

SYMPOSIUM INTRODUCTION

COMMEMORATING *BROWN* AND THE CIVIL  
RIGHTS ACT: LEARNING FROM THE PAST  
AND HOPING FOR THE FUTURE

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In 1954, the Supreme Court decided *Brown v. Board of Education*;<sup>1</sup> ten years later, Congress enacted the Civil Rights Act.<sup>2</sup> These two monumental changes in American law dramatically expanded the educational opportunities of racial and ethnic minority children across the country. They also changed the experiences of white children, who have learned in increasingly diverse classrooms. 2014 is an anniversary year for those two historical events and, like many anniversaries, it causes us to reflect on how far we have come and yet how far we also have to go.

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\* Professor of Law, Michigan State University. This issue, and the April 2014 symposium out of which it grew, are the result of the hard work of many. Professor Dan Weddle hosted and coordinated the portion of the symposium that was live in Kansas City, and in fact the structure of the symposium was based on a prior symposium about school speech, which he hosted at UMKC, in which I was delighted to participate. At MSU, I owe a great debt of gratitude to Law College Dean Joan Howarth, Professor Nicholas Mercuro, College of Education Dean Don Heller, College of Education Associate Dean Michael Sedlak, *Law Review* Senior Symposia Editors Shannon Smith (MSU Law '14) and William Cox (MSU Law '15) as well as all *Law Review* staff who assisted with the symposium, Events Coordinator Sally Rice, MSU technology gurus Amanda Olivier and Matt Drury, and last but certainly not least, law librarian Barbara Bean. Thanks also to William Cox for providing helpful editorial assistance with this piece. In addition to these major sponsors, the symposium was co-sponsored by numerous organizations and individuals, including the MSU Department of Political Science; the MSU LeFrak Forum on Science, Reason, and Modern Democracy; the MSU Office for Inclusion and Intercultural Initiatives; the national Education Law Association; the UMKC Joseph Cohen Lecture Fund; Sprint Corporation; UMB; UMKC Student Affairs and student organizations; the Kansas City Metropolitan Bar Association; and the following law firms in Kansas City: Ogletree Deakins; Husch Blackwell; Shook, Hardy & Bacon LLP; Spencer Fane Britt & Browne, LLP; Wagstaff & Cartmell; and Hardwick Law Firm LLC.

1. 347 U.S. 483 (1954).

2. Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (codified in scattered sections of 42 U.S.C.).

To encourage such reflection, Michigan State University has sponsored dozens of programs across campus to explore the impact of those changes.<sup>3</sup> One of those programs was an outstanding symposium co-hosted by the *Michigan State Law Review*, the Michigan State University College of Education, and the University of Missouri–Kansas City College of Law in April 2014.<sup>4</sup>

The live symposium, which was shared via a two-day videoconference between MSU and UMKC, traced the narrative of school desegregation and integration in the United States.<sup>5</sup> It featured individuals who participated in major cases as plaintiffs and community activists; lawyers who represented parties in these cases; and scholars from various disciplines who are considered many of the nation's leading school desegregation scholars.<sup>6</sup> We are honored to collect some of their contributions in this symposium issue and to collect others in a book forthcoming with Michigan State University Press.<sup>7</sup>

It is particularly important for us at Michigan State to commemorate *Brown* and the Civil Rights Act because of Michigan State's comparatively small but nonetheless meaningful contributions to *Brown* and to the Civil Rights Movement. A Michigan State sociology professor, Dr. Wilbur Brookover, was an expert witness for the NAACP in the *Brown v. Board of Education* trial.<sup>8</sup> Dr. Brookover was examined by Jack Greenberg, and his testimony helped the NAACP establish what would become a key premise of the *Brown* decision: that segregation harmed African-American children.<sup>9</sup> A few years later, Little Rock Central High School became one of the most contentious sites of school integration. When those brave African-American students collectively known as “the Little Rock Nine” neared high school

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3. *Project 60/50: A Year-Long Community Conversation on Civil and Human Rights*, MICH. ST. U., <http://project6050.msu.edu> (last visited Oct. 20, 2014).

4. *Pursuing the Dreams of Brown and the Civil Right Act: A Living History of the Fight for Educational Equality*, MICH. ST. U.C.L., <http://www.law.msu.edu/60/50/symposium.html> (last visited Oct. 20, 2014).

5. *Id.*

6. *Schedule*, MICH. ST. U.C.L., <http://www.law.msu.edu/60/50/symposium-schedule.html> (last visited Oct. 20, 2014).

7. THE PURSUIT OF RACIAL AND ETHNIC EQUALITY IN AMERICAN PUBLIC SCHOOLS: *MENDEZ, BROWN, AND BEYOND* (Kristi L. Bowman ed., forthcoming 2015).

8. Transcript of Record at 162, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (No. 8).

9. *Id.* at 164-65.

graduation, Michigan State University recruited them.<sup>10</sup> Two of them enrolled here in East Lansing; Ernest Green received a B.A. and M.A. from MSU, and Carlotta Walls LaNier attended MSU for two years before transferring to and graduating from Colorado State College (now the University of Northern Colorado).<sup>11</sup> Accordingly, we begin this issue of the Law Review by dedicating it to former Michigan State University President John Hannah, with a piece written by David Thomas.<sup>12</sup>

The first three articles in the issue then establish an important foundation for discussing racial and ethnic educational opportunity today. The first piece is actually a transcript of the opening panel at the April symposium, which focused on the 1946 federal district court decision *Mendez v. Westminster*.<sup>13</sup> Sylvia Mendez and her brother Gonzalo Mendez tell us about their experience as Latino children who were denied enrollment at the town's "white" school. We also hear about how their parents remembered their roles in a case that was the first successful school desegregation lawsuit in federal court, and a major victory for Latinos' and Latinas' educational rights. Documentary filmmaker Sandra Robbie adds important social context to the discussion; Judge Frederick Aguirre provides perceptive legal commentary; and political scientist Dr. Philippa Strum discusses some of the challenges involved in conducting research about school desegregation.

We then feature a unique article by Professor Steven Calabresi and Michael Perl, which argues that *Brown v. Board of Education* was rightly decided on originalist grounds.<sup>14</sup> As one would expect, their historical research is exhaustive, and the resulting article is an important contribution to the literature. Next, because school desegregation and school finance litigation are both rooted in a desire to ensure that disadvantaged children receive the same educational opportunities as their more advantaged peers, it is fitting to include an insightful article about the relationship between these two litigation strategies by MALDEF Senior Regional Counsel

10. *Meet the Little Rock Nine*, LITTLE ROCK CENT. HIGH, <http://www.lrsd.org/centralhigh50th/LR9.htm> (last visited Oct. 20, 2014).

11. *Id.*

12. David Thomas, *Dedication to John A. Hannah: "Only People Are Important,"* 2014 MICH. ST. L. REV. 391.

13. Frederick Aguirre, et al., *Mendez v. Westminster: A Living History*, 2014 MICH. ST. L. REV. 401.

14. Steven G. Calabresi & Michael W. Perl, *Originalism and Brown v. Board of Education*, 2014 MICH. ST. L. REV. 429.

David Hinojosa, who has litigated many such cases, and Karolina Walters.<sup>15</sup> As Hinojosa and Walters argue, despite extensive school finance litigation over the past few decades, students still have vastly different equal educational opportunities. Continued and increasingly nuanced school finance litigation is likely a necessary, but not sufficient, part of achieving the promise of *Brown*.

Based on that excellent foundation, the issue turns to analyses of educational opportunity today. Supreme Court decisions set limits for policy approaches; thus, the second part of the issue begins with an essay by Dean Erwin Chemerinsky, which analyzes the Court's most recent desegregation decision from 2007: *Parents Involved in Community Schools v. Seattle School District No. 1*.<sup>16</sup> Chemerinsky helpfully contextualizes the Court's 4-1-4 decision and then parses it, culminating with a discussion of the impact of *Parents Involved* on school districts and in courts.

Adding to Dean Chemerinsky's analysis, Professor Darrell Jackson discusses in great detail the integration efforts in Seattle and Louisville, effectively engaging the work of the National Academy of Education to underscore the legitimacy and importance of the goals pursued by the Seattle and Louisville districts.<sup>17</sup> Focusing on the goal of closing the racial and ethnic achievement gap, Jackson also discusses how school districts can insulate themselves from liability if they adopt voluntary integration strategies.<sup>18</sup> Also considering what it means to live in a post-*Parents Involved* world, Professor Erica Frankenberg analyzes voluntary integration efforts in sixty-nine school districts across the country.<sup>19</sup> That Frankenberg has compiled what is likely a close-to-comprehensive list of districts across the country that are engaging in voluntary integration is by itself a significant contribution to the literature; in addition to this important contribution, she carefully explains the legal and political reasons why voluntary integration plans are few and calls for

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15. David Hinojosa & Karolina Walters, *How Adequacy Litigation Fails to Fulfill the Promise of Brown*, 2014 MICH. ST. L. REV. 575.

16. Erwin Chemerinsky, *Making Schools More Separate and Unequal: Parents Involved in Community Schools v. Seattle School District No. 1*, 2014 MICH. ST. L. REV. 633; *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

17. Darrell D. Jackson, *Help! The Supreme Court Gave Me Bad Directions: Rethinking Brown and Affirmative Action in the Wake of Schuette*, 2014 MICH. ST. L. REV. 647.

18. *Id.* at 669-75.

19. Erica Frankenberg, *Assessing the Status of School Desegregation Sixty Years After Brown*, 2014 MICH. ST. L. REV. 677.

creative policymaking going forward to ensure *Brown*'s goal of equal educational opportunity.

One of those creative policymaking approaches is the subject of Professor Maurice Dyson's article.<sup>20</sup> The innovative federal "Promise Zones Initiative" Dyson writes about is based on the assumption that disrupting cycles of poverty and disadvantage requires a multi-faceted approach; accordingly, the initiative is sponsored by the U.S. Departments of Education, Housing and Urban Development, Justice, and Agriculture. Dyson thoughtfully discusses the types of education reform these zones should seek to include (and avoid) if the schools in these zones are able to transform themselves. Two more creative policymaking approaches are the subject of Professor Benjamin Superfine and Jessica Gottlieb's innovative article.<sup>21</sup> They argue that another way in which education reform can pursue the goals of *Brown* and the Civil Rights Act is via two types of reform sweeping statehouses across the country: teacher evaluation and accountability systems, and collective bargaining. The laws that regulate the employment of more than 3 million public school teachers across the United States<sup>22</sup> are not often discussed as part of an "education rights" agenda, and Superfine and Gottlieb's article shows us how shortsighted this oversight has been.

Considering new litigation and policy strategies is important, and so too is reconsidering foundational assumptions. Accordingly, this issue concludes with an article by Professor Atiba Ellis in which he argues for recapturing the potential of the civil rights model by focusing on race- and class-conscious remedies.<sup>23</sup> Ellis's article is a rich, ambitious, theoretically grounded response to the claims of post-racialism that pervade the *Parents Involved* plurality decision and that have gained so much traction in our society. Although it does not focus on education specifically, education advocates, and many others, have much to learn from Ellis's piece.

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20. Maurice R. Dyson, *Promise Zones, Poverty, and the Future of Public Schools: Confronting the Challenges of Socioeconomic Integration and School Culture in High-Poverty Schools*, 2014 MICH. ST. L. REV. 711.

21. Benjamin M. Superfine & Jessica J. Gottlieb, *Teacher Evaluations and Collective Bargaining: The New Frontier of Civil Rights*, 2014 MICH. ST. L. REV. 737.

22. *Fast Facts: Back to School Statistics*, NAT'L CENTER EDUC. STAT., <http://nces.ed.gov/fastfacts/display.asp?id=372> (last visited Oct. 20, 2014).

23. Atiba R. Ellis, *Reviving the Dream: Equality and the Democratic Promise in the Post-Civil Rights Era*, 2014 MICH. ST. L. REV. 789.

Taken together, these contributions have tremendous breadth and depth. They provide important insights into the past, present, and future of the struggle for racial and ethnic—and socioeconomic—equality in our public schools. They provide hope for using law as one tool, among many, to change a broken educational system. This is important, because hope is needed: In fall 2014, nearly 50 million students are enrolling in public schools in the United States.<sup>24</sup> Across the country, those students will attend schools that are increasingly isolated by race and ethnicity.<sup>25</sup> The physical isolation is mirrored in test scores: despite decades of reforms, white students (as a group) continue to outperform their African-American and Latino and Latina counterparts.<sup>26</sup> These disparities not only persist along the lines of race and ethnicity, though—they also remain along lines of socioeconomic status<sup>27</sup> and language.<sup>28</sup>

To be sure, the days of Jim Crow and invidious school segregation are far behind us. But, equal educational opportunities and schools that reflect the diversity of our communities are far ahead.

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24. *Fast Facts: Back to School Statistics*, *supra* note 22.

25. GARY ORFIELD, GENEVIEVE SIEGEL-HAWLEY & JOHN KUCSERA, CIVIL RIGHTS PROJECT, SORTING OUT DEEPENING CONFUSION ON SEGREGATION TRENDS 1 (2014), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/sorting-out-deepening-confusion-on-segregation-trends/Segregation-Trends-Dispute-CRP-Researchers.pdf>.

26. Trymaine Lee, *Educational Racial Gap Wide as Ever According to NAEP*, MSNBC (May 7, 2014, 12:17 PM), <http://www.msnbc.com/msnbc/student-proficiency-stagnant-race-gap-wide> (discussing the National Assessment of Educational Progress results, which are available in detail on the NAEP homepage: <http://www.nationsreportcard.gov/>).

27. Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN'S LIFE CHANCES* 91, 91 (Greg J. Duncan & Richard J. Murnane eds., 2011) (poverty achievement gap); GARY ORFIELD ET AL., CIVIL RIGHTS PROJECT, *BROWN AT 60: GREAT PROGRESS, A LONG RETREAT AND AN UNCERTAIN FUTURE 2* (2014), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-60-great-progress-a-long-retreat-and-an-uncertain-future/Brown-at-60-051814.pdf> (poverty isolation in schools).

28. U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, *ACHIEVEMENT GAPS: HOW HISPANIC AND WHITE STUDENTS IN PUBLIC SCHOOLS PERFORM IN MATHEMATICS AND READING ON THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS* 16 (2011), available at <http://nces.ed.gov/nationsreportcard/pdf/studies/2011459.pdf> (ELL achievement gap); ORFIELD ET AL., *supra* note 27, at 36 (ELL isolation in schools).



















































