

Unequal Education: HOW THE LEGAL SYSTEM SHORTCHANGES MINORITY STUDENTS

BY ELAINE R. JONES

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Fifty years after *Brown v. Board of Education* called for integration of schools with all deliberate speed, our courts, our governments, and many of our citizens still behave as if they subscribe to the discredited "separate but equal" theory. The courts may have declared that segregation based on race is unlawful, but segregation in educational quality based on poverty continues to be sanctioned by law.

Nowhere in the US Constitution is there an explicit right to a free, quality, public education. As a result, lawyers must demonstrate that inequities in funding are due to racial or ethnic discrimination, not poverty. The *Brown* decision continues to govern legal efforts largely because it is the only permissible avenue into the federal courts for cases involving the quality of education provided to poor and disadvantaged children.

Alternative rationales for suits have been tried and rejected. In 1973, in *San Antonio Independent School District v. Rodriguez*, the Supreme Court was asked to look at how wealth determines the quality of our public schools. The Legal Defense Fund filed an amicus brief, arguing that the use of property taxes to fund schools unfairly discriminates against students in high-poverty areas. We asserted that there ought to be a floor beneath which school funding could not fall and that floor should not be based on the property taxes of poor school districts.

The Court ruled that poverty is not a suspect classification, thus eliminating equal protection remedies under the 14th Amendment and setting a precedent that we still suffer from today. Because of that decision, it is constitutional to give African-American and Latino students an inferior education as long as that inferior education is a result of poverty, not race...as if the cause of the disparity somehow legitimizes the inferior education.

Regrettably, even the *Brown* decision is not the powerful talisman it used to be. In the 1980s and 1990s, the courts grew tired of desegregation suits and began phasing out desegregation plans, ending busing, and ruling that efforts to move students around for desegregation purposes must stop at the district line. As a result, whites fled to the suburbs and the number of African-American students attending predominantly minority schools now approaches 1968 levels.

ADVANCING EQUITY IN STATE COURTS

Although the federal courts have declared equity related to race to be a nonissue, many state constitutions do mention the state's responsibility for delivering education to all young people, thus allowing attorneys to go into state courts to demand funding equity. This, however, leads to two problems.

First, even if a state court rules against a funding system, it often lacks the means to enforce the decision and ends up sending the problem back to the same legislature that created the unequal system in the first place. In Connecticut, the Supreme Court ruled in *Sheff v. O'Neill* that the state has an obligation to do something about school funding inequities in Hartford. In 1996, the state sent the issue back to the legislature. Only recently were we able to reach a settlement with the state and begin providing the kind of relief the State Supreme Court had ordered years ago. In an Arkansas case, *Tucker v. LakeView School District No. 25*, the state courts have declared the school finance system unconstitutional twice in the past 20 years, yet Arkansas students continue to wait for a better system to emerge.

Second, these cases depend on the definition of "adequate education." In New York, the courts came down with a wonderful decision in *Campaign for Fiscal Equity v. State of New York*, only to have the Court of

Appeals decide that an eighth-grade education meets the criteria for “adequate.” How can anyone believe that an eighth-grade education is sufficient for future voters and future employees?

THE IMPACT OF STANDARDS

We need new ways to use the courts to advance the struggle for equity in schools. Standards-based reform can help us measure what constitutes an adequate education. Once a state sets standards for what students must be able to do to be promoted or to graduate, lawyers can claim the state incurs an obligation to ensure that schools have the resources they need to educate students to meet those standards.

In negotiations over the *No Child Left Behind Act*, the Legal Defense Fund worked for mandated increases in teacher quality in predominantly poor and minority schools, mandatory curricular alignment of testing instruments, fair-testing guidelines, and sufficient resources for all students to meet the standards. The results are mixed: more funding for poor and minority students, yet woefully inadequate appropriations to fund the legislation’s newest proposals.

The law’s focus on mandatory testing for all elementary students in reading and math is also a problem. Testing itself is neither a panacea nor a problem solver; it is only a tool for identifying problems. It can help determine what reforms are needed and what we have to put in place to help disadvantaged students. Too often, however, standards and assessments are used to punish students who fall short rather than to determine where more resources are needed to help them. When used inappropriately, testing can have a drastic impact on individual students’ educational outcomes. States and jurisdictions must implement

standards-based reform according to research and recommendations set forth by the nation’s leading experts on standards and testing. Otherwise, the most vulnerable children, typically minority and poor, will suffer great consequences.

In Chicago, we entered into a joint investigation with the Chicago Lawyers Committee on an Illinois testing program that required automatic retention for students who did not achieve a previously designated cut-score on a standardized test. We showed that Latino and African-American students were much more likely to be retained and that this retention did not increase their chances of passing the exam. The court ruled that this retention was illegal because of the disparate impact exit exams have on minorities. Similarly, we convinced North Carolina to change the requirement that students pass a standardized exam before being promoted to the next level.

The standards movement is having a disparate impact on minorities in other places as well. In New York, too often schools serving minority students have fewer resources, less qualified teachers, and less than adequate facilities—but their students are expected to perform at the same levels as other students throughout the state. As a result, low-achieving students are being encouraged to drop out and get a GED so that their scores are not included in district averages. California gives financial rewards to districts that have already improved their test scores and have demonstrated they do not need additional funds to succeed. Meanwhile, schools serving high percentages of minority students are located in high-poverty communities, are typically underfinanced and considered inferior, and are less likely to improve test scores and receive bonuses.

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Below: Elaine R. Jones

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MORE NEEDS TO BE DONE

The courts need to do a better job of protecting the rights of citizens. It is not right to give the children of Harlem lesser educational quality than the children of Scarsdale. It is not right to demand that all students pass the same test despite wide disparity in teacher quality and student needs. It is not right to assert that an eighth-grade education is all some children need. Courts must assert their power as arbiters of American justice, acknowledge that discrimination against the poor is wrong, and give children of the poor a level playing field upon which to compete with children of the rich.

We need to bolster the *Brown* decision. Virtually no one would dare justify segregation today, yet segregation has been quietly increasing beneath our collective radar screens. School district boundaries should not stop desegregation efforts, and inner city students

should not be treated differently than their white suburban counterparts. We need to raise the quality of teaching, the quality of curriculum, and the quality of support services in our neediest schools so all students get a fair chance to pass high-stakes exams.

Americans would instantly recognize unfairness if the post office charged more for delivering mail to urban America, if the police refused to patrol inner city neighborhoods, or if we had different voting rules for minority polling places. So why do we tolerate a double standard for our public schools? It is the job of the courts to end disparate impacts and unequal distribution of funds. It is the job of the public to make sure the courts act on behalf of fairness and equity. ■