THE 6TH CIRCUIT COURT AND THE CONSTITUTIONAL RIGHT TO A FOUNDATIONAL LEVEL OF LITERACY

Throughout U.S. history the courts, Congress, local legislatures, and the executive branch of government have resisted the idea that public school students have a constitutional right to meaningful education. Our decades of work with the Algebra Project bring this into sharp focus. The lack of opportunity rooted inside the educational system, and with mathematics in particular, continues to lock generations of youth from full participation in democracy and the economy, basically making full citizenship impossible. Furthermore, the caste system created by this failure has broadened to include not just blacks, but people of color and people living in poverty.

On April 24 of this year, the 6th U.S. Circuit Court of Appeals at Cincinnati ruled that there is a Constitutional right to a “foundational level of literacy.” This opens a small window that raises the possibility to meaningfully turn around this long-standing disparity.

This is an organizing opportunity – a time to make it clear to the many who will not know of this 6th Circuit ruling and what implementing it will mean to those being left out of equal educational opportunity. Now is the time to generate pressure. I have spent a lifetime both participating in and witnessing the critical connection between organized pressure directed at laws and lawmakers and achieving meaningful change. In the early 1960s, field secretaries of the Student Nonviolent Coordinating Committee (SNCC) of whom I was one, organized a campaign aimed at gaining the right to vote—an insurgency really—which led to the federal Justice Department bringing suits against the states of Mississippi and Louisiana.

The result was a legal challenge to what had been a longstanding compromise since 1877 when President Rutherford B. Hayes removed federal troops from Louisiana, ushering in a post-Civil War reinstatement of white supremacy and a racial caste system that endured for close to a century, locking blacks out of voting and full participation as equals in the nation’s political and economic structures. Not until the Civil Rights Act of 1957 do we see a potential opening in this political fabric – an opening which still required

sustained organizing by SNCC in tandem with those of local African Americans in these communities who had been engaged in struggle for generations.

This 6th Circuit decision and what it says about Detroit schools opens up an actionable window on the soul of how this caste system has endured in education up to the 21st century. Education, and math in particular, has become the voting rights issue of this time. We have a chance to get it right – to make the nation whole on its promises to "we the people" – to make sure that a foundational level of literacy is a paramount constitutional right.

These feel like the same conditions facing young people in the early civil rights years, erupting initially in the sit-ins at HBCUs in 1960. Out of that energy, SNCC was formed and we put the issue of political literacy front and center. In that window of opportunity, most importantly, in Mississippi and elsewhere in the Southern Black Belt, SNCC organized literate and barely literate African American Sharecroppers to breach the levee of Southern Democrat White Supremacy shielded by the National Democrat Party. The Mississippi Freedom Democratic Party (MFDP) sent a delegation to the Democratic Party's national convention in 1964. At the convention, although then President Johnson tried to shut her down, the exquisitely literate sharecropper, Fannie Lou Hamer, stirred the conscience of the nation when she said: "I question America."

That indeed the nation was embroiled in a national conundrum had been clearly articulated by Assistant Attorney General for Civil Rights, Burke Marshall, when earlier in 1964 he wrote that President Kennedy sought "a national commitment to meet the moral dilemma caused by our historical acceptance of a caste system weighted against Negroes." In short, the President was saying that when it came to civil rights, the federal government had both a role and a responsibility to do something.

The point already had traction: James Bryant Conant, in his 1961 book, "Slums and Suburbs," wrote:

"The people of the United States through their duly elected representatives in Congress acquiesced for generations in the establishment of a tight caste system as a substitute for Negro slavery ... As we now recognize so plainly, but so belatedly, a caste system finds its clearest manifestation in an educational system."

Furthermore, while Burke reminds us that Constitutional rights cannot be segmented to deal with race, Judge John Minor Wisdom, writing for the majority in *United States v. Jefferson County Board of Education*, 1967, provides the definitive truth about the Constitution and race.

"The Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is colorblind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate government purpose."

What does it all mean – as we stand here today – as witnesses to the 6th District's decision? To Ella Baker, it meant "facing a system that does not lend itself to your needs and devising means by which you change that system." That window is open – BUT we will need organizing to create an educational constituency strong enough to pass education legislation similar to the 1957 Civil Rights Act which established the Civil Rights Division of the Justice Department along with an Assistant Attorney General for Civil Rights and provided direct investment and involvement of the federal government in voting regardless of the action or inaction of the several states.

Putting into practice this 6th Circuit "fundamental right" to "foundational literacy" will require recognizing and dismantling the Nation's current educational caste systems – which for reasons of race, poverty, ethnicity and gender are relegating some to a limited participation in the current democracy and its opportunities. What it took to successfully wage a struggle for African American voting rights should remind us that this is no small matter and that the 6th Circuit Court decision offers us a foothold in the ground for today's activists to establish organizing efforts to demolish the nation's educational caste systems.

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