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Angela Mae Kupenda

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ESSAY

**TO WHOM IT MAY CONCERN:
RE: *BROWN III***

ANGELA MAE KUPENDA*

I am writing this letter to solicit your support for a complaint to be filed in a very important case, *Brown III*. The work from the two earlier *Brown* cases is incomplete. In *Brown I*,¹ the United States Supreme Court held that, as to racially segregated public education, separate was inherently unequal and therefore unconstitutional.² The case was in response to the state mandated segregation of the races in public education, especially in the southern part of the United States. After *Brown*, many school districts and states expressed their resistance to the decision and acted to impede any compliance with the Court's holding.³ More specifically, white citizens challenged the authority of the Court, refusing to send white children to school with black ones.

This hostile response necessitated another decision, *Brown II*.⁴ In *Brown II*, the United States Supreme Court faced off with the school districts, governors and others who refused to implement school desegregation, and shaped a remedy. The Court hedged, however, by saying that desegregation should be carried out with "all deliberate speed,"⁵ which was interpreted as meaning with moderation or slowness.⁶

As a result, although I was born in Jackson, Mississippi, in 1956, two years after *Brown I* was decided, I did not attend a class with white students until the 1970-71 school year. Admittedly, in spite of the resistance to *Brown*, the decisions still accomplished some goals. Along with the end of *de jure* segregation in public education, *Brown* has-

* Associate Professor, Mississippi College School of Law.

1. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

2. *Id.* at 495.

3. *See, e.g.*, *Cooper v. Aaron*, 358 U.S. 1 (1958).

4. *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

5. *Id.* at 301.

6. CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION* 10-11 (2004).

tened desegregation in other aspects of American life.⁷ Yet, as a country, we have never fully learned the lessons of *Brown I and II*. Many public schools, though no longer segregated by law, are now segregated by fact.⁸ Many schools populated by racial minorities receive less funding and support than the schools populated predominantly by white children.⁹ Moreover, the dismantling of segregation in public education has not eliminated all racial disharmony and inequities in this country.¹⁰

We are in need of a *Brown III* to address these realities. Unlike *Brown I and II*, *Brown III* will not be litigated in the courtrooms; rather, *Brown III* must be attacked on both individual and societal fronts. So, today I write to solicit your support in this effort. I write to ask you to join me in filing a complaint to litigate *Brown III* in the hearts and minds of Americans. To demonstrate the necessity for you to join this class action against racism, I will illustrate three lessons we have failed to learn from *Brown I and II*. *Brown III* will give us an opportunity to finally learn these lessons.

I. LESSON ONE

One of the lessons that we have failed to learn as a country from *Brown* is that we are created equal and are entitled to equal regard. Our failure to learn that lesson holds us back as a country from true greatness.

Until 1970, my ninth grade in school, I attended classes with all black students. That year, a few white students came to our otherwise black school, West Side Elementary and Junior High School, which was located right outside the Jackson, Mississippi city limits. However, the following year we were to be transferred to the predominately white Forest Hill High School, the home of the Rebels, where the band uniform resembled a confederate military uniform.

I learned in May of 1971 that I would be the valedictorian of my predominantly black junior high class. I was quite proud as I had worked very hard to become successful. My family was having difficulties, financial and otherwise. My parents had recently separated

7. See OGLETREE, *supra* note 6, at 13.

8. See Erica Frankenburg, et al., *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*, at <http://www.civilrightsproject.harvard.edu/research/reseg03/AreWeLosingtheDream.pdf> (Jan. 2003) (copy on file with the North Carolina Central Law Journal).

9. The Court has resisted efforts to dismantle de facto segregation. See *Milliken v. Bradley*, 418 U.S. 717 (1974). The Court has also declined to hold education a fundamental right. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (holding education is not a fundamental right and that disparities in the funding of education are not violative of the equal protection clause of the Constitution).

10. See, e.g., FBI: *Race bias behind more than half of '03 hate crimes*, THE CLARION LEDGER, November 23, 2004, at 3A.

and my mother was working two jobs and raising us alone. I assumed that one of the other black children, who had transferred to West Side from a private school and whose parents were professionals, would be the class valedictorian. So, I was pleasantly surprised when I learned I would give the valedictory speech.

Perhaps, I was looking just a little too proud, because one of the black teachers approached me and said, "Angela, you might as well enjoy all of this now, for next year you will be going to the white school. And you won't be making all those A's over there. You see white kids are just smarter than black kids." I looked at her strangely, and she met my gaze and said, "I am not trying to hurt you; I'm just trying to prepare you." I quietly said, "Yes ma'am," but I did not really believe her. I had a few white classmates, and they just seemed like people to me; so I was confused about her remarks.

That night at home, I told my mother the story, and she said to me, "Doesn't that Negro woman know that black kids are just as smart as, or smarter than, white kids? You will still make A's because you are a smart girl." The following year I was bussed to the white school, and although I experienced racial struggles,¹¹ I still received good grades.

By the eleventh grade, I was beginning to tire under my heavy academic load, and so I enrolled in a class that was supposed to be easy. I quickly realized how boring class would be, and on the second or third day I decided to drop the class and take chemistry. I left the easy class that morning and immediately went to the academic counselor. My academic advisor quickly reviewed my grades, made the change and sent me straight over to the chemistry class. I rushed into the chemistry classroom after class had started that morning. I went up to the elderly white teacher and told her I had enrolled in the class. She looked me up and down several times, and the classroom became quiet and still. Then, as she continued to look me up and down, she almost spat out her words as she said, "You . . . you . . . you . . . want to take chemistry . . . you think you can handle this?" Her voice grew louder and louder as she spoke. The white students and the privileged black students in the room just stared at me. At that moment, I became so afraid that I wanted to run out of the room, but instead, I managed to murmur, "Yes ma'am." She assigned me a seat, but did not give me a book for several days.

11. By that time the racism at the predominantly white school had become more covert. Although blacks were subtly excluded from activities and positions, only occasionally were we publicly called "niggers." However, the covert racism, fear, exclusion and hate were at times unbearable. At the black school, I experienced a form of hazing, but nothing as institutionalized as what I experienced at the white school. At the black school, my classmates had either befriended me, respected me for my hard work, tried to copy off my work, or picked on me. By the ninth grade, I had friends who stuck by me through most of the teasing.

I eventually told my mother about this, and she replied, "That is one Caucasian woman who does not know what she is talking about. You are smart and don't be afraid to let them know you are smart." I worked very hard in that class and eventually the teacher saw for herself that I was capable. The whole school saw I was capable when I became the first black valedictorian at Forest Hill High School in 1974. I had proven something to them and myself. However, I lost something along the way. I was so busy trying to prove my capability that I lost my love of learning the sciences.

If my experience was the extent of the problem, then there would be no real need for *Brown III*.¹² However, across America, the abilities of blacks are still unfairly critiqued. For example, many years later, when I completed law school, I remember calling one of my graduate school professors to tell him that I had graduated first in my class. I will never forget the response of this dignified white professor. He said, "Congratulations, your law school must be a black school."¹³

I share these stories as support for my request. Please join me in my complaint for *Brown III*, for America still needs to learn a valuable lesson from *Brown*. The lesson still unlearned is that all people are created equal. The societal myth, that black people are less capable, hinders blacks, as we must struggle against doubts and the barriers that others' doubts cause. As a result, all of America loses. The little black girl steered away from science classes may actually have, in her brain and spirit, the cure for cancer. Similarly, unearned privilege and the assumption of capability bestowed upon the white child may actually hinder him from truly excelling and proving himself. The little white boy presumed to be smart that does not have to work as hard, may not work hard and the cure for diabetes that lies within him will go undiscovered, for unearned privilege incites laziness.

If we can learn from *Brown* that all people are equal, our whole country would benefit. The power of America is derived from its human resources. We underutilize our black citizens when our judgments of them hinder their development. Moreover, we underutilize our white citizens when our judgments of them lure them into complacency and dissuade them from striving for their full potential. *Brown* can become an even greater victory, and our country a better nation, when we learn to judge and reward the "content of character and not the color of skin."¹⁴

12. Although a need for affirmative action remains and, perhaps, some type of reparations might be in order to compensate individuals like me for all we have lost because the shackles of slavery and Jim Crow kept us from learning and competing.

13. It was not. But, I would have been proud if it had been.

14. Martin Luther King, Address at the Lincoln Memorial, Washington D.C. (Aug. 28, 1963).

II. LESSON TWO

Brown III is also essential because we have yet to learn the lesson that knowledge is freedom. Many of us prefer to be in the known valley of ignorance than risk the unknown peaks of knowledge. Part of our education comes from learning from others who have different backgrounds. Recently, in holding that diversity is a compelling government interest, the United States Supreme Court stated that classroom diversity produces “cross-racial understanding,” breaks down racial stereotypes, “promotes learning outcomes,” and “better prepares students for an increasingly diverse workforce [and] society.”¹⁵

America’s general fear of the results of learning and knowledge can be traced back at least as far as its enslavement and mistreatment of blacks. Slaves were denied access to learning, because the white system feared they would become humans, unfit for slavery.¹⁶ However, the dehumanization of the black race also resulted in the dehumanization of the white race. The white race’s attempt to perpetuate the ignorance of the black race led to the continued ignorance of the white race.

For example, when I was in the tenth grade at a predominantly white high school, I enrolled in an American History class. The white teacher spent approximately ten minutes of class time discussing slavery, the Civil War, Reconstruction, Jim Crow, and the Civil Rights Movement. The only reason that much time was spent on the subject was because a white girl in the class innocently raised her hand to ask the teacher to explain the KKK because she had never heard of them. The teacher took several minutes to hush the laughter and whispering of the black students and another few minutes to delicately phrase her response to my classmate’s question.

I plead with you, therefore, to join us in the *Brown III* suit. The continued ignorance only leads to more fear and misconceptions. A few years ago, in the Civil Rights course I teach, I assigned several readings on poverty issues. An Asian American law student approached me after class to tell me how much she enjoyed the readings. She said that before reading the assigned materials, she did not know that any poor mothers cared about their children. I asked her where she got such an idea. She explained that she formed her belief from television, where according to her, no poor women were pictured who

15. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (upholding law school affirmative action program).

16. See FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE 79 (Houston A. Baker, Jr., ed., 1982).

care about their children. She further explained that she had thought the media would never convey that idea unless it were true.

Ignorance means not knowing or being uninformed. The ignorance of some Americans seems to be almost intentional, and it is at least a negligent or reckless ignorance. In the history classes in our schools, we teach young people the stereotypical assumptions of American Indians, blacks and other minorities. We ignore the rich heritage, various points of view and extensive societal contributions of these groups. If race is discussed in other contexts, it is done so, even in law schools, in only narrowly defined courses. These courses are not required, even for law students who may go on to become uninformed lawyers, deans, judges, or even Presidents. White students may complete their legal education still in racial ignorance, with little or no contact with individuals of other races and with little or no education about race.

The ignorance seems intentional. The system seems intent that the “good cowboys and bad Indians” story and the “happy and stupid slave” story will continue to be perpetuated and that these minority groups will continue to be considered inadequate and too ignorant to compete in the American society. Actually, the inadequate ones are those who choose to remain ignorant of the understanding of minority groups and their truths. Blacks and other minority groups cannot be ignorant of whites and survive, for many blacks work and live almost exclusively in predominantly white systems. Many whites, however, intentionally or not, avoid the exposure which can educate and provide them with more insight about others.¹⁷

Even if the ignorance is unintentional, it is reckless. A lack of knowledge of others leads to continued racial disharmony which results in the underutilization of human potential and the perceived need to spend more on prisons, policing authorities, gated communities, legislation to address racial discrimination, and discrimination lawsuits. This lack of knowledge plays into a third failing grade for a lesson we have not learned under *Brown*.

III. LESSON THREE

We have not yet learned that it is critical to play and work well together, even if we have to modify the game. In 1970, when I was

17. As the Court stated in *Grutter*, education about others is important to function well in our diverse society and world. *Grutter*, 539 U.S. at 330 (“[Diversity] benefits are not theoretical but real, as major businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”) If diversity is critical at the level of professional education, certainly it is also critical in pre-college education to better equip the masses.

attending a black junior high school, a small group of white students were sent to the school. That year, the black students got together and discussed notions of inclusion and exclusion. We decided to encourage the white students to run for school offices, try out as cheerleaders, play on the basketball team, try out for the dance troupe and otherwise actively participate in our school activities. Black students who were good dancers taught the white girls the dance steps for the dance troupes. When the white students ran for office, we supported them and made sure they had representation in the major school activities. Unfortunately, we were not welcomed the same way at the predominantly white high school.

At the predominantly white high school, black football players, however, were welcomed. But, they were later punished for refusing to stand at attention during a pep rally as the band, attired in Confederate looking uniforms, played "I wish I were in Dixie." Blacks were welcome in the choir, although one year a black male student who could sing and dance well had to sit out of the performing group because no suitable black female partner was found for him. The choir director refused to allow him to have a white girl as a partner, even though the white girl was willing. It took many years before a black cheerleader was elected to the team. If we were close in electing a black cheerleader or black student to a school-wide office, the student council would always hold a run-off between the top two candidates, and the black student would usually lose.

In my last year of high school, we decided to try to get a black student elected in our homeroom classes, instead of a school-wide office. In my homeroom, we tried everything: soliciting white votes, nominating blacks most liked by whites, nominating additional whites in an attempt to split the white vote. Our efforts were to no avail. As the last two officers were being elected in my homeroom, the white student presiding started to count the votes but then said there was no need to count "those" votes as she already knew they only had eight. Then, a bold voice was heard from the back of the classroom, "No, they have nine." Another said, "No, we have ten." Several of the white kids, who were ostracized by the other whites because of their weight or some other inconsequential characteristic, took a stand and voted with us. Nevertheless, we still did not get enough votes. After that, we thanked the bold white students and sort of withdrew emotionally from the rest of the meeting and began working on our homework. The white teacher called me outside to say, "Do not give up." I asked him why he would not help. He said there was nothing he could do. He was unwilling to speak to the class about inclusion and fairness.

CONCLUSION

If these incidents were the end of the story, there would not be a need for *Brown III*. Unfortunately, even today, there is an assumption by some that blacks are inferior and that whites are superior. Moreover, many Americans seem to flee from knowledge and seem to actively silence individuals who attempt to open racial dialogue and more accurately deliver lessons on our true American history. And, blacks are still excluded in our society, as often Americans of various colors do not work and play well together. Blacks are taken for granted by some and directly injured by others.

The problem is often perceived as a black problem, which blacks alone must resolve. If white America could see that it too loses from the unresolved racial conflict and inequities, would it change? The point of *Brown III* is this: to urge a change from the inside. Please join me in this complaint.

The clock is running.¹⁸ It is past time for America to learn the lessons of *Brown*, of equality, of a rejection of feigned or real racial ignorance, and of learning to work and play well together. I will be looking forward to your audible response.

18. The Court expects that "25 years from now, the use of racial preferences will no longer be necessary" *Grutter*, 539 U.S. at 343.