

## Escaping the Circle by Confronting Classroom Stereotyping: A Step toward Equality in the Daily Educational Experience of Children of Color\*

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As the fiftieth anniversary of the decision in *Brown v. Board of Education*<sup>5</sup> approaches, we must assess what obstacles continue to obstruct the path to equal educational opportunity for children of color. That project can be constructively, albeit painfully, informed by an imaginative look backward to the transformed future the original *Brown* plaintiffs could have envisioned as they endured the hardship produced by their challenge to the racist status quo.<sup>6</sup> As we try to resurrect the dreams the plaintiff families could have projected onto the American future, we can conjure a vision of the greater hope for true social equality,<sup>7</sup> as well as the lesser-included expectation of educational opportunities that would equip all of their children to achieve their academic potential and break out of the economic boundaries set by an educational caste system.<sup>8</sup> These hopes were, of course,

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

6. *Brown* was a consolidated opinion resolving the Equal Protection Clause claims of plaintiffs from Delaware, Kansas, South Carolina, and Virginia. In a separate opinion, the Supreme Court addressed the Fifth Amendment due process claims of black schoolchildren in the District of Columbia. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

7. See RICHARD KLUGER, *SIMPLE JUSTICE* 395 (1975) (recounting how plaintiff Oliver Brown, a shy and quiet man, "was no longer willing to accept second class citizenship. Oliver Brown wanted to be a whole man."). The ideal of social equality, the ability of blacks to "insist on equal treatment in the ordinary course of social life," had remained elusive since Reconstruction due in significant part to the divisible concept of equality held by members of the Reconstruction Congress, who preferred to acknowledge no more than blacks' potential claims for political and civil rights. Mark Tushnet et. al., *The Politics of Equality in Constitutional Law: The Equal Protection Clause*, 74 J. AM. HIST. 884, 886-90 (1987).

8. See KLUGER, *supra* note 7, at 12 (relating comments of close relative of Reverend J.A. DeLaine, who mobilized South Carolina plaintiffs to initiate the school desegregation litigation, in which relative concluded DeLaine had been deeply hurt "because a man of his ability and dedication was denied so much in life because of his color"); CARL T. ROWAN, *DREAM MAKERS, DREAM BREAKERS—THE WORLD OF JUSTICE THURGOOD MARSHALL* 20-21 (1993) (reporting interview with then seventy-four-year-old Eliza Briggs, wife of named plaintiff Harry Briggs in original South Carolina desegregation challenge, who said she would sign the original petition challenging conditions in South Carolina schools again without hesitation but noted, "I just be awake some nights thinking how we suffered and regretting that my children never gained a good education from our fight").

burdened by a sense of wariness about whites' reaction to a declaration of equality and a skepticism about whites' willingness to relinquish the privileges preserved by de jure racism.<sup>9</sup> Now, in hindsight, this sense of anxiety and distrust appears tragically prescient as we examine the educational fortunes of African-American children since May 17, 1954.<sup>10</sup>

## I.

### ACKNOWLEDGING OUR CONTINUED CONFINEMENT WITHIN MYRDAL'S VICIOUS CIRCLE

Rather than a world reworked to realize the multidimensional equality for which the *Brown* plaintiffs yearned, the educational universe for too many African-American children,<sup>11</sup> particularly those in large urban school systems, bears an alarming resemblance to what Gunnar Myrdal described as "the vicious circle" in his classic 1944 treatise on American race relations, *An American Dilemma*. With this image, Myrdal described how white prejudice imposed conditions of deprivation on blacks through discriminatory practices and then looked at those conditions of deprivation as confirmation of the validity of their prejudiced viewpoint.<sup>12</sup>

American schools are moving toward resegregation and often, particularly in major urban centers, reflect the continued isolation of children of color from their white peers.<sup>13</sup> Many white children and children of color live and learn in increasingly separate worlds.<sup>14</sup> As statistical groups, black and Latino children lag behind white children on measures of academic competency and are significantly

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9. The symposium presentation of Professor Waldo Martin addressed the complexity of American blacks' reaction to the *Brown* decision. See also KLUGER, *supra* note 7, at 25 (describing how South Carolina plaintiffs anticipated the consequences of the litigation with "hope as well as a heavier burden of fear").

10. For a dismaying portrayal of the limited educational progress that has been achieved for African-American children in communities that were involved in major desegregation litigation, including the communities in the cases consolidated as *Brown v. Board of Education*, see PETER IRONS, JIM CROW'S CHILDREN—THE BROKEN PROMISE OF THE BROWN DECISION (2002).

11. These intertwined patterns of isolation and inequality affect other racial and ethnic student populations. However, as a presentation of a narrative of historical continuity, I will concentrate primarily on the condition of African-American schoolchildren.

12. GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 75-78 (1944).

13. See ERICA FRANKENBERG ET AL., THE CIVIL RIGHTS PROJECT HARVARD UNIVERSITY, A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS—ARE WE LOSING THE DREAM? (Jan. 2003), available at <http://www.civilrightsproject.harvard.edu/research/reseg03/>

AreWeLosingTheDream.pdf (documenting increasing racial segregation of public schools since 1991); JOHN R. LOGAN, LEWIS MUMFORD CENTER, CHOOSING SEGREGATION: RACIAL IMBALANCE IN AMERICAN PUBLIC SCHOOLS 1990-2000 (2002), available at <http://mumford1.dyndns.org/cen2000/SchoolPop/SPReport/page1.html> (finding National Center for Education Statistics data revealed that levels of school segregation in American schools had remained stagnant or increased during that period and that segregation of black and Hispanic children resulted in their concentration in schools where two-thirds of students were at or near the poverty line).

14. See JOHN R. LOGAN ET AL., LEWIS MUMFORD CENTER, SEPARATING THE CHILDREN (2001), available at <http://mumford1.dyndns.org/cen2000/Under18Pop/U18Preport> (analyzing 2000 Census data showing greater racial and ethnic segregation among children than segments of population over eighteen years of age); JOHN R. LOGAN ET AL., LEWIS MUMFORD CENTER, SEGREGATION IN NEIGHBORHOODS AND SCHOOLS: IMPACTS ON MINORITY CHILDREN IN THE BOSTON REGION (2003), available at <http://mumford1.dyndns.org/cen2000/colorlines/colorline01.html>.

less likely to achieve the highest levels of academic performance on standardized achievement tests such as the National Assessment of Educational Progress (NAEP).<sup>15</sup> Distressingly, black and Latino children disproportionately continue to learn from teachers who have fewer years of experience and significantly higher attrition and absentee rates than those teaching white children.<sup>16</sup> Children of color and poor children are disproportionately likely to have a secondary school teacher who teaches out of field, lacking even a college minor in the subject being taught.<sup>17</sup> In an era in which small class size is frequently linked to better educational outcomes,<sup>18</sup> classes composed of more than 75% minority children are significantly more likely to be in classes with twenty-five or more students.<sup>19</sup> Children of color are also more likely to attend schools in districts with inadequate financial resources yet are less likely to benefit from litigation challenging inequities in school funding.<sup>20</sup> The social meaning<sup>21</sup> of denied equality that these patterns of white absence and educational disparity convey is not lost on African Americans, leading many to advocate for the voucher solution as a rejection of an educational system that has too long disserved and disrespected them.<sup>22</sup>

The statistical depiction of continuing inequality is inevitably incomplete in a variety of ways. It does not document the success of individuals or of particular communities that have broken down the barriers to educational equality more effectively than an abstracted cumulative portrayal can reveal. However, the numerical account also fails to capture the intensity that only individual testimony can provide when we consider the pervasiveness of personal heartache inflicted by the decades of disappointment and humiliation for minority children still often consigned to segregated and inferior environments either within ostensibly desegregated schools or within persistently segregated school systems.<sup>23</sup> The data do,

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15. 2003 NAEP data showing continuing achievement disparities for minority children and poor children can be viewed at <http://nces.ed.gov/nationsreportcard/>.

16. PAUL E. BARTON, EDUCATIONAL TESTING SERVICE POLICY INFORMATION CENTER, *PARSING THE ACHIEVEMENT GAP 12-13* (2003), available at <http://www.ets.org/research/pic/parsing.pdf>.

17. *Id.* at 10-11.

18. THE ECONOMIC POLICY INSTITUTE, *THE CLASS SIZE DEBATE* (Lawrence Mishel & Richard Rothstein eds, 2002).

19. BARTON, *supra* note 16, at 14-15.

20. James Ryan, *The Influence of Race in School Finance Reform*, 98 MICH. L. REV. 432 (1999) (examining the effect actual and perceived race of children among school financing litigation plaintiffs has on public and political reaction to claims and on litigation outcomes).

21. The term social meaning has been defined as "the semiotic content attached to various actions, or inactions, or statuses, within a particular context." Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943, 951 (1995). As explained by Richard Pildes, state action or inaction can convey a social meaning and impose consequent expressive harm that reveals an individual's or group's status outside the protection of a community's laws. See Richard H. Pildes, *Why Rights Are Not Trumps: Social Meaning, Expressive Harms, and Constitutionalism*, 27 J. LEGAL STUD. 725 (1998).

22. See, e.g., MIKEL HOLT, *NOT YET "FREE AT LAST"—THE UNFINISHED BUSINESS OF THE CIVIL RIGHTS MOVEMENT—OUR BATTLE FOR SCHOOL CHOICE* (2000) (chronicling how much of Milwaukee's black community became proponents of vouchers in reaction to the disappointments of white flight, a failed school desegregation program, poorly performing public schools, and racially hostile school administrators and teachers). This frustration and alienation from public education is also reflected in the work of the Black Alliance for Educational Options, whose pro-voucher philosophy is laid out on their website, <http://www.baao.org>. See also Karla Scoon Reid, *Minority Parents Quietly Embrace School Choice*, EDUC. WEEK (Dec. 5, 2001).

23. For a depiction of a variation on this problem, see Carla O'Connor, *"I'm Usually the Only Black in My Class:" The Human and Social Costs of Within-School Segregation*, 8 MICH. J. RACE & L.

however, suggest an insidious but recurrent pattern in American battles to dismantle the legal constructions of inequality that betray our infidelity to our post-Reconstruction constitutional credo. That pattern has been described by legal historian Reva Siegel as “preservation-through-transformation.”<sup>24</sup> Examining the evolution of the law governing marital and racial status and the regulation of gender and race hierarchy, Professor Siegel demonstrates how American law too often dismantles formal legal structures but ignores how the inequality imposed by those legal mechanisms continues to be enforced through new variations on old practices. The prohibition of one status-regulating code can actually work to isolate its injustice in what we choose to regard as a distant past, distracting us from evidence of continuing governmental and social practices that perpetuate past hierarchies.<sup>25</sup> The uncorrected and often unconscious stereotyping of children of color by their teachers represents one such pernicious status-perpetuating practice. Such stereotyping compromises students’ experience of equality in contemporary public education and serves to maintain the boundaries of Myrdal’s metaphorical circle.

## II.

### ESCAPING THE CIRCLE IN EDUCATION: A LONG-IGNORED TRANSITIONAL JUSTICE PROJECT

Why have our American communities too frequently failed to escape from Myrdal’s circle? From the announcement of the *Brown* opinion, we have failed as a nation to attend to the complicated details of transitional justice. This concept, explicated most frequently in the context of international human rights law, describes the process through which a country struggles to purge itself of the destructive institutional, social, and ideological vestiges of a deposed repressive regime and undertakes to construct its replacement. Salient examples include Germany, South Africa, the former Czechoslovakia, and El Salvador. As explained by Ruti Teitel, the project of constructing a new just system is multifaceted, involving an assessment of responsibility for past wrongs, the assembly of a comprehensive historical account of past injustices, the implementation of mechanisms to repair past wrongs, and the development of a workable governmental order and legal framework that reconstitutes the relevant community on just terms.<sup>26</sup> In the process of transition, a country should adopt what Professor Teitel terms a “critical and transformative aesthetic”<sup>27</sup> that will guide its meticulous documentation and public analysis of past oppressive practices in order to lay the groundwork for the normative shift toward the new political order. Ultimately the success of the societal transformation will

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221 (2002) (examining educational, social, and psychological effects of within-school segregation on academically elite black students).

24. Reva B. Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997).

25. The Supreme Court’s post-*Milliken* desegregation opinions reflect this debate about the reality of an achieved separation from past injustice and discrimination in American public education. See e.g. *Missouri v. Jenkins*, 515 U.S. 70, 175 (1995) (Ginsburg, J., dissenting) (offering as part of her critique of the majority’s termination of desegregation relief an account contrasting Missouri’s over two centuries of experience of black oppression through slavery and de jure segregation with the ten-year duration of desegregation remedies).

26. RUTI G. TEITEL, *TRANSITIONAL JUSTICE* 7-9 (2000).

27. *Id.* at 82.

depend on achievement of "a critical juncture of self-knowledge" that enables members of the changing society to come to terms with their own individual necessary changes in attitude and action.<sup>28</sup>

Thus, although *Brown* applied a legal norm of equality to reject segregated public education, neither the Supreme Court nor the lower courts and education policy makers charged with implementing the decision have devoted adequate attention to the challenge of translating that legal norm into an operational reality in the institutional context of the American public school. One critical facet of the transformative project of changing American schools to reflect and effectuate the fundamental equality of all children would have been careful attention to correcting the perceptual distortions that segregation's institutionalized racism had produced in the minds of America's predominantly white teaching force. In 1975, Gary Orfield observed the challenge and even crisis that desegregation of public schools posed to teachers as many faced the realization that they were unprepared to teach newly diverse student populations effectively.<sup>29</sup> As Orfield noted, too frequently teachers reacted to this challenge not by embracing an opportunity for their professional development but by adopting a resistant attitude that allowed them to attribute their discomfort with minority children to such children's perceived differences or deficits rather than to the teachers' lack of preparation or commitment. Insufficient preparation of principals for the specific institutional changes that would be necessary for effective school integration further undermined the success of the desegregation process.<sup>30</sup> Sadly, Orfield's insightful recommendations regarding the necessity of formulating desegregation plans that would ensure that teachers received appropriate assistance, including training on better teaching and communication methods and the use of more innovative curriculum resources, do not appear to have been widely implemented, and desegregation's potential to produce instructional reform beneficial to all students was often squandered. As a result, subliminally biased perceptions continue to compromise teachers' effectiveness and children's education, and the initiation of a systematic effort to address the issue of racial and ethnic stereotyping by teachers remains an outstanding challenge in contemporary American schools.

Our inattention to the mechanics of attitude transformation is, in part, traceable to the orientation of *Brown* in its description of the effects of de jure school segregation. The opinion stated:

To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . . "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually

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28. *Id.* at 109. The complexity of any present-day effort to redress our neglect of this dimension of transitional justice has been heightened by the increasing racial and ethnic diversity of our population.

29. Gary Orfield, *How to Make Desegregation Work: The Adaptation of Schools to Their Newly Integrated Student Bodies*, 39 LAW & CONTEMP. PROBS. 314, 317-18 (1975).

30. *Id.* at 320-22.

interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of the child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of the Negro children and deprive them of some of the benefits they would receive in a racial[ly] integrated school system."<sup>31</sup>

Concentrating only on the debilitating effects of segregation on black children, the Court fails to address explicitly the inevitable corollary effects of segregation on whites, including white teachers: the inculcation of a false ideology of superiority with its resulting cultivation of reductive misconceptions about blacks' abilities.<sup>32</sup>

### III.

#### THE CONSEQUENCES OF OUR NEGLECT OF THE MECHANICS OF ATTITUDINAL TRANSFORMATION IN AMERICAN CLASSROOMS

Acknowledged past official discrimination can be plausibly connected to "attitudinal remnants"<sup>33</sup> that continue to detract from teachers' capabilities to assess the abilities of students of color and address their needs, as well as compromise teachers' competence to engage productively with minority parents.<sup>34</sup> Participants in these educational exchanges become ensnared in the distorted mental frameworks imposed by segregation. In this way, we often continue to see members of other racial and ethnic groups as images consistent with past ideologies of imposed superiority and oppression rather than as authentic individuals.<sup>35</sup>

The effect of these attitudinal remnants on teachers' classroom practices, and consequently on children's school experience, was recognized, often only fleetingly, in desegregation case law, perhaps most notably by the district court in *Bradley v. Milliken*.<sup>36</sup> At the trial level, District Judge DeMascio wrote:

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31. *Brown v. Bd. of Educ.*, 347 U.S. 484, 494 (1954) (quoting in part from the Kansas district court opinion).

32. For cogent analysis of the implications of the Court's flawed and incomplete construction of the injuries of de jure school segregation, see Kevin Brown, *Has the Supreme Court Allowed the Cure for De Jure Segregation to Replicate the Disease?*, 78 CORNELL L. REV. 1, 57-81 (1992).

33. *Wessman v. Gittens*, 160 F. 3d 790, 804 (1st Cir. 1998) (using the term to describe what school officials cited as residual effect of past discriminatory policies in current teachers' treatment of minority students).

34. See SARA LAWRENCE LIGHTFOOT, *WORLDS APART—RELATIONSHIPS BETWEEN SCHOOLS AND FAMILIES* (1978); SARA LAWRENCE LIGHTFOOT, *THE ESSENTIAL CONVERSATION: WHAT PARENTS AND TEACHERS CAN LEARN FROM EACH OTHER* (2003) (examining difficulties in and possibilities for improvement of quality of exchanges between teachers and parents).

35. For brilliant explorations of the historical antecedents of these modern perceptual distortions, see GEORGE M FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY, 1871- 1914* (1971); MIA BAY, *THE WHITE IMAGE IN BLACK MIND* (2000).

36. 402 F. Supp. 1096, 1139 (E.D. Mich. 1975). For examples of desegregation decrees requiring post-desegregation training for teachers, see *United States v. Missouri*, 523 F. 2d 885, 887 (8th Cir. 1975) (ordering establishment of in-service training program to "prepare administrators, teachers, board members, students and the community for desegregation"); *Moore v. Tangipahoa Parish School Board*, 304 F. Supp. 244, 253 (E.D. La. 1969) (requiring school district to offer teacher training to "remedy any inadequacies in their preparation" and to prepare them to "deal with problems arising from school desegregation"); *Smith v. Tammany Parish School Board*, 302 F. Supp. 106, 110 (E.D. La. 1969) (using same description of training as in *Moore*).

A comprehensive in-service training program is essential to a system undergoing desegregation. A conversion to a unitary system cannot be successful absent an in-service training for all teachers and staff. All participants in the desegregation process must be prepared to deal with the new experiences that inevitably arise. The order that follows pursuant to these guidelines requires in-service training in such fields as teacher expectations, human relations, minority culture, testing, the student code of conduct and the administration of discipline in a desegregated system for all school personnel. . . . It is known that teachers' attitudes toward students are affected by desegregation. These attitudes play a critical part in the atmosphere of a school and affect the pulse of a school system. Teachers, both white and black, often have unhealthy expectations of the ability and worth of students of the opposite race. Moreover, it is known that teachers' expectations vary with socio-economic variations among students. These expectations must, through training, be re-oriented to ensure that academic achievement of black students in the desegregation process is not impeded. A comprehensive in-service training program will ensure that all students are treated equally in the educational process. The goal of a sound in-service training program should be the awareness that there are neither black students nor white students, just students.<sup>37</sup>

Interestingly, from the district court opinion to the Supreme Court's pronouncement in *Milliken v. Bradley*,<sup>38</sup> the explanation of the nature of the prescribed necessary relief had changed subtly but revealingly. Although affirming the district court's order in its entirety, the Supreme Court opinion in *Milliken* chose to highlight as exemplary components the aspects of the original order that addressed how the school system should respond to educational and cultural deficits among black students:

On this record, we are bound to conclude that the decree before us was aptly tailored to remedy the consequences of the constitutional violation. Children who have been thus educationally set apart from the larger community will inevitably acquire patterns of speech, conduct and attitudes reflecting cultural isolation. They are likely to acquire speech habits, for example, that vary from the environment which they must ultimately function and compete, if they are to enter and be part of that community. . . .

Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation; the consequences linger and can be dealt with only by independent measures. In short, speech habits acquired in a segregated system do not vanish

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37. *Bradley*, 402 F. Supp. at 1139.

38. 433 U.S. 267 (1977).

simply by moving the child to a desegregated school. The root conditions shown by this record must be treated directly by special training of teachers prepared for that task.<sup>39</sup>

This passage again exhibits the Supreme Court's inclination in its desegregation jurisprudence to direct critical attention away from how segregation and discrimination infect white attitudes, particularly those of white teachers, and to focus instead on how the Court believes segregation diminishes black students' capabilities. When subsequently authorizing the termination of desegregation remedies in its final opinion on Kansas City school desegregation, the Court conveniently disconnects deficiencies in black educational performance from antecedent segregation and suggests poor minority achievement more likely resulted from "external factors" beyond control of schools (and impliedly within control of students, their families, and cultural communities).<sup>40</sup>

Following the course of aversion charted by the Rehnquist Court to a community's acknowledgment of how past officially sanctioned discrimination continues to pollute the opportunity environment for minority citizens,<sup>41</sup> federal appellate courts have been reluctant to accept school officials' proffered admissions of teacher bias and low teacher expectations for stereotyped minority children when such explanations have been offered to justify race-conscious remedial strategies. For example, in *Wessman v. Gittens*,<sup>42</sup> the First Circuit rejected as insufficient testimony that lower academic achievement by minority children could be traced to teachers' biased expectations when presented by the Boston School Committee as a justification for the adoption of a race-conscious admissions policy at its prestigious exam school, Boston Latin. Similarly in *United States v. City of Yonkers*,<sup>43</sup> the Second Circuit characterized as inadequate testimony from the superintendent of public schools, other administrators, teachers, and school social workers in which they recounted their observations that teachers trained in the segregated Yonkers system and younger teachers perhaps influenced by their older colleagues exhibited low expectations for black and Hispanic children and even voiced to co-workers or, appallingly, to the children themselves their negative projections of the children's abilities. The court found these volunteered accounts by school system representatives too anecdotal to constitute legally sufficient evidence of a causal link between prior de jure segregation and current low teacher expectations.<sup>44</sup>

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39. *Id.* at 287-88.

40. *Missouri v. Jenkins*, 515 U.S. 70, 102 (1995).

41. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (invalidating city council's enactment of minority contracting plan which had been based on council's conclusion that past low minority participation in city contracts resulted from private and public discrimination).

42. *Wessman v. Gittens*, 160 F.3d 790, 804-07 (1st Cir. 1998).

43. 197 F.3d 41, 51-54 (2d Cir. 1999), *cert. denied*, *New York v. Yonkers Bd. of Educ.*, 529 U.S. 1130 (2000).

44. *Id.* at 53; see also Ryan Tacorda, Comment, *Acknowledging Those Stubborn Facts of History: The Vestiges of Segregation*, 50 UCLA L. REV. 1547, 1558-61 (2003) (reporting Professor Stuart Biegel's findings of teachers' and administrators' low expectations for low-income minority children manifested in "watered down curriculum"). Professor Biegel's findings were also part of an expert report filed by the state superintendent in *Ho v. San Francisco Unified School District*, a challenge by Asian-American parents to the district's race conscious school assignment plan implemented pursuant to a prior consent decree. The litigation ultimately settled so Professor Biegel's findings do not appear within a

This judicial distrust of such confessional accounts can be explained in part by the failure of the school systems involved to describe coherently how a chosen remedy would actually address the problem of teacher bias, assuming the court chose to credit the admissions. In assessing how the Boston School Committee's race-conscious admissions policy at its most elite high school would fare under the narrow tailoring prong of suspect classification analysis, the First Circuit majority in *Wessman* reasonably questioned how that strategy would ameliorate a system-wide achievement gap at the primary school level which the School Committee attributed principally to low teacher expectations.<sup>45</sup> In *Yonkers*, the Second Circuit understandably hesitated to approve as a remedy for alleged continuing classroom racial discrimination an instructional program that appeared to potentially replicate stereotype-driven thinking by using what the court described as separate curricula for children of different races or ethnicities.<sup>46</sup>

Despite the inadequate or awkward character of past efforts by school systems to counteract the acknowledged bias expressed by low expectations, the problem of teacher stereotyping of minority students represents a worthy object of corrective action. The Supreme Court has repeatedly acknowledged that the elimination of the distorting and injurious effects of stereotyping represents a legitimate central target for government action against discrimination in the workplace.<sup>47</sup> The Court's recognition of the effect of these subconscious processes on employers' actions supplies a foundation for the construction of parallel protections against the inappropriate constriction of opportunity in schools, the setting where a child's employment trajectory is set.

#### IV.

### UNDERSTANDING HOW CLASSROOM STEREOTYPING CAN LIMIT EDUCATIONAL OPPORTUNITY

An examination of the assessment and placement of African-American children in educational programs reveals how stereotypes continue to operate and injure children of color at school.<sup>48</sup> African-American children are significantly

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reported opinion.

45. *Wessman*, 160 F.3d at 807-08.

46. *Yonkers*, 197 F.3d at 52, 54.

47. See *L.A. Dept. of Water & Power v. Manhart*, 435 U.S. 702, 708 n.13 (1978) (emphasizing that Title VII reflected Congressional recognition of need to "strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes"); *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993) (describing ADEA as prompted by Congressional concern that older workers were denied jobs due to employers' invocation of "inaccurate and stigmatizing stereotypes" about such workers' capabilities); *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401 (2002) (citing as central purpose of ADA the diminution or elimination of "the stereotypical thought processes, the thoughtless actions, and the hostile reactions that far too often bar those with disabilities from participating fully in the nation's life, including the workplace"); *Nevada Dept. of Human Res. v. Hibbs*, 538 U.S. 721, 123 S. Ct. 1972, 1979-82 (2003) (recounting how differential state family-leave policies for men and women reflected "pervasive sex-role stereotype that caring for family members is women's work" and represented appropriate subject for Congressional legislation).

48. The ongoing negative experiences of African-American schoolchildren, particularly African American boys, and the link between these experiences and the continued presence of racial bias and stereotyping has been comprehensively addressed in the work of Professor Pamela Smith. See Pamela J. Smith, *Looking Beyond Traditional Paradigms: When Old Victims Become New Victimized*, 23 HAMLIN L. REV. 101 (1999); Pamela J. Smith, *Our Children's Burden: The Many-Headed Hydra of the*

overrepresented among those assigned to special education programs pursuant to classification as learning disabled, developmentally disabled, or emotionally disturbed.<sup>49</sup> Even when such a placement is appropriate, once in such programs African-American children are less likely to receive proper services to address their needs.<sup>50</sup> Minority students are more frequently directed into low academic tracks or ability groups, thereby impeding their access to better curricular content.<sup>51</sup> African-American children are also less likely to be recommended for placement in gifted and talented programs<sup>52</sup> or to take Advanced Placement classes.<sup>53</sup> Because teachers are the gatekeepers of opportunity in terms of program assignment and service delivery, the imperative of ensuring the greatest possible degree of fair and unbiased evaluation is indisputable.

The racial disproportionality in the imposition of school discipline represents another dramatic example of the damaging effects of stereotyping on daily school practices. The overrepresentation of African-American students generally and African-American boys in particular among those disciplined, suspended, and expelled from public schools has been widely reported.<sup>54</sup> The explicit links between this pattern, teacher bias, and school disciplinary standards that invite subjective and biased application have been persuasively explained in research conducted by the

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*Educational Disenfranchisement of Black Children*, 42 HOW. L.J. 133 (1999).

49. See PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION, A NEW ERA: REVITALIZING SPECIAL EDUCATION FOR CHILDREN AND THEIR FAMILIES (2002), available at <http://www.wd.gov/inits/commissionsboards/whspecialeducation/reports/index.html>; see also Theresa Glennon, *Race, Education and the Construction of a Disabled Class*, 1995 WIS. L. REV. 1237 (1995); Robert Pressman, *A Comprehensive Approach to the Disparate Special Education Placement Rates of African American and National-Origin Minority Youth*, 27 CLEARINGHOUSE REV. 323 (1993); Dahun Zhang & Antonis Katsiyannis, *Minority Representation in Special Education: A Persistent Challenge*, 23 REMEDIAL & SPEC. EDUC. 180 (2002).

50. See Daniel J. Losen & Kevin G. Welner, *Disabling Discrimination in Our Public Schools: Comprehensive Legal Challenges to Inappropriate and Inadequate Special Education Services for Minority Children*, 36 HARV. C.R.-C.L. L. REV. 407 (2001) (exploring potential means of legal redress for recurrent use of special education placement as means of separating and stigmatizing minority children rather than providing educational support or services).

51. See Daniel J. Losen, Note, *Silent Segregation in Our Nation's Schools*, 34 HARV. C.R.-C.L. L. REV. 517 (1999) (documenting discriminatory tracking and ability-grouping practices and recommending use of OCR administrative complaints as one strategy to address the problem); see also Angela Dickens, Note, *Revisiting Brown v. Board of Education: How Tracking Has Resegregated America's Schools*, 29 COLUM. J.L. & SOC. PROBS. 469 (1996).

52. The presumptive connection between placement disparities affecting children of color and historic school segregation has been noted in *Vaughns v. Board of Education of Prince George's County*, 788 F.2d 983, 991 (4th Cir. 1985). This problem continues to be a subject of active litigation. See *Peters v. Jenney*, 327 F.3d 307 (4th Cir. 2003) (finding white former director of Virginia Beach gifted education program had cause of action under Title VI for retaliatory action taken against her in response to what she asserted were her efforts to initiate program reforms to eliminate discriminatory racial disparities in selection of students for gifted and talented classes).

53. See Maurice Dyson, *In Search of the Talented Tenth: Diversity, Affirmative Access, and University-Driven Reform*, 6 HARV. LATINO L. REV. 41 (2003) (discussing underrepresentation of children of color in gifted education and Advanced Placement courses).

54. See Robert C. Johnston, *Federal Data Highlight Disparities in Discipline*, EDUC. WEEK, June 21, 2000, available at <http://www.edweek.org> (reporting that black students represented 17% of U.S. public school population in 1998-99 but made up 33% of those suspended. Hispanic students constitute 15% of enrolled students and 14% of suspensions while white students were 63% of the student population but only 50% of those suspended); see also Patrick Pauken & Philip T.K. Daniel, *Race Discrimination and Disability Discrimination in School Discipline: A Legal and Statistical Analysis*, 139 ED. L. REP. 759 (2000).

Indiana Education Policy Center (IEPC).<sup>55</sup> The IEPC research examined the validity of the commonly asserted hypotheses that African-American students' overrepresentation in office referrals and school suspensions could be explained by these students acting out more than others or by their low socio-economic status. The IEPC research team found racial and gender disparities persisted even when controlling for poverty status and found no support for the asserted increased propensity for misbehavior by African-American students. The IEPC research also demonstrated that African-American students frequently received disciplinary referrals for less serious conduct and for more subjective reasons than white students. This analysis of data from the disciplinary records of 11,001 middle-school students in a large, urban Midwestern public school district led the researchers to conclude that the racial disproportionality could be most credibly linked to pervasive and systematic bias in the schools' administration of discipline. The consequences of such discriminatory discipline for African-American students are dire. Improper administration of sanctions such as in-school suspension interrupts the affected students' education.<sup>56</sup> When sanctions escalate to suspension or expulsion, the students disciplined may be pushed into "the school to prison pipeline,"<sup>57</sup> the educational destination for too many African-American males.

## V.

### THE SIGNIFICANCE OF THE STUDENT-TEACHER RELATIONSHIP IN TODAY'S SEGREGATED SCHOOL ENVIRONMENTS

A growing body of research has documented the persistent and, in some areas, resurgent segregation of children of color in economically and racially isolated environments.<sup>58</sup> At the same time, America's teaching force remains overwhelmingly white. According to National Education Association (NEA) data, over 90% of teachers in 2001 were white, 6% of teachers were black, and 5% were classified as "other," a category in which the NEA included Asian and American Indian/Alaskan Native.<sup>59</sup> Thus, many American teachers teach across a color line, and these demographic realities mean that a significant part of many African-

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55. RUSSELL J. SKIBA ET AL., INDIANA EDUCATION POLICY CENTER POLICY RESEARCH REPORT #SRS1, THE COLOR OF DISCIPLINE—SOURCES OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT (June 2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>.

56. Brent E. Troyan, Note, *The Silent Treatment: Perpetual In-School Suspension and the Education Rights of Students*, 81 TEX. L. REV. 1637 (2003) (describing how teachers' excessive use of in-school suspension can interfere with affected students' opportunity to learn).

57. See THE ADVANCEMENT PROJECT AND THE HARVARD CIVIL RIGHTS PROJECT, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES (2000), available at [http://www.civilrightsproject.harvard.edu/research/discipline/call\\_opport.php](http://www.civilrightsproject.harvard.edu/research/discipline/call_opport.php). A collection of papers addressing "school-to-prison pipeline" issues can be reviewed at [http://www.civilrightsproject.harvard.edu/research/pipeline03?call\\_reseppapers.php](http://www.civilrightsproject.harvard.edu/research/pipeline03?call_reseppapers.php).

58. See FRANKENBERG ET AL., *supra* note 13; see also LOGAN, *supra* note 13.

59. NATIONAL EDUCATION ASSOCIATION, STATUS OF THE AMERICAN PUBLIC SCHOOL TEACHER, 2000-2001 (Aug. 2003), available at <http://www.nea.org/edstats/images/status.pdf>. The NEA data also showed that teachers continue to be overwhelmingly female, with males constituting only 21% of teachers. The survey was based on respondent self-identification according to the categories presented in the 2000 U.S. Census. The tabular presentation of the race and ethnic data did not set out a percentage for Hispanic teachers, but the text identifies 5% of teachers as Hispanic.

American children's interracial contact may come through their daily interactions with a white teacher. The nature and quality of those interactions will have critical educational, social, and psychological consequences for the children.

Today teachers frequently live in different communities from those of their students<sup>60</sup> and do not share common social experiences with many children in their classroom.<sup>61</sup> These factors can produce a social distance and mutual wariness with a wide array of educational consequences, including the recently documented phenomenon of white teacher flight. Researchers at the Andrew Young School of Policy Studies at Georgia State University examined Georgia public school data and found that white teachers left schools with higher proportions of black students and went to schools serving lower proportions of minority and low-income students.<sup>62</sup> Black teachers in predominantly black schools did not exhibit similar high rates of turnover. Because the white teachers were often among the more senior and more experienced teachers, their accelerated departure often meant that students in predominantly black schools would be taught by new and less experienced teachers with an anticipated negative impact on student achievement.<sup>63</sup> The phenomenon of white teachers abandoning predominantly minority schools, a development not confined to Georgia,<sup>64</sup> may be interpreted as a further consequence of school systems' neglect of teachers' needs for training and assistance aimed at enhancing their effectiveness with all students.

## VI.

### COUNTERACTING THE PERCEPTUAL DISTORTIONS THAT COMPROMISE TEACHER EFFECTIVENESS

If, upon confronting the persistence of social and educational segregation along racial, ethnic, and economic lines, our communities decide to concede that stereotypes likely adulterate the teaching and learning process, how can we counteract this harmful but often subconscious contaminant? Training against the stereotype for teachers may be an effective initial response. Awareness of the deleterious effect of teacher stereotyping on student achievement has been

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60. See *Freeman v. Pitts*, 503 U.S. 467, 482 (1992) (observing that the combination of racially separate housing patterns and teachers' preference to work close to their homes made district compliance with faculty diversity objectives difficult).

61. GLORIA LADSON-BILLINGS, *THE DREAMKEEPERS—SUCCESSFUL TEACHERS OF AFRICAN-AMERICAN CHILDREN* 63 (1994).

62. CATHERINE FREEMAN ET AL., *GEORGIA STATE UNIVERSITY ANDREW YOUNG SCHOOL OF POLICY STUDIES, RACIAL SEGREGATION IN GEORGIA PUBLIC SCHOOLS 1994-2001: TRENDS, CAUSES AND IMPACT ON TEACHER QUALITY* (Dec. 2002), available at [http://frp.aysps.gsu.edu/frp/frpreports/Report\\_77/Rpt77text.pdf](http://frp.aysps.gsu.edu/frp/frpreports/Report_77/Rpt77text.pdf).

63. *Id.*

64. See Patrik Jonsson, *White Teachers Flee Black Schools*, *CHRISTIAN SCI. MONITOR*, Jan. 21, 2003 (presenting findings of Georgia State study and reporting that studies in Texas, California, and North Carolina had found a similar pattern of white teacher departures from predominantly black schools); see also *Comfort v. Lynn Sch. Comm.*, 283 F. Supp. 2d 328, 344 (D. Mass. 2003) (presenting court's findings that, prior to school district's adoption of a race-conscious student assignment plan and corresponding curricular and instructional changes, teachers with seniority would consistently transfer out of predominantly minority schools into white wealthier schools, reflecting teachers' perceptions that the environment in minority schools was not conducive to teaching and learning, especially given the absence of professional training on teaching a diverse student population).

recognized by educators themselves.<sup>65</sup> However, that commonsensical awareness does not often lead to the adoption of a systematic program to counteract stereotyping through training and monitoring of classroom practices.

When, in 1955, the Supreme Court offered its vaguely worded remedial postscript to *Brown*,<sup>66</sup> the current extensive psychological literature on stereotyping did not exist and could not inform the design of a program of transitional justice in America's schools. However, now such knowledge can guide education policy makers. In a survey of recent literature developed by cognitive scientists and social psychologists on the operation of racial, gender, and ethnic stereotypes and strategies to counteract their effects, Gary Blasi persuasively argues that advocates for racial justice should incorporate these findings into their strategies for change within essential public institutions, such as schools.<sup>67</sup>

Adoption of a scientifically constructed program of anti-stereotyping training for teachers would simultaneously reflect consistency with the paramount ethos of individuality that has dominated the Supreme Court's appraisals of race-conscious public policy. It would also demonstrate a collective awareness about the reality of the vestiges of discrimination that are denounced but too often denied in the jurisprudence of racial equality in public education. Such a race-conscious approach would represent the antithesis of the racial paternalism which Justice Thomas describes as the basis for his rejection of more familiar race-conscious policies.<sup>68</sup> This strategy would not be premised on presumptions of racial inferiority but on an expectation of universal capacity for achievement.

Moreover, data collection and reporting requirements of the No Child Left Behind statute could be used to create a factual predicate for adoption of teacher training policies aimed at attacking the stereotype effect. The statute requires each state to document and respond to minority performance disparities within schools.<sup>69</sup> This information can provide a starting place for analysis and correction of instructional practices, including teacher stereotyping, that inhibit student achievement.<sup>70</sup> Such an approach would be consistent with the emerging trend

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65. Examples of such acknowledgment by education professionals include the California Department of Education's webpage, which addresses diversity issues and asks readers to take the Implicit Association Test to assess how their attitudes about their own and others' age, race, and gender affect their judgments at <http://www.cde.ca.gov/iasa/diversity.html>, and the material and resources presented by the North Central Regional Educational Laboratory under the title "Critical Issue: Educating Teachers for Diversity" at <http://www.ncrel.org/sdrs/areas/issues/educatrs/presvrce/pe300.html>.

66. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955) (remanding cases to district courts to "enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed").

67. Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Psychology*, 49 UCLA L. REV. 1941 (2002).

68. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 240-41 (1995) (Thomas, J., concurring).

69. 20 U.S.C. § 6319 (2004).

70. See generally James S. Liebman & Charles F. Sabel, *The Federal No Child Left Behind Act and the Post-Desegregation Civil Rights Agenda*, 81 N.C. L. REV. 1703 (2003) (charting how the statute's requirements could be utilized to address racial disparities in education). This potential benefit to poor students and students of color has been hailed in the recent statement by a hundred African-American and Latino superintendents of education and civic leaders. The text of this statement is available at <http://www2.edtrust.org/NR/rdonlyres/D4EA0468-953D-4580-8E86-434925A6E8AD/0/FINALSIGNERS.pdf>. Such data must be used for institutional reform rather than further stigmatization or victimization of poorly performing students. School districts must guard against

toward so-called "value-added" evaluations of teacher effectiveness in which teachers are assessed according to an analysis of how much their instruction has increased individual student progress.<sup>71</sup> Such an approach also creates a further incentive for teachers to abandon practices or attitudes that hinder effective engagement with each student. Finally, as states move to clarify and amplify their definition of the as-yet-underdeveloped concept of a "highly qualified teacher,"<sup>72</sup> advocates can explain how required teacher education and professional development should include a carefully constructed and rigorously implemented program of anti-stereotyping training. This kind of training need not detract from instruction aimed at ensuring subject matter competency but would only enhance efforts to improve pedagogical effectiveness.

## VII.

### WORKING TO MAKE CHILDREN OF COLOR VISIBLE AND VALUED AS INDIVIDUALS

To create the political will to address the damaging effects of teacher stereotyping, we must reveal how such unconscious bias inflicts a condition of the wounding invisibility on children of color in our racially stratified school environments. This message may be most effectively delivered by the affected children and their families as part of a grassroots education advocacy campaign operating in conjunction with formal legal initiatives.<sup>73</sup> Authentic contemporary first-person narratives would recall the accusations of injustice powerfully asserted in prior literary and sociological treatments of the problem of black invisibility. As Ralph Ellison begins his masterpiece *Invisible Man*, the black protagonist accidentally bumps into a white man on a city street, immediately causing the white man to hurl a racial epithet. The enraged protagonist responds by asserting his claim for dignity with escalating physical force, leading the white man to later claim that he was the innocent victim of a mugging rather than the perpetrator of a verbal racial assault.<sup>74</sup> This encounter delivers simultaneous injury and revelation as it awakens

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discriminatory abuses as school officials may be tempted to try to improve their performance profile by finding ways to remove struggling students from their schools. See Tamar Lewin, *Lawsuit Says Manhattan High School Illegally Discharged Students Without Hearings*, N.Y. TIMES, Oct. 15, 2003, at B9 (class action suit alleged New York City high school was pushing out poorly performing students and students deemed difficult to serve in reaction to state standards evaluating schools on percentage of students passing state graduation exams); Tamar Lewin, *Schools Reduce the Number of Students They Force to Leave Early*, N.Y. TIMES, Dec. 24, 2003, at B8 (reporting that New York City Department of Education had reduced number of discharges and was working to improve procedures to track such actions that student advocates still reported as too frequent).

71. For accounts of use of value-added assessments of teacher performance, see Lynn Olson, *Education Scholars Finding New 'Value' in Student Test Data*, EDUC. WEEK, Nov. 20, 2002, at 1; Erik W. Robelen, *Tenn. Seeks to Use Student Tests to Show Teacher Quality*, EDUC. WEEK, May 7, 2003; David M. Herszenhorn, *School System Performance Getting New Measuring Sticks*, N.Y. TIMES, Dec. 5, 2003, at B2.

72. 20 U.S.C. §7801(23) (codifying elements of definition of "highly qualified"); see William L. Taylor, *Title I As An Instrument For Achieving Desegregation and Equal Education Opportunity*, 81 N.C. L. REV. 1751, 1766-67 (2003) (noting opportunity for use of No Child Left Behind teacher quality provisions in civil rights education advocacy).

73. The work of Californians for Justice described in the symposium presentation of Abdi Soltani exemplifies this kind of advocacy.

74. RALPH ELLISON, *INVISIBLE MAN* (1952).

the protagonist to the reality of both his effective erasure as an individual by the white man's unseeing inner eye and his own narrowly averted unconscious transformation into the embodiment of the white man's stereotyped vision. This tragic enlightenment sets the tone for all that follows. Evoking Ellison, Ray Rist entitled his 1973-74 case study of the integration of an affluent, predominantly white Portland elementary school *The Invisible Children*<sup>75</sup> to underscore how the behavior of their white teachers and school principal toward the new black students sought to erase the children's individuality, approaching them as racial caricatures and targets of assimilationist correction. Offering one of the few available narratives of the classroom experience of black children in newly desegregated schools, sociologist Rist's depressing account of the experiences of these black children demonstrated how flawed and unchallenged expectations drawn from segregated white experience deformed the classroom experience of all participants. Rist's observations, echoing Orfield's pragmatic assessment of the necessary components of effective desegregation planning, also revealed how the teachers' inadequate preparation to see and teach all their students could have been anticipated and remediated but was instead never even recognized.

Arguing that a constructive form of color consciousness in American law is necessary to redress the continuing unequal status of blacks and other Americans of color, T. Alexander Aleinikoff writes:

Blacks are "invisible" not in the sense that whites do not see them; they are "invisible" in the sense that whites see primarily what a white dominant culture has trained them to see. . . . Robert Berkhofer's description of the process by which whites understand American Indians applies here: "preconception became conception and conception became fact."<sup>76</sup>

Reliance on stereotypes in interpersonal relations renders the identified "other" invisible in the way Aleinikoff describes. Such an approach in the public school classroom, even if subconscious in its operation, violates each child's right to be recognized as a valued and distinct individual. The imposition of a false and stigmatizing identity on a minority citizen by a government actor is, of course, what provokes public outrage against racial profiling by law enforcement officers. The realization that minority children may undergo similar experiences on a daily basis in many American classrooms should provide an impetus for responsive action.

Importantly, as a starting place for political mobilization against classroom stereotyping, advocates can tap into the sense of disappointment felt by parents from every background when they believe their child has not been known, appreciated, or understood in school. Thus, as a matter of political rhetoric, a program of teacher education aimed at the elimination of racial, ethnic, economic, and gender stereotypes and at the improvement of teachers' capabilities to assess children more accurately can be sold as potentially beneficial to all children, thereby providing a rallying point across racial, cultural and economic lines.

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75. RAY C. RIST, *THE INVISIBLE CHILDREN: SCHOOL INTEGRATION IN AMERICAN SOCIETY* (1978).

76. T. Alexander Aleinikoff, *A Case for Race-Consciousness*, 91 COLUM. L. REV. 1060, 1070 (1991).

Persuading education policy makers to prescribe anti-stereotyping training as a required component of teacher education and professional development programs will not be effortless. Even though there are obstacles to passing such an initiative, it can be framed outside a context of blame and vilification of teachers and should be cast simply as one element of the nation's redoubled effort to offer teachers the tools they need to achieve the success they want for their students. Adoption of the training recommendation would reflect an honest recognition of how the distorted images from our nation's discriminatory past and our often racially and ethnically divided present inhibit our capacity to see each other clearly.

However, our country still finds that kind of candid collective self-consciousness about the lingering effects of racism a disquieting element in public policy debates.<sup>77</sup> This particular discomfort among educators has been the subject of extensive study by Mica Pollock.<sup>78</sup> In conducting three years of ethnographic interviews among school and district personnel in California, Professor Pollock documented how teachers and administrators frequently discussed and explained academic achievement in racial terms in their private conversations, often offering naturalizing and stereotypical explanations of student group academic performance. However, in public settings, including events ostensibly about school reform, the same school actors suppressed any discussion of the role ideas about race played in achievement. This "colormuteness" prevented teachers and school leaders from examining how particular racial achievement patterns could have been influenced, produced, and corrected by institutional and communal action. As an antidote to "colormuteness," antistereotyping teacher education would represent a vital part of a comprehensive approach to identify and eliminate the cognitive distortions that constitute the essence of contemporary racism. However disquieting, the exploration of the effects of such submerged racial attitudes is essential to the project of equality oriented education reform. As esteemed educator Vivian Gussin Paley has written:

The challenge in teaching is to find a way of communicating to each child the idea that his or her special quality is understood, is valued, and can be talked about. It is not easy, because we are influenced by the fears and prejudices, apprehensions and expectations, which have become a carefully hidden part of every one of us.<sup>79</sup>

In the context of considering the use of race-based peremptory challenges in civil jury trials, the Supreme Court announced:

If our society is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of race stereotypes retards that progress and causes continued hurt and injury. By the dispassionate analysis which is its special distinction, the law dispels fears and preconceptions respecting racial attitudes. The

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77. See Justice Ginsburg's discussion of the need for candid approaches to continuing racial inequality in her dissenting opinion in *Gratz v. Bollinger*, 539 U.S. 244, 298-304 (2003).

78. Mica Pollock, *How the Question We Ask Most About Race in Education Is the Very Question We Most Suppress*, 30 EDUCATIONAL RESEARCHER 2 (Dec. 2001). Professor Pollock's fullest examination of this phenomenon will be presented in her forthcoming book, *COLORMUTE: RACE TALK IN AN AMERICAN SCHOOL*, which will be published by Princeton University Press in 2004.

79. VIVIAN GUSSIN PALEY, *WHITE TEACHER* xvi (1979).

quiet rationality of the courtroom makes it an appropriate place to confront race-based fears or hostility by means other than the use of offensive stereotypes.<sup>80</sup>

The public school classroom, recognized repeatedly as our national training ground for citizenship,<sup>81</sup> represents an even more appropriate and potentially more effective venue for the systematic elimination of stereotyping. A deliberate program of anti-stereotyping teacher training would respond directly to the difficult and too long postponed challenge of realizing the *Brown* plaintiffs' dream, making every American public school a place where all children's individual dignity and potential for achievement will be acknowledged.

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80. *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 631 (1991).

81. This conviction echoes from *Brown* to *Grutter v. Bollinger*, 539 U.S. 306 (2003). See *Brown v. Bd. of Educ.*, 347 U.S. 484, 493 (1954) (describing public education as "the very foundation of good citizenship" and "the principal instrument in awakening the child to cultural values"); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681-83 (1986) (citing the role of public education as the preparation of pupils for citizenship); *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979) (identifying objective of public education as "inculcating fundamental values necessary to the maintenance of a democratic system"); *Grutter*, 539 U.S. at 331 (affirming "the overriding importance of preparing students for work and citizenship" and characterizing education as pivotal to "sustaining our political and cultural heritage" and as "fundamental to maintaining the fabric of our society").

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