Introduction The Quest for Equal Education Opportunity: Brown Nears 50, San Antonio Turns 30

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INTRODUCTION

STEPHEN J. WERMIEL∗

It has been nearly fifty years since the United States Supreme Court on May 17, 1954, in Brown v. Board of Education, held out the vision of a society in which children of all races would attend school together and would have equal opportunity to get the kind of education that would enable them to succeed as full participants in our democracy.

It has been just over thirty years since the Supreme Court in San Antonio Independent School District v. Rodriguez, on March 21, 1973, limited that vision by declaring that education was not a fundamental right and that disparity in funding within a state’s education system did not discriminate on the basis of any characteristic of which the “equal protection” clause should take special recognition.

Justice Thurgood Marshall, who led the desegregation effort as a lawyer in Brown and many other cases, recognized the potential

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2. Id. at 494 (“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.”).
3. Id. at 493 (holding that education “is the very foundation of good citizenship.”).
5. Id. at 35 (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”).
7. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973) (“We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class.”).
8. From 1938 to 1961, Thurgood Marshall was the lead lawyer for the National Association for the Advancement of Colored People (“NAACP”) and planned a string of cases up to and including the attack on school desegregation in the U.S. Supreme Court. See Mark V. Tushnet, Marshall, Thurgood, in THE OXFORD COMPANION TO AMERICAN LAW 543-45 (Kermit L. Hall ed., 2002).
limits that the San Antonio decision would place on the quest for equal educational opportunity. In a dissenting opinion that was surely one of his finest works as a Justice, he decried the "retreat from our historic commitment to equality of educational opportunity" and suggested that leaving equal opportunity to future legislative solutions would mean that "countless children unjustifiably receive inferior educations that [and here he was throwing the words of Brown back at the majority] 'may affect their hearts and minds in a way unlikely ever to be undone.'"

This Symposium is the result of a conference held at the American University Washington College of Law on March 20 and 21, 2003, entitled, "The Quest for Equal Educational Opportunity: Brown Nears 50, San Antonio Turns 30." The goal of the conference and of the transcripts and papers prepared for this Symposium was to examine the history, context and current state of the promise of the historic decision in Brown. Rather than just celebrate that promise, the goal was to reflect on the influence of other legal and social developments, including the school finance issues in San Antonio, the effects of the resegregation of the nation’s schools, the debate over affirmative action and many other factors.

There can be no doubt that the decision in Brown is a national treasure. But as the landmark ruling turns fifty, Brown must be more than an icon. It must continue to inspire those who believe in education as the key to the future to look for new ways to provide equal opportunity to quality education for all.

11. Id. at 70 (Marshall, J., dissenting).
12. Id. at 71.
13. 347 U.S. at 483.
15. The conference was made possible by the generous support of Dean Claudio Grossman of the Washington College of Law, and with the support and hard work of the American University Law Review and the Program on Law and Government.
16. 347 U.S. at 483.
18. See Greg Winter, Schools Resegregate, Study Finds, N.Y. Times, Jan. 21, 2003, at A14 (describing a new study by the Civil Rights Project at Harvard University showing increased racial isolation of black and Latino students in public schools).
19. 347 U.S. at 483.
20. Id.
The Quest for Equal Educational Opportunity:
Brown Nears 50, San Antonio Turns 30

Thursday, March 20 and Friday, March 21, 2003
American University Washington College of Law

It has been nearly 50 years since the landmark decision of *Brown v. Board of Education* held out the promise of equal educational opportunity for all. It has been 30 years since the Supreme Court redefined and limited the parameters of that equal opportunity in *San Antonio Independent School District v. Rodriguez*. This conference will look back on the history, impact, and legacy of these two critically important rulings, and ahead at how access to equal educational opportunity may be shaped in the future.

**Thursday, March 20, 2003**

*Brown v. Board of Education: A Moot Court Argument*

Advocates will consider the problem of racially segregated education in light of the factual and legal circumstances that existed in 1954, and with the benefit of hindsight regarding what we have learned in the ensuing decades about the politics of race, law and education, the difficulty of and resistance to desegregation efforts, and the current status of students of color in public schools today.

**Lawyers:**  Professor Erwin Chemerinsky, for petitioners
Professor Derrick Bell, for respondents

**Judges:**  Judge Paul L. Friedman
Judge Nathaniel R. Jones
Judge Damon J. Keith
Professor Earl M. Maltz
Professor Jamin Raskin
Judge Inez Smith Reid

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Friday, March 21, 2003

Professors Erwin Chemerinsky, Genna Rae McNeil, John Charles Boger, and Judith A. Winston.
Moderated by Professor Stephen J. Wermiel.

Panel II—San Antonio: History, Context, Current Assessment.*
Professors Earl M. Maltz, James Edward Ryan, Erwin Chemerinsky and Judge Nathaniel R. Jones.
Moderated by Judith A. Winston.

Judge Damon J. Keith, Judge Nathaniel R. Jones, and William Taylor.
Moderated by Professor Stephen J. Wermiel.

Professors Charles R. Lawrence, Susan Low Bloch, Roslyn Arlin Mickelson, and Jamin Raskin.
Moderated by Professor Thomas O. Sargentich.

* Transcripts on file with the American University Law Review