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True Education Reform Requires Equal Treatment Under the Law

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[Thurgood Marshall argued the case of Brown v. Board of Education before the Supreme Court. He did not write the Court's decision, as this article mistakenly states.]

WASHINGTON, D.C.--The recent death of Supreme Court Justice Thurgood Marshall reminds us that equal treatment under the law is absolutely essential if every citizen is to benefit fairly from government's efforts to promote education. Marshall wrote the Supreme Court's path-breaking decision *Brown v. Board of Education*, which sealed the doom of the mythical ideal of "separate but equal" schooling for blacks and whites.

Besides equal justice, when it comes to education there is also the country's economic viability to consider. President Clinton knows that education reform will have to stand at the heart of any program to upgrade America's economic prospects for the long-term future. Even the president of the National Education Association (NEA), Keith Geiger, says that the nation's "schools need a serious overhaul if economic reform is to occur.

Well, where are we today in American education with respect to equal treatment under the law and with respect to laying the foundations for long-term economic revival based on improvement in the quality of education for every citizen?

Unfortunately, we are not in good shape. Almost 40 years after *Brown v. Board of Education*, racial discrimination in public schools is worse than in most non-government schools. This is not because governments have not tried to force integration. Busing and countless other legal mandates have sought to overcome racial inequities. Moreover, all the evidence suggests that the quality of education in most parts of the country--particularly in the country's large metropolitan areas--is not improving for white children any more than it is for the children of minorities.

So far, neither Bill Clinton nor the NEA has addressed the three most important reasons for the sad state of public education. Neither is proposing the kinds of serious reform that will be necessary to "overhaul" the schools for long-term educational and economic improvement.

What must be done?

Distinguish Schooling from Governing

First, the American people must come to recognize that the task of government is different from the task of education. Alan Wolfe, in a review of nine recent books on schooling, emphasizes this point [The New Republic, February 8, 1993]. Education and policy making are different institutional arts--different kinds of responsibility. Government-run schools, says Wolfe, are a mess today because society passes on problems of poverty, teenage pregnancy, drug addiction and other ills to the teachers. Assuming that schools are simply an extension of government, citizens and policy makers attempt to solve all kinds of social problems and to force the achievement of all kinds of social goals by means of schooling. Families are also often affected negatively by this process. The problem, says Wolfe, is this: "Schools are simultaneously too rigid to substitute for families and too

fragile to substitute for government." "The baleful consequence is to ask too much of the schools and too little of the state." What we are witnessing is the damage done to both families and schools by policies that collapse the boundaries between them and between the state and both of them.

Schools, in essence, have been misused by government (and thus by citizens, interest groups, and teachers unions) to achieve ends and to fight battles that ought not to be fought in (or over) the schools. "Americans," Wolfe comments, "have a peculiar habit of fighting their political battles everywhere save in elections, and they are now engaged in a political struggle over schooling that is as furious in its means as it is unresolvable in its ends." Only by properly distinguishing school and family from the state and by treating each--in its own integrity--fairly and equally under the law will government be in a position to begin to act constructively.

Establish Equal Funding

The second major problem that neither President Clinton nor the NEA has addressed is government-supported inequality in education funding. For all the efforts to overcome racial discrimination in schooling, government has not yet faced up to unequal funding. Most state laws still force separate and unequal schooling based on residency. The reason is that funds for government-run district schools derive, for the most part, from property taxes. Those who live in wealthier areas typically have better, richer schools. Those who live in poor areas typically have poorer schools. Busing is no answer to this problem, as many African-American citizens know. Busing destroys local community schools, breaks the healthy connection between families and neighborhoods, and frustrates direct and local control of schools.

The present system of taxing and spending for education also requires radical reform. And this takes us to the third reason for the predicament of contemporary American schooling.

Quit Violating Religious Freedom

Justice Marshall's leadership in getting the federal government to reject the separate-but-equal doctrine did not go far enough. His concern, which was quite legitimate as far as it went, was to force an end to government-coerced separation of black and white citizens in separate, government-run schools. Those schools were separate but certainly not equal. What Marshall did not address was another kind of "separate but equal" doctrine that is still upheld by the Court. This is the doctrine that presumes that all citizens are treated equally under a law that treats government-run schools and non-government schools very unequally.

All citizens pay property taxes for schooling, but only the children who attend government-run schools get any significant return on their public investment.

This pattern of discrimination is still justified by many on the grounds that the public arena is a secular, non-sectarian realm. Non-government schools --especially religious schools--are supposedly sectarian and ought to suffer discrimination. But this is exactly parallel to the argument for racial segregation and discrimination. White schools belong to the majority--to those who matter. Black people are different--a minority undeserving of the same social benefits that white people legitimately enjoy.

Justice Marshall was correct to say that the law of the land should treat all citizens equally. There is no room in public policy for unfair discrimination against citizens because of their race. What he

should have gone on to argue is that equal legal treatment of all citizens requires equal public recognition of the full diversity of schools and families that belong to those citizens.

Following Wolfe's argument, we need to recognize that if public policy-making is something different from schooling and family life, then government has no right to give privileged attention to some schools and families while discriminating against others. Government owes fair and equal treatment to the families and schools of all its citizens. Not to give equal recognition to them is to force separate and unequal treatment by its taxing and spending policies. Public policy is unjust if it privileges white people over against black people, rich people over against poor people, or secular people over against religious people. Government becomes the perpetrator of injustice when its policies support the parents who choose government-run schools but denies support to parents who choose non-government schools. This amounts to First Amendment discrimination on a grand scale--religious discrimination, speech discrimination, and assembly discrimination.

Do Justice in Education Reform

How do these three points fit together and where do they lead? First, they show that the present talk about school reform coming from the Clinton administration and from groups like the NEA don't begin to reach to the roots of America's education crisis. Parental choice confined to government-run schools, based on a property-tax base that discriminates in favor of the rich against the poor, and which leaves government policy makers free to misuse families and schools because boundaries between them have been ignored--all of this amounts to talk not of reform but of politics as usual. We should expect no significant long-term improvement in the economy, in education, or in social justice within this framework.

The reforms we need are the kind that go to the root of the crisis. Government should act to treat all citizens equally under the law. It should distinguish its own actions on behalf of fairness and equity from the arts of schooling and family nurture. It should quit trying to force schools to handle all of society's problems and responsibilities. Let's have fair and equal treatment of all the families in society. Let's quit discriminating in favor of the rich by allowing more education tax dollars to go to rich schools than to poor schools. Let's give equal treatment to all students. Stop the unequal treatment of government and non-government schools. Give all citizens the same fair and equal choice of the schools they want--with the same amount of money going to each student.

Real justice for all; true choice; respect for the integrity of diverse families; support for schools that concentrate on teaching not on social policy--this is what we need Mr. Clinton. Let's get serious about education reform!