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press release

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***Brown v. Board of Education* Under Sustained Attack Say NAACP Legal Defense Fund and Members of Congress**

— Will Mark 50th Anniversary of *Brown* Decision by Initiative to Counter Threats
and Help America Realize the Promise of *Brown* —

In preparation for the 50th anniversary of the landmark U.S. Supreme Court decision, *Brown v. Board of Education*, on May 17, 2004, the NAACP Legal Defense and Educational Fund, Inc. (LDF) announced today a public education campaign to help ensure that the spirit of *Brown* is fully realized, and sounded an alarm about mounting obstacles to educational equity in public schools.

Elaine R. Jones, President and Director-Counsel of LDF, explained the urgent need for action to protect and extend the principles of the *Brown* decision. “The strength of *Brown* is not that it’s a point in time — it’s that *Brown* is a living legacy. We may commemorate and observe, but the state of public education today prohibits us from celebrating.”

Ms. Jones invoked a call to all Americans: “The American public assumes that education is a fundamental right. It is recognized as such in many of our states. But nowhere is there an affirmative statement that you are entitled to it. It’s time for reality; one of the things that LDF hopes is that through this coming year, the nation will have a dialogue about public education and how we support it and enshrine it as a fundamental right.”

Called “Red, White, Blue and *Brown*: Why *Brown v. Board of Education* Matters to All Americans,” LDF’s initiative will highlight the noble promise of the *Brown* decision, shed light on why that promise has yet to be fulfilled, and call on Americans to act to ensure that the principles of *Brown* are fully implemented during its 50th anniversary year.

Also speaking was Theodore M. Shaw, LDF’s associate director-counsel, who offered specific examples of the inequities that continue to exist in public schools, and expressed a mixture of hope and caution. “As a nation, we honor *Brown*, perhaps more in principle than in practice,” he said. “Over the next year, there are private and public celebrations planned. That is a good thing, but this is not a time for blind or thoughtless celebration. The work of *Brown* is undone. In some places, *Brown* is being dismantled. LDF is calling for a critical examination of America’s commitment to the provision of public education. Anything less is a disservice to all Americans and to our nation’s future.”

(more)

Supporting LDF's view of post-*Brown* public schooling were Representative Robert C. "Bobby" Scott (D-VA) and Representative James E. Clyburn (D-SC), both representing states that were included in the combined *Brown v. Board of Education* decision. (The state cases that comprised *Brown* are Kansas, South Carolina, Virginia, Delaware, and the District of Columbia.)

"In 2000, 40% of black students nationwide attended schools that were 90% black," said Congressman Scott. "The lesson of *Brown* is that segregation in and of itself is illegal. I'm delighted that LDF initiated this public education campaign to remind us that segregation did not end with *Brown*."

Representative James Clyburn saluted the courage of the LDF attorneys and plaintiffs who were involved in the *Brown* cases saying, "Every day I am in office, I am going to celebrate the lives of the people who put their own lives on the line to end segregation in public schools."

Marisa Demeo, regional counsel for the Mexican American Legal Defense and Education Fund, echoed statements from her fellow speakers, stressing the importance of recognizing that the *Brown* decision and all it represents is not only a concern of African-Americans, but of all people. "Latino students today attend some of the most highly segregated schools," she said. "The dream of *Brown* has not been realized."

Also attending the event was Eleanor Holmes Norton, the Congressional Representative for the District of Columbia. "I believe *Brown* will go down in history as one of the most important decisions of the United States Supreme Court," she said. "*Brown* is about much more than education. It stood for – finally – what we thought the civil war stood for – equality for all."

The NAACP Legal Defense and Educational Fund also launched a new portal on the World Wide Web today, www.brownmatters.org. The portal is designed to be "information central" on the *Brown* decision and the activities surrounding the commemoration of its 50th anniversary. "I'm gratified to see that the principles of *Brown* are important to many, many people," said Elaine Jones, "and there are, literally, hundreds of organizations that will be holding *Brown* events between now and the anniversary next May – and even after that. While LDF will be focusing on our own public education campaign, we also want to highlight and support the work of other groups who are honoring *Brown*. That's why we created a web portal devoted to the decision, and to all of the heroes – past, present and future – who are making the promise of *Brown* a reality."

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unequal education

50 years after *brown v. board of education*



As we approach the 50th anniversary of the historic victory in the *Brown v. Board of Education* ruling that ended official segregation in public schools, the simple reality is that across the country, in court after court, the right of all students to the best possible education is still under continuous challenge.

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

Nowhere in the U.S. 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.

Regrettably, even the *Brown* decision is not the powerful talisman it used to be. In the 1980s and 1990s, the courts tired of desegregation suits. They began to phase out desegregation plans, end busing, and rule that efforts to move students around for desegregation 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 a non-issue, many state constitutions do mention the state's primary responsibility for delivering education to all young people, thus allowing attorneys to go into state courts to demand funding equity.

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 Connecticut, for example, the state Supreme Court ruled in *Sheff v. O'Neill*, an LDF case, that the state has an obligation to remedy school funding inequities in Hartford. In 1996, the state sent the issue back to the legislature. It was not until only recently that we were able to reach a settlement with the state, approved by the legislature, which began to provide the kind of relief that the state Supreme Court had ordered years ago.

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 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 concern. Testing itself is neither a panacea nor a problem solver; it should only be a tool for identifying problems. Testing can help determine what reforms are needed to help disadvantaged students. Too often, however, standards and assessment are used to punish students who fall short rather than to determine where more resources are needed. When used inappropriately, testing can have a drastic impact on individual student 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.

Vouchers

President Bush and others have praised voucher programs and characterized a recent U.S. Supreme Court decision upholding a Cleveland voucher program against a First Amendment challenge as being as historic as *Brown*. This analogy trivializes the courage and persistence of thousands of African-American parents and children who struggled to make the *Brown* decision a reality in the face of determined, and often violent, official and public resistance. Only a tiny fraction of African-American and

other minority students can be selected to receive vouchers or scholarships. It is undeniable that these programs fail to reach all, or even most, of the poor students and students of color attending public schools in large urban settings. Voucher programs that would reduce funding to already struggling public schools may worsen the prospects of those students remaining in public systems, where the vast majority of African-American students will continue to be enrolled.

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 suburbia. 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 most needy schools so all students get a fair chance to pass high-stakes exams.

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.

During this new century, as we did in the last, LDF will continue to work to ensure fairness, equity and opportunity at every entry point of this nation's educational system. To ensure the best future for our children, and, indeed the nation, we are determined to prevail.

For a look at resegregation trends in the country's largest school districts, please see *Race In American Public Schools: Rapidly Resegregating School Districts*, ©2002 Harvard Civil Rights Project, www.civilrightsproject.harvard.edu.

Summary of Polls Conducted on Attitudes Toward *Brown v. Board of Education* and Affirmative Action

1994 Gallup Poll:

- 87% of Americans believed that *Brown v. Board of Education* was rightly decided - up from 63% in the early 60s.
- 65% of the general population (70% of African Americans) say that desegregation has improved the quality of education for black students.
- 62% of those polled say that desegregation has improved race relations.
- 84% of African Americans support further desegregation efforts.

March 2003 Associated Press:

- 53% of those polled believe affirmative action programs that provide advantages or preferences for blacks, Hispanics and other minorities in hiring, promoting and college admissions should be continued.
- 51% think affirmative action programs are needed today to help minorities such as black and Hispanics overcome discrimination.
- 80% of the general population think it is important to have a racially diverse student body.
- 59% of those polled believe we are not too close or not close at all to eliminating discrimination against racial minorities in America. 38% believe we are fairly close or very close.

about the

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

The NAACP Legal Defense and Educational Fund, Inc. (LDF) was founded in 1940 under the leadership of Thurgood Marshall, who subsequently became the first African-American U.S. Supreme Court Justice. Although initially affiliated with the National Association for the Advancement of Colored People, LDF has been an entirely separate organization since 1957.

LDF's mission is to transform the promise of equality into reality for African Americans and, ultimately, all individuals in the areas of education, political participation, economic justice and criminal justice.

As LDF's first Director-Counsel, Marshall led the legal team that won *Brown v. Board of Education*, the landmark school desegregation case, in the U.S. Supreme Court in 1954. The *Brown* case ended officially enforced public school segregation and overturned the "separate but equal" doctrine of legally sanctioned discrimination.

Among its current priorities, LDF is challenging initiatives to ban affirmative action in admissions to public colleges and universities; protecting minority voting rights; and seeking to bring justice to African-American communities, such as the one in Tulia, Texas, which have been targeted unfairly by the "War on Drugs," and the Mississippi communities affected by that state's indigent defense crisis.

LDF is America's premier civil rights law firm. It has been involved in more cases before the U.S. Supreme Court than any organization except the U.S. Department of Justice. It was considered the legal arm of the civil rights movement. It has more than 100 active cases on its docket, one of the largest legal loads of any public-service institution.

In its work, LDF has participated in every important U.S. Supreme Court case on the issue of voting rights. It has won rulings to improve health services for the poor, to upgrade low-income housing developments, to ensure equal access to public transportation for minorities and the poor, and to protect the employment rights of women with school-aged children.

LDF was a primary supporter of the Civil Rights Act of 1991, pressing to make compensatory and punitive damages available in employment discrimination suits under the 1964 Civil Rights Act. LDF also represented the successful white female plaintiff in an age discrimination case before the U.S. Supreme Court that established a critically important rule of evidence that protects workers from discrimination because of age, disability, gender, race, religion, and ethnicity.

Although LDF works primarily through the courts, its strategies include advocacy, educational outreach, monitoring of activity in the executive and legislative branches, coalition building and policy research.

Almost 50 years after *Brown*, education is still LDF's main program area. LDF continues to play a major role in the decades-long struggle to win equal access to primary, secondary and higher education for all of our nation's youth.

Additionally, through its scholarship and fellowship programs, LDF has helped over 4,000 exceptional African-American students to graduate from many of the nation's best colleges, universities and law schools.

LDF is headquartered in New York City, with regional offices in Washington, DC and Los Angeles.