirm that desegregation in public education is good, a worthy aim, a national priority. We must admit that no action is truly neutral with respect to desegregation and that affirmative steps have to be taken to advance this interest. Otherwise, I fear that all the lawsuits in the world will not bring us closer to dealing with this lingering national disgrace.

It has been customary when one attempts to take the measure of the American psyche to quote Alexis De Tocqueville.

Visiting our country over 100 years ago, De Tocqueville observed with amazement the penchant of Americans for casting social questions in legal terms. I am attracted more for present purposes to the words of another, more recent, foreigner in our midst, Alexander Solzhenitsyn. In his recent speech at Harvard University, he stated as follows:

A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses.

It is high time we put away our weaving of "legalistic relations" with respect to the continued isolation of minorities in our inferior big city schools. Twenty-four years of moral mediocrity is more than enough.

Don't you agree?

Thank you.