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Can We At Least Have Plessy - The Struggle for Quality Education

Gloria J. Ladson-Billings

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CAN WE AT LEAST HAVE *PLESSY*? THE STRUGGLE FOR QUALITY EDUCATION*

GLORIA J. LADSON-BILLINGS**

It's not who you attend school with, but who controls the schools you attend.¹

—Nikki Giovanni

He who opens a school door, closes a prison.²

—Victor Hugo

Violence is black children going to school for 12 years and receiving 6 years' worth of education.³

—Julian Bond

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** Gloria J. Ladson-Billings is the Kellner Family Chair in Urban Education in the Department of Curriculum and Instruction at the University of Wisconsin-Madison. She is the former president of the American Educational Research Association. Her research focuses on the pedagogical practices of teachers who are successful with African-American students.

1. Thinkexist.com, Nikki Giovanni Quotes, <http://thinkexist.com/quotation/it-is-not-who-you-attend-school-with-but-who/362384.html> (last visited Apr. 7, 2007).

2. Steven Skelly, *Back to School Attitudes Affect Education*, NAPLES SUN TIMES (Naples, Florida), Aug. 18, 2004, at D6.

3. Thinkexist.com, Julian Bond Quotes, <http://thinkexist.com/quotation/violence-is-black-children-going-to-school-for/364925.html> (last visited Apr. 7, 2007).

INTRODUCTION

At the Presidential Address I gave in April 2006 at the Annual Meeting of the American Educational Research Association, I asserted that most of the work of education research was severely limited because the field failed to submit two fundamental propositions to full hypotheses testing. One was school desegregation and the other was equal funding. Indeed, I argued, "If we are unwilling to fully implement *Brown*⁴ could we at least have *Plessy*⁵?" Although my comments were tongue-in-cheek, there is some merit to looking carefully at what it might mean to truly establish funding equity for those students left in our most depressed and neglected schools. In this address I would like to take on this notion of funding equity from a critical race theoretical perspective.

I imagine that many in this audience are not only familiar with critical race theory, but indeed, more knowledgeable and facile with this work than I. For those who are not grounded in this scholarly tradition let me just say that I intend to use the strategy of the counter-narrative to build a case for why a "real" *Plessy* might provide some relief for the millions of black and brown and immigrant Asian children who are suffering in schools that currently are both separate and unequal.

I. HOMAGE TO *BROWN*

Of course no discussion of school equity can glide over the landmark significance of *Brown v. Board of Education*. *Brown* is iconic in United States jurisprudence, history, and popular culture. We celebrate it and congratulate ourselves for the work it took to make it a legal reality. I, myself, have been a part of a *Brown* plus forty celebration, a *Brown* at fifty celebration, and if I am fortunate expect to be around for *Brown* at sixty, seventy, eighty and maybe ninety. I have a deep appreciation for the work of the NAACP, Thurgood Marshall and his legal team, and the brave families who persisted in bringing cases before the courts to create what we know as *Brown*. But this historical record indicates that Marshall himself did not share fully the optimism of his colleagues once the decision

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

5. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

was rendered. As his colleagues celebrated, Marshall remarked, “you fools go ahead and have your fun . . . we ain’t begun to work yet.”⁶

Brown became a major salvo in the war to dismantle white supremacy and racial inequity. But, it would be fought against with vigor and success in subsequent years. No less than President Richard Nixon acted as the point person for the strategy of legal retreat from *Brown*. In his memoir, Nixon Chief of Staff H.R. Haldeman wrote on February 4, 1970:

[H]e plans to take on the integration problem directly. Is really concerned about situation in Southern schools and feels we have to take some leadership to try to reverse Court decisions that have forced integration too far, too fast. Has told [Attorney General] Mitchell to file another case, and keep filing until we get a reversal.⁷

This “Southern Strategy” is really what laid the groundwork for the South’s turn to a solidly Republican area and explains the current stronghold the Republican Party has on it.⁸

The irony of our valorization of *Brown* is that we hold these milestone celebrations such as the fifty-year commemorations while simultaneously teaching students about the decision in hyper-segregated schools and classrooms, and no one seems to ask, “Well, what happened?” Now, before I go further it is important for me to declare that I am not saying anything *against* the *Brown* decision. Rather this discussion is focused on the shortcomings of implementation and the deliberate subversion of the ruling. In order to do this I want to focus on the deplorable condition of education for students of color, particularly African-American and Latino, in the United States and the degree to which the very principle against which *Brown* was argued—separate but equal—might provide some measure of relief for these students. I recognize that any discussion of separate schooling is seen as heresy, but it is an alternative we have

6. JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* 71 (David Hackett Fischer & James M. McPherson eds., 2001).

7. H.R. HALDEMAN, *THE HALDEMAN DIARIES: INSIDE THE NIXON WHITE HOUSE* 125–26 (1994).

8. See JOSEPH A. AISTRUP, *THE SOUTHERN STRATEGY REVISITED: REPUBLICAN TOP-DOWN ADVANCEMENT IN THE SOUTH* 5–6 (1996); cf. Mike Allen, *RNC Chief To Say It Was ‘Wrong’ to Exploit Racial Conflict for Votes*, WASH. POST, July 14, 2005, at A4 (reporting that the Republican National Committee Chairman was planning to describe the “Southern Strategy” as “wrong”).

to examine if we are sincere about looking at education in the midst of crisis.

To make my argument, I intend to use the storytelling tenet of critical race theory.⁹ I want to tell my story juxtaposed to the one Derrick Bell told in his book, *And We Are Not Saved: The Elusive Quest for Racial Justice*.¹⁰ In this volume, Bell tells what he calls, "The Chronicle of the Sacrificed Black Schoolchildren."¹¹ Briefly, the chronicle tells the tale of a white community that attempts to resist court-ordered desegregation in their local schools. On the day that school opens, all of the black children disappear. Their parents are frantic and the white community is ecstatic. Initially, the white community celebrates its victory. However, soon it becomes apparent that the loss of the black children represents a loss in jobs and revenue for the white schools. The money for school buses, bus drivers, desegregation specialists and coordinators, magnet programs, and special teachers has to go back to the federal government. The ancillary benefits of having additional students in the community—purchases at the local candy stores, magazine racks, and eateries—are not realized. The mood of the white community changed. Not having the black children is costing them money. Before long, the white community joins with the black community to see if they can locate the children.¹²

Of course, this story is a fantasy. However, Bell uses it as a tableau for helping us understand that school desegregation—like most civil rights legislation—primarily benefits whites. This comes as a surprise to most people but the evidence is clear. The major benefactors of affirmative action are white women.¹³ The same is true about education research, i.e., most education research aimed at students of color ultimately benefits white children. For example, innovations such as cooperative learning and early education had their genesis in black and brown communities. Their ultimate beneficiaries, however, were white students.

9. See Richard Delgado & Jean Stefancic, *Introduction to CRITICAL RACE THEORY: THE CUTTING EDGE*, at xv, xvii (Richard Delgado & Jean Stefancic eds., 1999).

10. DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987).

11. *Id.* at 102–07.

12. See *id.* at 107.

13. Focus on Affirmative Action, <http://www.aapf.org/focus/episodes/oct30.php> (last visited Apr. 24, 2007).

II. THE CHRONICLE OF THE SACRIFICED BLACK CHILDREN, PART TWO¹⁴

Like Bell's chronicle, this second chronicle relies heavily on the creation of a coherent narrative with a basis in our racial reality:

The economy was finally turning around. New construction was sprouting up everywhere and with that construction came more jobs. For the first time in many years the city could begin to compete with the suburbs for new businesses and manufacturing. People were growing tired of long and arduous commutes to the suburbs. If only the city was safer, cleaner, with good housing and good schools.

The mayor, some select city council people, and corporation heads met to decide how to make the city a more attractive place. "Well, first we have to get rid of those pesky homeless people!" came one voice. "Not a problem," said the Mayor. "We just have to pass some ordinances that make panhandling, loitering, and sleeping on the streets illegal." "But won't that get the churches and do-gooders up in arms?" "Perhaps, but we have to sell this as an initiative for safe and attractive streets. I mean, we'll keep the shelters open and point out to the public how hard we're working to get these people into them for their own safety." "Yes, but the shelters aren't really safe and we don't have nearly enough to house all of the homeless people." "That's ok. As long as we look like we're trying to help, people will support us. You watch, the word will get out in the homeless community that they don't stand a chance in this city and we'll force them out of the central city. They'll relocate to a less desirable part of town or better yet a neighboring town and our problems will be solved."

"Next we have to start recruiting businesses back to the city," said one of the corporate heads. "Not to worry," chimed in a councilperson. "We'll put together tax breaks and incentives for the business community that will make it impossible for them to resist moving back downtown." "Sure, we can make sure that businesses get prime real estate, property tax exemptions, and tax credits for hiring as few as 5% of their workforce from among the 'disadvantaged.'" That comment brought a huge burst of laughter. Businesses had no trouble hiring low-income and working class people. There was always some low level, menial job to be done—janitors, clerks,

14. Adapted from Gloria Ladson-Billings, *The Chronicle of the Sacrificed Children*, Part II, at 1-6 (Feb. 24, 2001) (paper presented at the second annual R.A.C.E. Conference, on file with the North Carolina Law Review).

cooks, cafeteria workers, messengers and delivery people. All of these people could be hired on limited and part-time bases and employers could avoid paying living wages or providing any benefits.

With the streets clear and the businesses returning to the city, the next thing that had to be accounted for was housing. The city's movers and shakers could not be expected to leave their lavish suburban mansions to live in the inadequate housing the city currently offered. Then the owner of a major construction firm perked up. "Hey, here's an ingenious plan. What if we run the old 'urban renewal' scheme? We talk up the dangers and inadequate condition of the current public housing. The mayor can start talking about how inhumane it is to crowd that many people in those buildings and get the ball rolling for their demolition. They are awful and even the people who live in them can attest to that. Get some single mothers or elderly people who live over there in front of a TV camera to talk about how terrible living there is. In fact, we could get the local TV news to do a weeklong exposé on the conditions inside public housing. We could generate so much support that we could have a 'demolition day' where the Mayor comes out to flip the switch. We'll have the entire city cheering the destruction of those awful places. But, now here's beauty. We replace the public housing with luxury apartments and condominiums—nothing under five hundred thousand." "But, what happens to the poor people who were in public housing?" asks one of the people seated at the table. "Simple," replied the construction firm owner. "Our research indicates that without adequate resources, poor people just drift on to the next poor community. In Chicago, they started drifting south to Gary and north to Milwaukee. In New York, they headed to New Jersey and to the outer boroughs. Don't worry, the poor are like cockroaches. They'll survive."

The Mayor began to smile. The whole plan was coming together nicely. It could be a major campaign that boosted one's political star. "I can see it now," thought the Mayor. "Our town's coming back. Will you be there?" However, after a moment the Mayor began to frown. "What's the matter, Mayor?" asked a city hall lackey. "Hmmm," said the Mayor. "I can see how we can clean up the streets, welcome back the businesses and build high-end housing but what are we going to do about these awful schools? Nobody is going to want to leave their beautiful suburban schools for the city's schools, especially when that means going to school with *those* kids!"

At that moment the plan seemed lost. The room was deadly quiet. Finally, one of the corporate heads who had seen this plan work in another city spoke up. "The schools don't have to be the problem. All you have to do is take a get tough, law and order type approach to the schools, offer a bunch of specialty programs for your target population, and we can transform the public schools to serve only the kids we want."

"Well what does a get tough school program look like?" asked one of the council people. "Ok, here's how it goes," said the corporate head. "Like with the housing project, you have to point out to everyone how terrible the schools are. You will have an easy time getting consensus on that, even though most people think their own local school is fine, they are quick to condemn schools in general. Next, you have to start talking about how we have to hold the schools accountable. The best way is by using a rigid testing system. You see, you require one test across all schools. You set a cut off score for passing the test. The kids who don't pass the test don't get promoted. And even though we know that educational research is not that great, one solid piece of educational research is that retention is the biggest predictor of school drop out. We all know who's not going to pass the test and that's exactly who will drop out. You can also institute a 'Zero Tolerance' policy that on the surface argues for school safety, but in reality serves as a way to weed out the 'undesirables.' Now, on the upside of the equation, you start creating choice and charter programs that release the middle class from the poor conditions of the regular public schools. You can even comply with federal desegregation laws without losing your white, middle class community."

"How is that possible?" asked one of the business people. "Easy," came the reply. "When we examine what happens in school desegregation, we see that schools often re-segregate the students within the schools. Take a look at which students are selected for gifted and talented programs. See who ends up in special education classes. Check the suspension and expulsion rates. Look at who's in the orchestra versus a basic reading class. Heck, I was in a magnet school in San Jose that was set up for the performing arts. The building's top two floors that housed the magnet program was lily white. The bottom floors that maintained the so-called regular program were almost all black and brown. It was like two separate schools. When I was in another city, the school district offered the white community free afterschool and special enrichment programs. Get this, in a high school in East Palo Alto, California the district offered

free ski and camping trips to kids as an inducement for white kids to attend the school.¹⁵ Of course, everyone was permitted to go on the trips but you know who already had ski and camp equipment, and you know who would rather do those activities. It's a beautiful plan. I've seen it work over and over."

The construction firm owner broke into a big grin. "Yeah! This could work. And, when these kids can't pass tests and drop out of school we can hire them into those low paying jobs we talked about. If they don't want those jobs and start doing anti-social things like drug dealing or stealing we can make a pitch for more and bigger prisons. I can build state-of-the-art super prisons out in the suburbs. That will provide a steady stream of state employment for the white working class. Indeed, we will need to manufacture prisoners to keep them employed and it won't be hard to manufacture these prisoners as long as we perpetuate an inferior education for the city's poorest students."

"Does it matter to anyone that the people who are going to get the shaft in our plan are mostly going to be black and brown?" came one timid voice in the corner of the room. The Mayor looked up and said, "Well, as my teenagers say, 'Duhhh.'" The entire room exploded into laughter. The die was cast and the plan was put in motion.

I offer this chronicle not as merely a cautionary tale of a sinister and conspiratorial oppressor class against which we all struggle, but rather as a way to begin to talk about larger possibilities. I wrote this chronicle in early 2001, before the passage of the "No Child Left Behind" legislation,¹⁶ before the proliferation of municipal Tax Increment Financing ("TIFs"),¹⁷ and before the destruction of housing projects in a number of central cities. I offer this chronicle as a way to take us back to the fundamental question of this paper, "Can we at least have *Plessy*?"

III. RECONCEPTUALIZING THE PROBLEM

The *Plessy* decision came as a result of a light-complexioned black man, Homer Plessy's, attempt to ride in a whites-only train car.¹⁸ The Supreme Court ruled against Plessy saying that as long as the accommodations were "equal" their separateness did not reflect

15. THE RAVENSWOOD EXPERIENCE (Phil Arnot ed., 1975).

16. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified at 20 U.S.C. §§ 6301-6578 (Supp. II 2002)).

17. See PAULINE LIPMAN, HIGH STAKES EDUCATION 29-30 (2004).

18. *Plessy v. Ferguson*, 163 U.S. 537, 538 (1896).

discrimination.¹⁹ For fifty-eight years, this remained the law of the land. The *Brown* decision reversed this principle,²⁰ but did not reverse the actual experiences of black and brown people in the nation. One of the places we see the intransigent nature of segregation is in our schools.

In my 2006 Presidential Address for the American Educational Research Association, I argued that despite everyone's willingness to talk about the "achievement gap," the problem facing the nation's schools is greater than a gap.²¹ More accurately, the problem is one of overwhelming education debt that comes as a result of historic, economic, sociopolitical, and ethical decisions and actions in which this society has engaged. I reiterate that the two bottom-line issues that the nation has never *fully* committed to are desegregation and equal (and equitable) funding.

Limitations of time and space prohibit a full discussion of everything that is wrong with the lack of implementation of the *Brown* decision. We know that there has never been a time in our history where we have had full school desegregation, and indeed we seem to be in a mode of rapid resegregation in most of the schools serving communities of color.²² Instead, I want to argue that the second issue—equal funding—offers a place for merging the reality of schooling with the ethical intent of this society.

Social critic Jonathan Kozol has presented us with some shocking data about the huge funding disparities that exist between urban schools serving black and brown students, and their white suburban counterparts.²³ Chicago Public Schools spend about \$8,482 per pupil while nearby Highland Park spends \$17,291 per pupil.²⁴ Chicago Public Schools have an 87% black and Latino population while Highland Park has a 90% white population.²⁵ Per pupil expenditures in Philadelphia are \$9,299 per pupil for its 79% black and Latino population, while across City Line Avenue in Lower Merion the per pupil expenditure is \$17,261 for a 91% white population.²⁶ New York City Public Schools spends \$11,627 per pupil for a student population

19. *See id.* at 544.

20. *See Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

21. *See* Gloria Ladson-Billings, *From Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools*, EDUC. RESEARCHER, Oct. 2006, at 3, 3–12.

22. JONATHAN KOZOL, *THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA* 19 (2005).

23. *See id.* at 321–24.

24. *Id.* at 321.

25. *Id.*

26. *Id.* at 322.

that is 72% black and Latino, while suburban Manhasset spends \$22,311 for a student population that is 91% white.²⁷ The question that plagues me as I consider these funding disparities is why are suburban white children worth, on average, \$10,000 more than black and brown children in our cities.

Can we even imagine a set of conditions that reflects truly equal and equitable funding for urban and suburban schools? First, let me clarify what I mean by equal and equitable. Equal funding is fairly straightforward. It means that we have a dollar for dollar match in urban and suburban schools. On the surface, this seems both a simple and fair solution. Unfortunately, the longstanding disparities that exist between city and suburban schools mean that equal funding does not permit poor school districts to catch up to the major advantages that wealthy schools already have. Instead what we may need to do is create a system of equitable funding. By equitable, I mean we have to ask what it will take to create schooling *outcomes* that place black and brown children on equal footing with their white, middle class peers.

Equality of outcomes has always been one of the stumbling blocks of *Brown*. People disagree as to whether *Brown* should go further than providing equal access, to guaranteeing equal outcomes. Crenshaw refers to this as the difference between restrictive and expansive notions of equality.²⁸ Restrictive equality looks solely at equality of access while expansive equality looks both at access and outcomes.²⁹

What would it mean for black and brown students in deeply segregated urban schools to receive their education in a state-of-the-art facility? What would it mean for black and brown children to have access to highly qualified teachers? What would it mean for black and brown children to have smaller class sizes and an enriched curriculum?

IV. DO WE NEED SEPARATE SCHOOLS?

In 1935, W.E.B. DuBois raised the question, "Does the Negro need separate schools?"³⁰ His conclusion was that what black people needed was neither separate nor integrated schools. What they

27. *Id.* at 324.

28. Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1341-42 (1988).

29. *Id.*

30. W.E. Burghardt DuBois, *Does the Negro Need Separate Schools?*, 4 J. NEGRO EDUC. 328, 328 (1935).

needed was education.³¹ However, a number of education scholars have raised this question over the seven decades since DuBois did. Scholars like Sizemore,³² Asante,³³ Hilliard,³⁴ and Hale³⁵ point out that black people have a history of educating themselves in the midst of adverse circumstances.

Of course, in the best of all possible worlds we would want all children to have the opportunity to attend fully integrated, well-funded schools. But, we do not live in the best of all possible worlds and we cannot compel white, middle class families to send their children to school with black and brown children. When we have attempted to do so they have abandoned the city and/or abandoned public schooling. And the courts have supported their repeated rollbacks of *Brown*. Over the twenty years after *Brown*, several legal cases functioned to effectively roll back the principle of *Brown*. Among the cases were *Milliken v. Bradley*,³⁶ *San Antonio Independent School District v. Rodriguez*,³⁷ *Board of Education v. Dowell*,³⁸ and *Freeman v. Pitts*.³⁹ Briefly, *Milliken* closed off the opportunity for racially isolated communities of color to draw from white suburbs in order to desegregate;⁴⁰ in *Rodriguez* the Court ruled that children had no constitutional right to equal school expenditures;⁴¹ and *Dowell* and *Freeman* allowed formerly desegregated school districts to return to neighborhood schools because they are determined to be “unitary,” i.e., there was no separate school district for children of color.⁴² The power and impact of *Brown* on school desegregation had become substantially diluted.

Perhaps a better strategy is to determine whether high quality all black and/or all brown schools are viable. Historically, Siddle Walker detailed the story of the Caswell County Training School in rural North Carolina that had succeeded against the odds from 1934 to

31. *Id.* at 335.

32. BARBARA A. SIZEMORE ET AL., AN ABASHING ANOMALY: THE HIGH ACHIEVING PREDOMINANTLY BLACK ELEMENTARY SCHOOL 17 (1983).

33. MOLEFI KETE ASANTE, THE AFROCENTRIC IDEA 95–97 (1998).

34. ASA G. HILLIARD, THE MAROON WITHIN US: SELECTED ESSAYS ON AFRICAN AMERICAN COMMUNITY SOCIALIZATION 142–44 (1995).

35. JANICE E. HALE, LEARNING WHILE BLACK: CREATING EDUCATIONAL EXCELLENCE FOR AFRICAN AMERICAN CHILDREN 169 (2001).

36. 418 U.S. 717 (1974).

37. 411 U.S. 1 (1973).

38. 498 U.S. 237 (1991).

39. 503 U.S. 467 (1992).

40. See *Milliken*, 418 U.S. at 744–45.

41. *Rodriguez*, 411 U.S. at 36–37.

42. See *Dowell*, 498 U.S. at 248–49; *Freeman*, 503 U.S. at 498–99.

1969, but was forced to close to comply with the *Brown* decision.⁴³ Siddle Walker argued that the better black school was closed to force students to attend the inferior white school.⁴⁴

In East Palo Alto, California, one of the poorest communities in the San Francisco Bay Area, sits Eastside Preparatory Academy.⁴⁵ This school serves exclusively African-American, Latino, and Asian Pacific Islander students. All of its students graduate from high school, and all of its students are admitted into quality four-year colleges and universities.⁴⁶

In Newark, New Jersey, one of the worst cities in the nation on most quality of life indicators, sits Harriet Tubman Elementary.⁴⁷ For years after the riots of the 1960s the school limped along, barely preparing students for middle school. Today, it is a school where students achieve at high levels and where parents are actively involved.⁴⁸ Indeed, there are dozens of instances of such schools throughout the nation. The questions that they provoke are what can we learn from them that can improve teaching and learning for students everywhere and are such schools viable alternatives to fighting for desegregated schools.

Clearly, I do not believe these schools are successful because they are black and/or brown. I believe that caring, dedicated, and skillful teachers and administrators decided to work hard to make them successful despite the fact that they serve black and brown communities. But what would *Plessy*-like conditions look like? What might we expect from them? Today we have students attending deeply segregated schools that are grossly unequal.⁴⁹

In Inglewood, California we had the case of *Daniel v. State*,⁵⁰ where high school students from this black and brown school district had access to only three Advanced Placement courses and could not compete with their white suburban peers, who had grade point

43. See VANESSA SIDDLER WALKER, THEIR HIGHEST POTENTIAL: AN AFRICAN AMERICAN SCHOOL COMMUNITY IN THE SEGREGATED SOUTH 6–11 (1996).

44. *Id.* at 3.

45. Equal Opportunities: A Personal Account of the Founding of Eastside Prep, <http://ed.stanford.edu/suse/news-bureau/educator/spring2001/pages/Article2EqualOpp.html> (last visited Apr. 14, 2007).

46. Eastside College Preparatory School, Eastside at a Glance, <http://www.eastside.org/overview.php?subnav=5> (last visited Apr. 14, 2007).

47. *A+ for Kids: A Tale of Two Schools* (WWOR television broadcast Jan. 12, 1991).

48. *See id.*

49. GARY ORFIELD & SUSAN E. EATON, DISMANTLING DESEGREGATION 1–2 (1996).

50. No. BC214156 (L.A. Super. Ct. July 27, 1999).

averages better than 4.0 due to the availability of more Advanced Placement and honors courses that were weighted more heavily than regular classes.⁵¹

CONCLUSION

Thus, what I am suggesting would require a massive infusion of money and personnel—neither of which the public is willing to invest on behalf of poor black and brown children. When Kansas City was under its consent decree to desegregate its schools, the State poured an incredible amount of money into city schools to get them to a standard that white parents would deem acceptable.⁵² The scandal of the program was the Classical Greek Magnet Schools whose underlying philosophy of a sound mind and a sound body required the building of an Olympic-sized swimming pool.⁵³ Of course, no one asked black parents if a swimming pool was on the education priority list and few black students ever used the pool.

The Nebraska State legislature approved a plan to create separate, racially identifiable school districts in Omaha.⁵⁴ The State's lone African-American state legislator supported the bill and indicated that black and Latino students already attend segregated schools.⁵⁵ The bill, he claimed, was designed to give parents of black and brown children direct control over their schools.⁵⁶ By September a district court enjoined the State from implementing the law suggesting that it violated the Equal Protection Clause of the Constitution.⁵⁷

True *Plessy*-like conditions would mean that teachers in schools serving black and brown students would possess credentials and skill sets identical to those teaching in suburban schools rather than the flood of novice and emergency credentialed teachers they now have. "Teach for America" would send half of its candidates to suburban schools serving white, middle class students where they could

51. See Dan Carnevale, *ACLU Sues California over Unequal Access to Advanced Placement Courses*, CHRON. HIGHER EDUC., Aug. 6, 1999, at A38.

52. Paul Ciotti, *Money and School Performance: Lessons from the Kansas City Desegregation Experiment* (CATO Policy Analysis No. 298, Mar. 16, 1998), <http://www.cato.org/pubs/pas/pa-298.html>.

53. *Id.*

54. Sam Dillon, *Law To Segregate Omaha Schools Divides Nebraska*, N.Y. TIMES, Apr. 15, 2006, at A9.

55. *Id.*

56. *Id.*

57. See Howard Witt, *Omaha Gets Hard Lesson on Race, School Integration*, CHI. TRIB., Oct. 8, 2006, at 9.

experiment on them as they learned to teach. Half of all AmeriCorps volunteers would also be in the suburbs.

Of course, the flaw in my argument is *Brown's* primary premise that separate is inherently unequal.⁵⁸ Because our society is consumed by hierarchy and differentiation, we do not know how to create equality in separate settings. One side will invariably fare better than the other. The argument will be made that creating two separate school systems with essentially the same resources and same purposes is wasteful and not good stewardship of the public's tax dollars. The entire reason for which we created separate schools in the first place had nothing to do with creating equal spaces. It had to do with maintaining a rigid division between white and black, haves and have-nots, advantaged and disadvantaged.

In the final analysis my question about whether or not we can have a real *Plessy* rather than a make-believe *Brown* is purely rhetorical and provocative. The law and our ethical responsibility clearly lay out the path we are to travel.

58. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494-95 (1954).