Remarks of Nicholas de B. Katzenbach

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REMARKS OF NICHOLAS
de B. KATZENBACH†

It is interesting to look back on *Brown v. Board of Education*, one of the great decisions of the Supreme Court of the United States, and examine how differently that decision is viewed today as compared to how it was received in 1954. The significance of *Brown* at the time, and for years thereafter, was political rather than educational. Although foreseeable, I do not think that those who argued the case considered this possible result. They argued education because, in the fight against racial discrimination, there was little progress made in other areas. The important thing about *Brown* at that time was that it disposed of *Plessy v. Ferguson*. In fact, the Court realized that nothing could be done about racial discrimination until *Plessy* was overturned. Despite the Thirteenth, Fourteenth, and Fifteenth Amendments, the Supreme Court in *Plessy* held, in essence, that the States could confront racial situations as they wished. Thus, states created the "separate but equal" doctrine, which was based upon police power, and instructed the states to do whatever their best judgments dictated to keep peace among the races. In the South, this meant a caste system, and the situation in the North was not much different as there was a great deal of prejudice there as well.

The Court wanted to eliminate *Plessy*, however, some of the Justices—even the more liberal ones—recognized that the consequences of overruling *Plessy* were enormous. Chief Justice Warren recognized that it would require a unanimous court, but even more was needed. As the record would indicate, the Justices were concerned about the enforcement of a decision holding school desegregation unconstitutional. This is a very interesting question because, normally, when the Supreme Court of the United States has spoken about the Constitution, their

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word is the law and it is carried out. That was not true after Brown: The Court was not prepared to carry its out mandate nor were the states; particularly the southern states, where segregation was a matter of law.

Jim Crow laws were prevalent throughout the South. This caste system was supported by the Plessy decision. The concept of "separate but equal" could never be achieved through segregated educational opportunities. This could be seen in graduate schools, law schools, and other educational institutions. Even in the primary schools it was too expensive to create separate schools that were genuinely equal. When Plessy was overturned, the whole political system was forced to deal with segregation. Essentially, Brown rejected the validity of any type of caste system, not just in education, but in other areas as well. This breakthrough allowed Dr. King to hold sit-ins and marches, and permitted the Justice Department to become deeply involved in civil rights litigation.

By themselves, these responses to Brown had little positive impact on the states. In fact, it can be argued that Brown almost had a negative impact by creating a massive resistance by Southerners opposed to the decision. They argued that the Supreme Court was not following the Constitution in that the decision resulted from judicial activism. Conversely, others claimed that Brown opened the way for Dr. King. Brown supporters also claimed that segregation had a harmful impact on the nation in the international sphere, as well as negatively impacting the domestic economy and the military. For those of us at the Justice Department, Brown also opened a path toward genuine revolution. We felt, as the Court indeed believed, that the first step in moving toward a genuinely colorblind society was to remove the caste system. If the nation removed enforced segregation it could begin the legislative process to address other race problems. The prevalence of racial bias and discrimination in this country was the basis of the Supreme Court decision in Plessy. This was the reason for the laws enforcing segregation. Those laws did not exist in the North because there were relatively few blacks, and private discrimination, which was lawful, served a purpose similar to de jure segregation.

Dr. King and his marches took advantage of what the Legal Defense Fund had done, and for that reason, I think that Thurgood Marshall and Dr. King never could get along. One was
interested in the courts, and the other was interested in
demonstrations. In a way, the successes in the courts made the
demonstrations possible. Nevertheless, it was the
demonstrations, coupled with television, that made political
action possible in 1964. The impact of watching Sheriff Clark
with his hoses and cattle prods hurting peaceful blacks—young
and old—was too overwhelming, and it led to the enactment of
bipartisan legislation in Congress in 1964, and then again in
1965.\(^3\)

The political impact of the demonstrations did not have
much relation to schools. It helped to integrate the University of
Mississippi and the University of Alabama, but institutions of
higher education were primarily integrated because individuals
in higher education wanted to integrate. These attitudes were
not true at the grade school level. While I was at the Justice
Department, I remember a group of white and black mothers
who came in to discuss busing. The thing that impressed me the
most was that they were all in disagreement and all in
agreement. Their disagreement was about busing, but what
they all wanted a better education for their children. To one
group, that meant busing; to the other, it meant no busing.

The modern education system is still largely segregated. In
a way, the situation is better in the South because the housing
patterns are somewhat more integrated. The South lacks the
problems that cities such as New York, Newark, Philadelphia,
Chicago, and Los Angeles face with respect to segregated
housing patterns and schools.

As I look forward, I think we have come full circle. Today,
what is not working with respect to race is education, because we
live in a society that absolutely demands an educated citizenry.
Educated citizens can be productively employed, affording them
the possibility of upward mobility. So, we have returned to
where we were in 1954, with education being the most important
issue with respect to racial problems in this country.

The final issue I want to raise is something that concerns me
and is something to which I do not have a solution. Our modern
political system has its failures in many respects and
particularly with certain decisive issues. One such issue is race.

We lack the required leadership in the political process. This deficiency was understandable, at least in 1954, because the problems of the South necessitated a judicial decision. Today, we turn to the courts because we do not see any alternative. We look to the courts to solve problems that, in all honesty, should be solved by our political leadership. My concern is that in the long-run this is not good for the political system. Looking back to the 1960s, I find it interesting that the South had strong feelings about the Supreme Court and its decisions and orders. Decisions have been handed down, but despite these efforts, little has been done to significantly improve the educational system. I am not stating that the court is not a proper forum for these issues, but I think the focus should be on trying to make the political system work. If we can make the political system work, then the courts will be in a better position to protect us all in the areas where we need the most protection.