
Essays

A Message from Thurgood Marshall

*The Association of Black Foundation Executives
2004 James A. Joseph Lecture
Toronto, Canada*

*by
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I am honored to be the 2004 James A. Joseph Lecturer. When I first joined the world of organized philanthropy in 1982, I immediately became a member of the Association of Black Foundation Executives (ABFE) because I believed then, as I do now, that there is a need for an organization that is concerned with the Black community, professionals in philanthropy, and the philanthropic enterprise itself. I thank ABFE for conferring this signal honor upon me.

My nearly 23 years of service in philanthropy have been enriched and enlivened by many wonderful colleagues and friends. I wish especially to thank my former Ford Foundation colleagues, Susan V. Berresford, Barry G. Gaberman, Franklin A. Thomas, Shepard Forman, Anthony Romero, Alan Jenkins, Natalia Kanem, Bernard MacDonald and Emmett Carson for the friendship, sage counsel and commitment to excellence that inspired and challenged me during my many years of work at Ford and for their continuing support. Without Susan, Barry and Frank, I would not be here tonight because they are the folks who hired me! Ford deserves credit for its integrity, pathbreaking embrace of diversity, and visionary leadership.

In addition, I wish to acknowledge the myriad ways in which I have learned from and come to admire William White, Hugh Burroughs, Handy Lindsay, Sherry Magill, Elridge W. McMillan, Adrienne Y. Bailey, and James Joseph over the years. Lastly, I express special appreciation for the friendship of my buddy Jacqui Burton with whom I have made common cause for many years and whom I count as a friend for life. And what can I say about my beloved colleague, Emmett Carson except that he is a master of hyperbolic speech—witness his generous introduction of me—and one of the most learned and honest leaders whom I have ever been privileged to know. It is great to know that Emmett is at the pinnacle of leadership in philanthropy, bringing his unique and powerful vision and sparkling intellect to the work that lies ahead. To all of you here present, thank you. My cup runneth over.

In May 2004, the nation will mark the 50th anniversary of the United States Supreme Court's decision in Brown v. Board of Education.¹ My lecture tonight is a fictional letter that I imagine Thurgood Marshall

¹ 347 U.S. 483 (1954).

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might have written to ABFE's friends and supporters were he able to do so on this special occasion. Thurgood Marshall, as you know, was the lead counsel in Brown, the first African American to be named Solicitor General of the United States, and the first African American to serve as a Justice of the United States Supreme Court.

Though the letter is written largely with the African American membership of ABFE in view, I hope that no one here will think that the message is only for Black people. To the contrary, the central ideas that I probe in the letter are for all who care about social justice, fairness and overcoming the legacy of inequality and poverty spawned by our nation's historic embrace of slavery, segregation and discrimination. Were it not for the support, engagement and sacrifices of White, as well as Black people, and others who joined in the civil rights movement that was the precursor to and aftermath of Brown, we would not be here together tonight.

***Open Letter from Thurgood Marshall
To Members and Supporters of
The Association of Black Foundation Executives***

Date: Timeless

My Dear Brothers and Sisters:

I rarely have a chance these days to communicate with my heirs, all who, irrespective of race, gender or other traits unrelated to character, love and pursue justice and fairness. So I thought that I should break my silence and send this missive to you from heaven in honor of the 50-year anniversary of the United States Supreme Court's decision in Brown v. Board of Education, the case that transformed America irrevocably. If you want to know *who* you are, you have to know *whose* you are. I claim each one of you as part of my extended family and legacy and hope that you will claim me.

My Early Years

I was born in 1908, and raised in Baltimore, Maryland, forty-seven years after the start of the Civil War and one year before the founding of the National Association for the Advancement of Colored People. I attended Lincoln University and Howard University Law School, both historically Black institutions of higher learning. At the time that I went to law school, there were less than 1,000 African American lawyers and only 100 resident in the South, compared to about 160,000 White lawyers.

During the ugly days of legalized segregation, HBCUs were the primary vehicles of access for Blacks to higher education. They still are a vital part of the response to Blacks' unequal access to higher education. Today, although most African Americans who are enrolled in college attend two-year institutions, HBCUs

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annually still graduate between 20 and 25 percent of all African Americans who receive four-year degrees and about 40 percent of African Americans with undergraduate degrees in the sciences and mathematics.

The 103 public and private HBCUs constitute about 3 percent of the nation's institutions of higher learning. They have always been strapped for resources and still are: about 80 percent of HBCU students qualify for and receive financial aid. HBCUs' endowments collectively total about \$1.6 billion. Harvard alone, by way of contrast, has an endowment of \$19 billion.

At Lincoln and Howard, my mind was developed by some great human beings. Charles Hamilton Houston², one of my Howard professors used to say that "...the black lawyers he trained at Howard would become social engineers rather than lawyers. That was our purpose in life."³ He was prescient.

My Life's Work Begins

For a number of years after graduation from law school, I was in private practice in Baltimore, but times were hard, and I had trouble making ends meet. After going with my mentor Charles Hamilton Houston on fact-finding tours for the NAACP Legal Defense and Educational Fund, Inc., a tax-exempt offshoot of the NAACP, to states like Virginia, Kentucky, Missouri and Mississippi, I knew that working against racism, discrimination and injustice was my calling. Everywhere Houston and I went, we saw Black people living under the not so lightly veiled threat of violence. As in the days of Plessy v. Ferguson, Black people were denied their basic rights and dignity, disrespected and disregarded. Most of us were dirt-poor, uneducated or undereducated. "Separate and unequal" was the order of the day.

Many people don't know that it took years for me and other members of the Bar and the poor people for whom and with whom we worked to get to the point where a positive decision in the case called Brown v. Board of Education of Topeka, Kansas, and its companions, was possible, but it did. From 1938 to 1952, I worked on everything from voting rights to anti-lynching cases. Did you know that in 1933, right in Princess Anne County Maryland, a Black man was lynched by a crowd of 5000 Whites? In fact, according to the NAACP, over 5,105 Black people, some of them women, were lynched between 1882 and 1936. I worked like a horse to help our people get rights to fair housing, to government benefits, to employment and, of course, to education. I worked on cases involving the desegregation of the military when World War II was being waged.

Working to change the law of the nation was critically important. We knew that if we could get the courts to interpose themselves in the struggle between the powerful and the vulnerable, between the majority and

² Of course, at the time I was coming along, neither Houston nor I nor any other Black lawyer could join the American Bar Association—wrong hue. But Houston worked with others to found the National Bar Association for us and it continues to function to this day, providing professional development opportunities and representing the interests of our community in diverse fora.

³ Williams, Juan. *Thurgood Marshall, American Revolutionary*. (New York: Random House, 1998), p. 55.

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the minority, we would gain a valued ally in our struggle for emancipation from inequality. More than that, we knew that we would be strengthening substantive democracy by ensuring that the brilliant scheme of checks and balances between our three branches of government set forth in the United States Constitution was functioning. We were the original “democrats” with a small “d.”

The movement of which I was a part was called the “civil rights movement”. When people use the term these days, some seem to suggest that civil rights is something small. Maybe it is *until you don't have any rights that others are bound to respect*.

We were part of something bigger than “civil rights.” With hindsight, I realize that the struggles of the Dalits of India against caste, the anti-apartheid movement of Nelson Mandela and the world community, the pro-democracy demonstrators in Tienamen Square, and the efforts of Afro Brazilians to expose the myth of the “great racial democracy,” all freedom movements everywhere are brother and sister to the civil rights movement of which I was a part. The African American struggle for freedom was the domestic arm of a noble, global movement for fairness and equality for all people.

Eliminating the color line in education was never far from my mind. In the 1940s, we NAACP lawyers decided to argue that even if schools were equal, which they were not, segregation was still illegal. We filed cases in over eleven southern states demanding integration. One of those cases was Sweatt v. Painter and involved an effort to desegregate the University of Texas Law School and we won it!

I got so excited over the Sweatt decision that I wrote: “The complete destruction of all enforced segregation is now in sight...Segregation no longer has the stamp of legality in any public education.”⁴ (Williams 195)

That was an overstatement. It was one thing to win cases involving professional education. It was another to tackle elementary and secondary school desegregation, an area that was bound to provoke the strongest backlash. Say what you will about us, we were bold! Outnumbered, outgunned, and fearless!

Buoyed by Sweatt, my colleagues at the NAACP, Spottswood Robinson and Robert Carter, and I decided to focus on elementary and secondary schools. One of the cases that we brought was Brown v. Board of Education of Topeka, Kansas.

Brown v. Board of Education of Topeka, Kansas

Our submission in Brown and its companion cases was, simply stated, that enforced separation based on race fostered not only unequal education opportunity, but also damaged the hearts and minds of students who were made to feel “inferior” to Whites. Our brief before the United States Supreme Court put the matter thusly:

⁴ Id. At 195.

The child who, for example, is compelled to attend a segregated school may be able to cope with ordinary expressions of prejudice by regarding the prejudiced person as evil or misguided; but he cannot readily cope with symbols of authority, the full force of the authority of the States—the school or the school board, in this instance—in the same manner. Given both the ordinary expression of prejudice and the school’s policy of segregation, the former takes on greater force and seemingly becomes an official expression of the latter.

Today, I hear some African Americans say, “I don’t care whether my child goes to an integrated school. My child doesn’t have to sit next to a White child in order to learn.” That may be. But you must remember that at the time we were arguing Brown, disparities in power between Blacks and Whites ensured that the only way our children could get a fair chance to have an equal education was if they sat in the same school with White children. We were pragmatists. We didn’t have many Black elected and appointed officials, a spine of anti-discrimination laws and policies, a burgeoning middle class or a developed and supportive constituency of Whites, Latinos, and Asians on which to rely. Our nation was not yet under the global human rights spotlight and forced to demonstrate its fidelity to equal justice under law in international fora in order to preserve its legitimacy and influence. Times were very different when Brown was being litigated.

Time does not permit me to regale you with the points and counterpoints made in the briefs and oral arguments related to Brown and its several companion cases but I cannot resist sharing one highlight with you. Listen to the demeaning way in which opposing counsel, John W. Davis, who had been a candidate for the presidency of the United States, summed up the question before the High Court :

I am reminded of Aesop’s fable of the dog and the meat: The dog, with a fine piece of meat in his mouth, crossed a bridge and saw the shadow in the stream and plunged for it and lost both substance and shadow. Here is equal education, not promised, not prophesied but present. Shall it be thrown away on some fancied question of racial prestige?...I entreat [my opponent] to remember the age old motto that the best is often the enemy of the good.⁵

Well, I never thought that segregation in education was a “good.” I thought it was an “evil.” Nor was there any doubt in my mind that recognizing the fundamental humanity and rights of Black people in relation to all others was an unqualified “best.”

When the Court finally ruled in the case, we were all ecstatic. In announcing the unanimous decision, Chief Justice Earl Warren said:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the

⁵ Id. at 224.

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performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

...[T]o separate {children in grade and high schools}...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....

We conclude that in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal.

It took years of “all deliberate speed” to yield modest progress in school desegregation across the South. Although most of you may be too young to remember the massive resistance that attended efforts to implement Brown, let me assure you that the decision unearthed some of the most shocking manifestations of deformity of the human spirit that anyone could ever see. School children, innocent school children, were jeered and threatened and had to be protected by federal marshals just to go to some of the schools. Inside of those buildings, many encountered and endured heart-wrenching hatred and maltreatment. Those children and their brave families sacrificed all to make way for a better day.

Impact of Brown v. Board of Education

What is Brown’s legacy today? It is difficult to isolate the consequences of Brown because the decision did not exist in a vacuum, but let me say this. Brown ushered in a whole array of activist efforts to reduce poverty and inequality and combat discrimination in all areas of life in America. It spawned a public interest law movement. It shored up the commitment of the federal judiciary to make the lofty values set forth in the United States Constitution come to life. It was the ray of hope that emboldened Martin Luther King, Jr. and millions of others to march and pray and organize and litigate in order to bring into being the spine of civil rights protections that we now enjoy. Brown created a new consciousness, a new social order, and a new value system.

In terms of education, alone, consider the following:

- Sixty-nine percent of Black children ages 5 and 6 were enrolled in school in 1954. By 2002, 96 percent of Black children were enrolled in school.
 - Twenty-four percent of young, Black adults ages 18 and 19 were enrolled in school in 1954. In 2002, the comparable figure was 58 percent.
 - There were 926,000 Black high school students in 1955. In 2002, there were 2.6 million.
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- Fifteen percent of Blacks age 25 and over were at least high school graduates in 1952; by 2002, this figure had risen to 79 percent.
- One million six hundred thousand Blacks 25 years old and over had a high school diploma in 1957. This number had risen to 16 million by 2002.
- In 1957, there were 252,000 Blacks who had at least a bachelor's degree. By 2002, there were 3.5 million Blacks with at least such a degree.
- There were 155,000 Black college students in 1955. By 2002, this number had risen to 2.3 million.⁶

Of course, these figures don't tell the whole story: they don't compare Black advances to those of Whites or other groups nor take into account population growth. Still, they show that we have made progress. I am not counseling complacency, but it is very important to celebrate progress made in this hard world.

As a methodological matter, it is most difficult to isolate the effects of integration on Black student achievement. Many factors contribute to underachievement and disparities—school finance, class, teacher and instructional leadership quality, health and nutrition, the absence or presence of parental and community support, the validity of test measures—and so much more. There is, however, evidence to support the idea that integration has yielded modest improvements in the educational attainment of some African American students.⁷

I am proud of the transformative impact of Brown and its progeny. But I will also be the first to say that the full promise of Brown has never been realized. Rather than work to improve the quality of education for all children in public schools, many Whites took their children out of the public schools after integration, robbing the schools of the opportunity to desegregate and their children and ours of the opportunity to benefit from integrated education. White flight caused by fear of integration and racism and segregated housing patterns yielded the patchwork of racially identifiable schools that continue to dot the nation, and especially the South.

The federal courts in later years became more hostile to school desegregation matters, especially where transportation is implicated, or where district lines have to be crossed. This has limited the opportunity for integration. Moreover, now that the courts have begun to declare school districts unitary, many school cases have been closed. Given the demise of *de jure* segregation, it is getting harder and harder to demonstrate that racially identifiable schools are the result of intended state action.

The era of school desegregation efforts ushered in by Brown is ending, but the work of Brown is not yet done. The same students, low income, rural, minority group students, as a group, still lag behind their more advantaged majority group counterparts. Inadequately funded mandates such as No Child Left Behind are

⁶ These data are derived from U.S. Census Bureau, *Facts and Features: Brown v. Board of Education: 50th Anniversary*. <http://www.census.gov/Press-Release/www/2004/CB04-FF03se.pdf> 2/25/2004

⁷ See: Orfield, G. and Lee, Chungemi. 2004. *Brown at 50: King's Dream or Plessy's Nightmare?* Cambridge: The Civil Rights Project. Harvard University.

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putting a contemporary spotlight on education inequality but more is required. Litigation brought under state constitutions challenging the adequacy of education afforded to low income students offers some judicial forum for redress of grievances but the process of remedy development and implementation is long and unsatisfying.

The inequality in education access and outcome with which I struggled for so long remains the most important issue of the day. I hope that you will pick up my mantle and work to reduce education inequality in finance, in access and in outcomes in all of its manifestations. What good does it do to have equal opportunity if due to lack of education you don't have equal ability to take advantage of equal opportunity? Make no mistake about it. Our future progress as a nation and as a people rests on our capacity to develop our minds to meet the challenges that the future and life will surely bring.

Message to Brothers and Sisters of the Association of Black Foundation Executives

Before I wrote this letter, I went back and read all of the prior James A. Joseph Lectures. I commend the exercise to you. They are an amazing and edifying blend of insights and ideas.

- Some lecturers focus on trends in and emerging forms of philanthropy in a changing world, the taxonomy of civil society and the nature of the charitable impulse.
- Others are blunt in expressing frustration—even anger—at a sector, the philanthropic sector—that has not yet fully integrated people of color into all of its ranks in sufficient numbers or which sometimes values the appearance but not the reality of diversity.
- Some lecturers have admonished members and supporters of the Association of Black Foundation Executives to unearth the devalued and largely unknown history of philanthropic practice among Blacks and lift it up for all to see. They have focused on the need to build sturdy institutions to serve our community for the long haul.
- Still others have been riveted on strategic issues of consensus and coalition-building, and the promise of effective work across boundaries of ethnicity and self-interest.

I happen to agree with most of what the lecturers have said but to their sage observations, I would add these concluding thoughts:

First, I hope that you will always remember that you are where you are, not just because of your own brilliance and hard work, but because people of all races and ethnicities, stations in life and prospects, who went before you glimpsed a noble vision of a fairer, more inclusive social order and then worked with all of their might to bring it into being. The civil rights movement always had two goals: The first was to secure equal opportunity for all people, not just the already privileged few. The second, which is too often forgotten these days, was to secure equal opportunity within a profoundly transformed, fairer and more open social order. We didn't struggle just so you could integrate the existing power structure. We worked so that you could transform it. Do you feel an obligation to work to promote diversity in philanthropy or

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other parts of the non-profit sector? Do you speak up to prompt critical self analysis about whether the institutions for which you work are using their funds strategically to optimize a benign impact on the “least of these?” Do you have a sense of connection with the growing mass of low-income people who populate the nation and seek to find ways to serve them?

Of course, I know that being spread thin across a bewildering array of institutions does not necessarily create critical mass or power, but each of you has a sphere of influence and a measure of access to information, resources, and ears of thoughtful people. You also have developed intellects, decent wages and occupy positions of respect in the communities of which you are a part. My question to all who read this letter, no matter your race, gender, orientation, religion, ethnicity, origin or class, is what are you using your access and influence for? What is your purpose in philanthropy? If you were run over by a car tomorrow, what would your colleagues and grantees say is your philanthropic legacy?

Second, if you look back on my life, you will see that I didn’t always say or do the politic thing, but I always tried to do the right thing. One of the things that I sought always to be was accountable to the people whom I was there to serve. Now these days, we read a lot about foundations and other institutions of organized philanthropy and issues of lack of accountability and transparency. I think that there is definitely room for improvement in this area. Let me tell you what I mean.

If you asked any ten people whom you know who are the Board chairs or presidents of the nation’s top largest foundations, I’ll bet that they couldn’t tell you. If you asked them to describe how monies that otherwise would have gone into the public coffers are dispensed through private hands, I’ll bet that they couldn’t tell you. Surely you don’t think that grantseekers are going to give you the kind of critical feedback that you need to improve philanthropic practice. They are too scared that they may never get another grant to tell you the truth.

No, I think that people within philanthropy have to rise to the level of self-criticism and ask themselves and their peers some tough questions. Why are there so few trustees of color at foundations? Why, given a burgeoning talent pool, are so few Blacks, Latinos and Asians in top positions? If the donor only funds the best and most capable institutions, isn’t that likely to ensure that emergent institutions of self-help from Black communities will be underserved and underrepresented among grant recipients? Is the “minority serving” rubric a functional way of addressing the needs of discrete minority groups whose pathways into and out of poverty, cultures and demographics may be remarkably different? Why are so few historically Black colleges and universities a focus of donors? Why are so few foundations willing to support litigation and/or advocacy organizations? If there is one overarching lesson from Brown v. Board of Education it is that litigation is a powerful means of not only redressing grievances but devising more equitable public policy. From whence cometh this aversion to things perceived to be “controversial?”

Third, I didn’t live to see the new century dawn, but I am sure that the color line, slightly blurred, has not yet disappeared. I am sure that the poverty line, if trend information is a portent of things to come, is becoming more distinctive all the while. At the century’s turn, in the United States, the bottom twenty

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percent of the nation's population received less than 5 percent of the nation's total income, while the top 20 percent received over 45 percent of the nation's income.⁸ This makes the United States one of the world's most unequal societies measured by wealth and income mal-distribution.

Is the growth in the number and resources of foundations a good thing or evidence of growing and dysfunctional inequality and stratification in the nation? Since there are few Blacks among the venture capitalists, how responsive will the new forms of philanthropic leadership be to our needs and concerns? Is anyone in philanthropy talking about these issues other than the Southern Education Foundation?

I wrote this letter to members and supporters of the Association of Black Foundation Executives. Of course, given the occasion and the sponsorship of the event, I have emphasized issues of particular concern to people of African descent. But let me say this as well, lest I be misunderstood. I know that "race" is a social construct without significance in the world of science as it relates to human beings. The battle for fairness that led to Brown, the continuing struggle for social justice in our nation is being waged by all types and hues of people. I fought all of my life to combat racism. So, my message here is not just for Black people. It is for *all* people. Remember that segregation was a Black and White relationship problem, not just a "Black problem." I believe as Ford Foundation President *Emeritus* Franklin Thomas said in his James A. Joseph Lecture some years ago, "we must all get there together."

Well, I have gone on overly long and probably vexed your spirit. That wasn't my intention. My intention was to simply to remind you that you have to stand for something in your life. This is not a dress rehearsal for life, as Dr. Lawrence N. Jones would say, this is the real thing.

You are my eyes, ears, lungs, voice and heart in this world. I see you from afar and hope somehow that the causes that gave my life meaning will speak to your sensibilities. More than that, I hope that you will remember me each time you hear someone talk about Brown v. Board of Education. That case and our cause was and is ultimately about becoming bigger than ourselves. It was and is about creating a stronger, better nation and respecting the dignity of all human beings.

Nelson Mandela in his book, "Long Walk to Freedom," recounts how his Dad, a fearless man, was once sent for by a representative of the apartheid government. His Dad refused to go, saying to the messenger. "Tell him that I cannot come because I am girding for battle."

My battle has ended, but yours rages on. Please don't let me down. Remember what my Brazilian colleague, Benedita da Silva, always says: "May my enemies live long so that they may see my victory." To this I add: "A man can't get on your back, if it ain't bent."

Sincerely,

⁸ The Southern Education Foundation. 2000. *Beyond Racism, Overview*, p. 37.

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Thank you.
