SOUTHERN SCHOOLS

TOKEN DESEGREGATION AND BEYOND

BY J. KENNETH MORLAND

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J. KENNETH MORLAND
Professor of Sociology
Randolph-Macon Woman's College
Lynchburg, Va.

SOUTHERN REGIONAL COUNCIL
5 Forsyth Street, N.W.
Atlanta 3, Georgia

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Speed, Not Deliberation

It is now more than nine years since this court held in the first Brown decision . . . that racial segregation in state public schools violates the equal protection clause of the 14th Amendment. . . .

. . . we cannot ignore the passage of a substantial period of time since the original declaration of the manifest unconstitutionality of racial practices . . . the repeated and numerous decisions giving notice of such illegality, and the many intervening opportunities heretofore available to attain the equality of treatment which the 14th Amendment commands the states to achieve. . . . Given the extended time which has elapsed, it is far from clear that the mandate of the second Brown decision requiring that desegregation proceed with "all deliberate speed" would today be fully satisfied by types of plans and programs for desegregation of public educational facilities, which eight years ago might have been deemed sufficient. Brown never contemplated that the concept of "deliberate speed" would countenance indefinite delay in elimination of racial barriers in schools, let alone other public facilities not involving the same physical problems or comparable conditions.

—Mr. Justice Goldberg, speaking for the Supreme Court in the case of *Watson v. Memphis,* decided May 27, 1963. The decision, which was unanimous, ruled that, public parks in Memphis, Tennessee, must be desegregated at once, not with "deliberate speed."

Introduction

A NEW TERM—"token integration"—has emerged in the struggle for racial equality in public schools in the South. Although employed in more than one way, the term is generally used to describe deliberate efforts to keep racial integration at a minimum. It differs from "massive resistance," aimed at preventing any integration, for it allows for some breakdown of racial segregation. But token integration has essentially the same goal as massive resistance: it seeks to preserve, in effect, the established pattern of segregation. Thus it differs from gradual desegregation which urges a slow pace in the process of changing the segregated pattern, but which at the same time envisions the elimination of segregation eventually.

Authors and advocates of plans providing for token integration have made clear their hope that such plans can prevent sizable change. For example, consider the arguments used in support of North Carolina's Pupil Placement Act of 1955, which, including local option and transfer provisions, constitutes a plan for token integration. The report of the North Carolina Advisory Committee on Education, urging adoption of the plan, began describing the problem confronted by public schools in the state:[1] "The educational system of North Carolina has been built on the foundation stone of separation of the races in the schools. . . . The decisions of the Supreme Court have destroyed our foundation on segregation required by law. . . ." The report pointed out that defiance of the Supreme Court would be "foolhardy" because it would alienate those who might be won to the segregationist's way of thinking and it could mean "the closing of the public schools very quickly." To avoid such alienation and the closing of schools, it suggested that a child not be barred from a particular school solely because of color since this had become unconstitutional. Nevertheless, racially separate schools could be maintained, the framers of the report believed, through a form of natural and voluntary separation in the following way: ". . . an administrative body may well find . . . that under local conditions it may not be feasible or best for a particular child to go to a particular school with children of another race. *A color bar by law is one thing. A factual local condition bar, even if color is one of the causes of the condition, is a different thing.* . . . We believe that members of each race prefer to associate with other members of their race *and that they will do so naturally unless they are prodded and inflamed and controlled by outside pressure.*" The writers of the report concluded by saying that they were ". . . proposing the building of a new school system on a new foundation—a foundation of no racial segregation by law, but assignment according to natural racial preference and the administrative determination of what is best for the child."

In sum, token integration plans are designed to meet the demands of the

[1] The full text of the report is found in *Race Relations Law Reporter*, Vol. 1 (1956), pp. 581-586.

Supreme Court by allowing some integration while still keeping the number of Negroes in school with whites at such a low level as to maintain *de facto* segregation. Token integration, then, is an end in itself—an end in which the established patterns of segregation prevail.

What are the various plans of token integration, and how well have they fared in the courts? What have they accomplished, and at what price, financial and human? What is the rationale behind token integration, and how soundly based is such rationale? These are among the questions with which this report will deal.

Methods of Keeping School Integration at Token Levels[2]

Pupil Placement Plans

A basic method for keeping desegregation in public schools at token levels has been through the adoption of public placement laws. The eleven former Confederate states[3] have passed such laws, which, in essence, authorize either a state or local board to assign pupils individually to different schools. The criteria for assignment range from a few broadly stated principles, such as "orderly and efficient administration of the school," to as many as 20 or more detailed considerations. Included in the latter may be the availability of teachers and transportation, the pupil's preparation and ability, the moral and health condition of the pupil, and the anticipated effect of the admission on other pupils and on the community itself. None of the plans mention race itself as a criterion of assignment; instead, they allow the operation of racially separate schools to shift to other grounds. Hartwell B. Lutz pointed this out in commenting on the Alabama Pupil Placement Law when he said that it was:

> . . . of common knowledge that the bill was passed with the intention of preventing, or, at least, delaying racial integration. The manner in which the bill might accomplish this is obvious; when a Negro child applies for admission to a white school, the Board of Education can simply assign him to a school that has only colored pupils on any one of approximately 20 grounds.[4]

In actual operation pupil placement laws have been used with the assumption that initial assignments could be by race. Negroes have been assigned to all-Negro schools and whites to all-white schools, even though ostensibly on criteria other than race. The limited amount of integration that has taken place has come through application for transfer from the school of initial assignment through provisions of the placement laws. If an individual wishes to contest his assignment, he is allowed to do so, but he must carry his request through an involved and cumbersome administrative route. Just how elaborate this procedure may be is illustrated by Section 4 of the North Carolina School Placement Law:

> Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county. . . . Upon such appeal,

[2] Among the sources relied on in this section are the following: *Race Relations Law Reporter* (published by the Vanderbilt School of Law); U. S. Commission on Civil Rights, *Civil Rights USA: Public Schools, Southern States, 1962* (Washington, D. C.: U. S. Govt. Printing Office, 1962); G. W. Foster, Jr., "1960: Turning Point for Desegregation?" *Saturday Review*, December 17, 1960, pp. 52-54; G. W. Foster, Jr., "Token Desegregation and the Law," a working paper.

[3] Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, (see U. S. Commission on Civil Rights, *Civil Rights USA: Public Schools, Southern States, 1962*, p. 4, footnote 12 for reference to where these plans might be found).

[4] Hartwell B. Lutz, "School Placement Bill—Its Practical and Legal Effect on Racial Segregation," *Alabama Law Review*, Fall, 1955, p. 229.

the matter shall be heard *de novo* in the superior court before a jury. . . . The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by any interested party or by the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions.[5]

In practice, the children who have applied for transfers from schools to which members of their race have been assigned have almost always been Negroes. Thus, actual integration of schools has depended upon whether Negro parents and their children were willing to go through time-consuming, expensive steps to contest the initial assignment, as has been well pointed out by a law professor at the University of North Carolina: "A Negro parent seeking to assert his child's constitutional rights to attend a desegregated school in some sections of the South must have unlimited courage, resources, time, and energy to litigate with the massed power of the state. He must also be prepared to face economic, and, sometimes, physical sanctions."[6] The comparatively few Negro children who have successfully protested their assignment and who have been admitted to former all-white schools have constituted the "token" numbers of Negro pupils in school with whites. Because there have been so few, the pattern of racial segregation has, in fact, prevailed where placement laws are the only means for desegregation.

School Closing, Tuition Grants

A number of states with pupil placement laws have included "local option" provisions which allow communities to close schools ordered to desegregate. The arrangement has usually been to leave the decision of continuing or suspending the operation of schools up to the localities themselves, either through vote or through the action of the school board or board of supervisors. In order to make school closing legal, constitutional statutes requiring the state to maintain public schools have been amended. The North Carolina local option act gives the rationale for such a provision in the following way:

It is . . . recognized that our public schools are so intimately related to the customs and feelings of the people of each community that their effective operation is impossible except in conformity with community attitudes. Our people in each community need to have a full and meaningful choice as to whether a public school, which may have some enforced mixing of the races, shall continue to be maintained and supported in that community. It

[5] *Race Relations Law Reporter*, Vol. 1 (1956), pp. 240-241.
[6] Daniel H. Pollitt, "Equal Protection in Public Education: 1954-61," *American Association of University Professors Bulletin*, Vol. 47 (1961), p. 205.

is the purpose of this Act to provide orderly procedures, consistent with law, for the effective expression of such choice.[7]

The act then spells out how a board of education may call for an election on the question of closing public schools. It was under a comparable Virginia provision that Prince Edward County closed its schools in 1959.

Another device for avoiding integrated schooling has been the offer of tuition grants to allow pupils to attend private, nonsectarian schools instead of public schools. Six states—Alabama, Arkansas, Georgia, Louisiana, North Carolina, and Virginia—have passed such legislation.

The Louisiana Act states:

> . . . it is the policy of this state to encourage the education of all of the children of Louisiana. In furtherance of this objective, and to afford each individual freedom in choosing public or private schooling, the Legislature finds that it is desirable and in the public interest that financial assistance should be provided from the public funds of the state for education of the children in private non-sectarian elementary or secondary schools in this state.

In order to allow children to withdraw entirely from public schools if they are integrated to any degree, several states have amended compulsory school attendance laws. The Virginia provision reads, in part: "Notwithstanding any other provision of law, no child shall be required to enroll in or attend any school wherein both white and colored children are enrolled."[9]

Restrictive Transfer Provisions

Still another way of keeping integration at low levels has been the grade-a-year or stair-step plan. Nashville was the first city to utilize such a plan. It began desegregation with the first grade in the fall of 1957 and reached the sixth grade in the 1962-63 session. Initial assignment in most plans has been made on geographical proximity, the child being assigned to the school nearest him. But Nashville and most of the other cities adopting such a plan have allowed those children assigned to a school in which they were in a racial minority to transfer to the nearest school in which their race is in a majority. Such a transfer provision has been aptly termed "restrictive," for it applies to certain children and not to others.[10] Whites in predominantly Negro schools may transfer under this provision while Negroes in that school may not; Negroes in predominantly white schools may transfer while whites in that school may not.

The effect of this restrictive transfer arrangement has been to resegregate the previously all-Negro school. As a rule, white children assigned to all-Negro schools seek and are automatically granted a transfer to the nearest school in which whites are in a majority. Some Negro children assigned to all-white schools ask for a transfer, and those remaining constitute the comparatively few in integrated schools.

[7] *Race Relations Law Reporter*, Vol. 1 (1956), pp. 934-935.
[8] *Race Relations Law Reporter*, Vol. 7 (1962), p. 921.
[9] *Race Relations Law Reporter*, Vol. 1 (1956), p. 1096.
[10] U. S. Commission on Civil Rights, *Civil Rights USA: Public Schools, Southern States, 1962*, p. 14.

Extent of Integration in Public Schools

Just how effective have been these devices of pupil placement, school closing, tuition grants, stair-step plans and restrictive transfers in keeping integration at token levels? The figures on the number of desegregated school districts and the proportion of Negro pupils in schools with whites provide an answer to this question.

When the Supreme Court declared in 1954 that racial segregation in public schools was unconstitutional, 17 states and the District of Columbia required the separation of races in public education. Since the Supreme Court ruling, the District of Columbia and six of the states—Delaware, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia—have moved more or less steadily toward compliance, and may therefore be called "compliant" states. The other eleven states—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North and South Carolina, Tennessee, Texas, and Virginia—have passed legislation to prevent or to slow down desegregation. They may be called "resistant" states. In order to gain even a rough impression of the effectiveness of the plans for token integration, it is necessary to separate the extent of school integration in the "compliant" states from that in the "resistant" states.

We may look first at the number of school districts that have desegregated since 1954. A school district is regarded as desegregated when a single Negro child enters a school formerly attended only by whites, or when a single white child enters a school attended up to that time only by Negroes. Such desegregation is possible only in bi-racial school districts, that is, districts in which there are both white and Negro children residing. Table 1 shows how many bi-racial school districts had been desegregated as of November 1962.

It can be seen that little more than one out of ten of the bi-racial districts

TABLE 1

DESEGREGATION OF BI-RACIAL PUBLIC SCHOOL DISTRICTS IN SOUTHERN AND BORDER STATES, NOVEMBER, 1962*

States	*Total Number of Districts*	*Number of Bi-Racial Districts*	*Number of Desegregated Districts*	*Per Cent of Bi-Racial Districts Desegregated*
Resistant**	3,043	2,283	270	11.8
Compliant***	3,186	775	702	90.6
Total	6,229	3,058	972	31.8

* Source: *Statistical Summary of School Segregation-Desegregation in the Southern and Border States* (Nashville: Southern Education Reporting Service, November 1962), p. 3. For later data on a state-by-state basis, see Appendix.

** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.

*** Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.

in the eleven resistant states have been desegregated, while slightly more than nine out of ten have been desegregated in the compliant states. Moreover, it should be noted, of the 270 desegregated districts in the resistant states last fall, 176 were in Texas alone.

Because a district is desegregated, it does not follow that all Negroes and whites in the district go to school together, for, as previously noted, a single child in school with children of a different race makes an entire district desegregated. Table 2 summarizes the extent of actual integration in the desegregated districts, pointing out how many Negroes were in schools with white in those districts. *It can be seen that in the resistant states only 2% of all the Negro children in the desegregated school districts were actually attending school with whites.*[11] *Or, stated another way, 98% of the Negroes in desegregated districts in the resistant states went to segregated, all-Negro schools.*

TABLE 2

NEGRO PUPILS IN DESEGREGATED PUBLIC SCHOOL DISTRICTS IN SCHOOL WITH WHITES IN SOUTHERN AND BORDER STATES, NOVEMBER, 1962*

	Negro Pupils in Desegregated School Districts		
States	*Total Number*	*Number in School with Whites*	*Per Cent in School with Whites*
Resistant**	624,825	12,217	2.0
Compliant***	443,853	243,150	54.8
Total	1,068,678	255,367	23.9

* Source: *Statistical Summary of School Segregation-Desegregation in the Southern and Border States* (Nashville: Southern Education Reporting Service, November 1962), p. 3. See also Appendix.
** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.
*** Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.

A final set of figures indicating the extent of integration in southern public schools shows how many Negroes in all districts, racial and bi-racial, segregated and desegregated, attend school with whites. Table 3 presents those figures for the fall of 1962.

This clearly illustrates how exceedingly limited the actual amount of racial integration is in the eleven resistant states. And the caption on the lead article of the December 1962 issue of SOUTHERN SCHOOL NEWS—"7.8 per cent of Negro Pupils in Classes with Whites"—is, therefore, exciting until one reads further to see that 95.2% of those Negroes in school with whites are from the compliant states (*i.e.*, 243,150 of the total of 255,367 Negroes in school with whites).

[11] It is of interest to note that in one school district, Nashville, of the 810 Negroes reported as being in schools with whites, 540 of them were in a school with two non-Negroes, a white and a Chinese-American child. U. S. Commission on Civil Rights, *Civil Rights USA: Public Schools, Southern States, 1962*, pp. 112, 115.

Thus racial integration in public schools is by any standard at token levels in resistant states, where 98% of the Negro pupils in desegregated districts and 99.6% of the Negroes in all school districts are in segregated schools. And thus the segregated pattern continues to prevail in the eleven resistant states.

TABLE 3

NEGRO PUPILS IN ALL PUBLIC SCHOOL DISTRICTS IN SCHOOL WITH WHITES IN SOUTHERN AND BORDER STATES, NOVEMBER, 1962*

States	*Total Number*	*Number in School with Whites*	*Per Cent in School with Whites*
Resistant**	2,803,882	12,217	0.4
Compliant***	475,549	243,150	51.1
Total	3,279,431	255,367	7.8

* Source: *Statistical Summary of School Segregation-Desegregation in the Southern and Border States* (Nashville: Southern Education Reporting Service, November 1962), p. 3.
** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.
*** Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.

Some Court Rulings on Token Integration Plans

How have the numerous plans to keep racial integration at token levels fared in federal courts?"[12] Court rulings on such plans will largely determine how long they may continue as effective instruments for maintaining *de facto* segregation. But it should be pointed out that there have been many and, at times, diverse court rulings, and that new rulings continue to be made. For this reason, only those cases which appear to be of major importance to this subject are selected. The reader should keep in mind that the situation is far more complex than the cases and rulings cited would indicate.

Pupil Placement Plans

When first adopted, the pupil placement plans proved to be generally acceptable to the courts as plans for desegregation. In a North Carolina case in November 1956, the U. S. Court of Appeals for the 4th Circuit stated: "It is argued that the Pupil Enrollment Act is unconstitutional; but we cannot hold that that statute is unconstitutional upon its face and the question as to whether it has been unconstitutionally applied is not before us, as the administrative remedy which it provides has not been invoked."[13]

Later, in May 1958, a three-judge U. S. District Court ruled that the Alabama placement law was not unconstitutional on its face.[14] The district court ruling was affirmed the same year by the U. S. Supreme Court. But again, as in the North Carolina case, the plaintiffs had not sought transfers under the law, and therefore there was no evidence that it was being used in a discriminatory manner.

Lately, however, the federal courts have become increasingly critical of pupil placement laws. This criticism has been directed at the laws in two ways: on their application and on their acceptability as plans for desegregation.

In regard to their application, federal courts have ruled that pupil placement laws are being used in an unconstitutional manner when Negro children are subjected to hurdles not encountered by whites. For example, the 4th Circuit Court of Appeals condemned the application of the assignment plan in Roanoke County, Virginia, in the following ruling:

> A Negro pupil who wishes to free himself from the segregated school in which he has been routinely assigned under the dual racial zoning system must apply for a transfer. Regardless of the applicant's place of residence, the county school officials habitually refer his application to the state board with the recommendation that he be assigned to the Negro school. By the

[12] Many references will be made in this section to federal courts. Since frequent mention is made of circuit courts by number, it might be helpful to know in which circuits the "resistant" states are located: in the 4th are Virginia, North and South Carolina; in the 5th are Florida, Georgia, Alabama, Mississippi, Louisiana, and Texas; in the 6th is Tennessee; and in the 8th is Arkansas.

[13] *Race Relations Law Reporter*, Vol. 2 (1957), p. 20 (*Carson* v. *Warlick*).

[14] *Race Relations Law Reporter*, Vol. 3 (1958), pp. 425-434, 867. (*Shuttlesworth* v. *Birmingham Board of Education.*)

established practice of the state board, a Negro, in order to be admitted to a white school, must not only live closer to that school than to the Negro school, but he must in addition, meet a requirement that is not imposed upon white students seeking transfers, namely, in aptitude and scholastic achievement he is required to be substantially above the median of the class in the white school. . . . The obvious function of these transfer criteria, which find application in respect to Negro children only, is to place next-to-impossible hurdles in their way so as to perpetuate segregation.[15]

In this same decision, the 4th Circuit Court also undermined the effectiveness of pupil placement plans which require Negro plaintiffs to present their case individually. For this court held that not only the plaintiffs but also "those similarly situated in Roanoke County are entitled to injunctive relief from a continuance of this unlawful discrimination."[16]

In a comparable ruling in North Carolina, the 4th Circuit Court ordered the City Board of Education of Durham to stop subjecting pupils seeking transfers to "futile, burdensome or discriminatory administrative procedures."[17] It ruled further, in the same case, that: "So long as the school board allows its practice of racial assignments, the injunctive order should require that it freely and readily grant all requests for transfer or initial assignment to a school attended solely or largely by pupils of the other race."

On the same day (October 12, 1962), this same court ruled that the Caswell County School Board violated the spirit of the North Carolina Pupil Assignment Law by refusing to transfer Negro children to white schools and by using the Assignment Law "only when dealing with interracial transfer requests."[18]

The courts have raised questions too about the acceptability of pupil placement laws as plans for desegregation when schools under these laws continue to be segregated. Late in 1959, both the 5th and 8th Circuits of the U. S. Court of Appeals questioned the validity of these laws as desegregation plans. In a Dade County, Florida case, the 5th Circuit said: ". . . there is nothing either in the Pupil Assignment Law or the Implementing Resolution clearly inconsistent with a continuing policy of compulsory racial segregation."[19] The 8th Circuit Court stated in a Jefferson County, Arkansas case that the superintendents and officers of the defendant school district and its Board of Directors throughout the three school years in which the pupil placement plan was in effect had:

. . . carried into effect, enforced and maintained a rigid, racial segregation policy in all of its schools which, without exception, permitted no entry of any colored child into its white schools. . . . It is established, too, that the Board intends a continuation of that policy, without any change or modifications and that its professing of the Pupil Enrollment Act of 1956, having

[15] *Race Relations Law Reporter*, Vol. 7 (1962), p. 416. (*Marsh* v. *County School Board of Roanoke County.*)
[16] *Idem.*
[17] *Southern School News*, November 1962, p. 9 (*Wheeler* v. *Durham Board of Education; Spaulding* v. *Durham Board of Education.*)
[18] Idem. (*Jeffers* v. *Whitley*).
[19] *Race Relations Law Reporter*, Vol. 4 (1959), p. 861. (*Gibson* v. *Board of Public Instruction of Dade County.*)

been applied and in operation during the years 1957, 1958, and 1959, is but a cover-up to conceal its anti-racial and pro-racial segregation attitude.[20]

The most direct challenge to pupil placement laws in meeting the legal requirements for school desegregation was made in Tennessee in March 1962. The 6th Circuit Court ruled in a Memphis case that "The Pupil Assignment Law might serve some purpose in the administration of a school system, but it will not serve as a plan to convert a bi-racial system into a non-racial one."[21] The Court went on to say that the burden for bringing about desegregation was on the shoulders of Negro children and their parents who requested transfers, and that something more was needed to establish non-racial schools.

In August 1962 the 5th Circuit Court in a New Orleans* case emphatically denounced the Louisiana Pupil Placement Law as a plan for desegregation:

> This Court, like the district court, condemns the Pupil Placement Act, when, with a fanfare of trumpets, it is hailed as the instrument for carrying out a desegregation plan while all the time the entire public knows that in fact it is being used to maintain segregation by allowing a little token desegregation. . . . The Act is not an adequate transitory substitute in keeping with the grandualism implicit in the 'deliberate speed' concept. It is not a plan for desegregation at all.[22]

School Closing, Tuition Grants

The legality of closing public schools in order to avoid desegregation has involved the question of whether or not a state is practicing equal treatment of its citizens if state money is provided for public schooling in some districts but not in others. Prince Edward County, Virginia, is the only school district that has closed its public schools; since the fall of 1959 white children have attended private schools in the county while Negro children have been without formal education. In July 1962 the U. S. District Court declared that such closing was contrary to law:

> The Court holds that the public schools of Prince Edward County may not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the Commonwealth of Virginia permits other public schools to remain open at the expense of the taxpayers. . . . The School Board of Prince Edward County is herewith directed to complete plans for the admission of pupils in the elementary and high schools of the county without regard to race or color and to receive and consider applications to this end at the earliest practical date.[23]

This ruling has been appealed to the 4th Circuit Court.

In a U. S. District Court ruling on January 3, 1963, Powhatan County,

* Single, nonracial attendance zones for the first and second grades of the Orleans Parish public schools were approved by a 3-1 vote of the Orleans Parish School Board this spring and will become effective for the next school year.

[20] *Race Relations Law Reporter*, Vol. 5 (1960), p. 54. (*Dove* v. *Parham.*)

[21] *Race Relations Law Reporter*, Vol. 7 (1962), p. 43. (*Northcross* v. *Board of Education of Memphis.*)

[22] *Race Relations Law Reporter*, Vol. 7 (1962), p. 700. (*Bush* v. *Orleans Parish School Board.*)

[23] *Race Relations Law Reporter*, Vol. 7 (1962), p. 409 (*Allen* v. *County School Board of Prince Edward County.*)

Virginia, not far from Prince Edward County, was ordered to take no action, "directly or indirectly," to close its public schools while other public schools were open in Virginia.[24] School officials were directed to refrain from closing schools either by withholding funds or by failing to appropriate funds.

These two decisions clearly indicate that federal courts will not permit a state to allocate funds to some public schools while others remain closed to avoid desegregation.

The legality of tuition grants, not explicitly tied to desegregation, has not yet been passed on by federal courts. In Virginia the original tuition grant laws provided for the availability of grants only in those areas where schools were desegregated. In 1959 "State and Local Scholarships," as they are officially called, were made available to any student to attend an accredited nonsectarian private school. But in August 1961 a U. S. District Court held that such scholarships could not be granted in Prince Edward County as long as public schools remained closed. In this ruling the judge stated that in granting scholarship stipends the state had contemplated a freedom of choice between public and private schooling. He cited the regulation of the State Board of Education to support the state's intention: " 'Scholarships will be available for pupils of legal school age who are eligible to attend the public schools in the county, city or town in which the parent, guardian or such other person standing in loco parentis is a bona fida resident.' . . . This rule is plain and unequivocal. State scholarships are not available to persons residing in counties that have abandoned public schools."[25]

Grade-a-Year Plans

Federal courts have usually accepted grade-a-year plans as valid desegregation procedures. However, several considerations have entered into their acceptance. The plan, for example, must be more than just a promise to desegregate. Thus, a proposal in December 1960 by the Chattanooga School Board to desegregate the first three grades of selected schools beginning in 1962-63, with desegregation also to be considered in special programs, was rejected by the U. S.. District Court as being too indefinite and not an adequate start.[26]

Another consideration involves the degree of desegregation in neighboring school systems. In some cases, the courts have required that desegregation levels in contiguous areas be made equal. This approach was evident in a case involving Davidson County, Tennessee, where the city of Nashville is located. The County Board of Education submitted a grade-a-year plan four years after the Nashville grade-a-year plan had gone into effect. The U. S. District Court accepted the plan but required that it be speeded up to include

[24] Associated Press report in the Lynchburg *News*, January 4, 1963. (*Bell* v. *Powhatan County School Board.*)
[25] *Race Relations Law Reporter*, Vol. 6 (1961), p. 754. (*Allen* v. *County School Board of Prince Edward County.*)
[26] *Race Relations Law Reporter*, Vol. 6, (1961), pp. 107-113. (*Mapp* v. *Board of Education of the City of Chattanooga.*)

the first four grades immediately in order to bring desegregation in line with that already in effect in Nashville.[27]

Still another factor conditioning the acceptance of grade-a-year plans has been evidence of the willingness of the school board to move with "good faith," toward compliance with the Supreme Court ruling. This factor can be seen in a decision of the 6th Circuit Court regarding a grade-a-year plan proposed by the Knoxville, Tennessee School Board. The Board had chosen to operate under Tennessee segregation statutes until compelled to do otherwise, and the Court criticized this position in these words:

> The position of the board that it would continue to operate under these unenforceable laws [*i.e.*, Tennessee statutes prohibiting the mixture of races in schools] until compelled by law to do otherwise, does not commend itself to the Court for the acceptance of a plan that provides for a minimum degree of desegregation. . . . We . . . believe . . . that more grades than contemplated by the board's plan should now be desegregated. In the light of the board's experience with the present plan, it should be enabled to submit an amended plan that will accelerate desegregation and more nearly comply with the mandate of the Supreme Court for 'good faith compliance at the earliest practicable date.'[28]

The courts have given different rulings on whether or not the grade-a-year plans may be used simultaneously with the transfer provisions made available under pupil placement laws. The 6th Circuit Court refused transfer requests by pupils in grades other than the ones desegregated by the grade-a-year procedure in both the Davidson County and Knoxville cases cited above.[29] The Court's reasoning was:

> . . . we think the Supreme Court contemplated that there would have to be plans for the transition and that some individual rights would have to be subordinated for the good of the many. The smooth working of a plan could be thwarted by a multiplicity of suits by individuals seeking admission to grades not yet reached in the desegregation plan.[30]

On the other hand, the 5th Circuit Court in the Pensacola, Florida, case added a grade-a-year plan to an existing plan permitting transfer of Negro pupils into formerly all-white schools. Both the grade-a-year plan and the transfer provisions were allowed to operate at the same time.[31] And in Virginia grade-a-year plans have been added to existing transfer arrangements under the pupil placement act with approval by the federal courts.[32]

Restrictive Transfer Provision

Since grade-a-year plans involve a rezoning of school districts without

[27] *Race Relations Law Reporter*, Vol. 7 (1962), pp. 34-36. *(Maxwell* v. *the County Board of Education of Davidson County.)*

[28] *Race Relations Law Reporter*, Vol. 7 (1962), pp. 38-39 *(Goss* v. *Board of Education of the City of Knoxville.)*

[29] See Footnotes 27 and 28 above.

[30] *Race Relations Law Reporter*, Vol. 7 (1962), p. 39. *(Goss* v. *Board of Education of the City of Knoxville.)* In response to this decision, Knoxville desegregated one additional grade.

[31] *Race Relations Law Reporter*, Vol. 7 (1962), pp. 669-674. *(Augustus* v. *Board of Public Instruction of Escambia County, Florida.)*

[32] See, for example, *Jackson* v. *School Board of the City of Lynchburg, Race Relations Law Reporter*, Vol. 7 (1962), pp. 728-729.

regard to race, some white children are often included in the attendance zones of former Negro schools, and are therefore assigned to these schools. As was pointed out earlier, plans for grade-a-year desegregation usually include a provision granting the right to those children assigned to a school in which their race is in a minority to transfer to schools in which their race is in a majority.

The restrictive transfer provision in the Nashville grade-a-year plan was approved by the 6th Circuit Court in 1959,[33] and it was later approved by the same court in the Knoxville and Davidson County grade-a-year plans in these words:

> We do not think the transfer provision is in and of itself illegal or unconstitutional. It is the use and application of it that may become a violation of constitutional right. . . . We adhere to our former ruling with the admonition to the Board that it cannot use this as a means to perpetuate segregation.[34]

However, the 5th Circuit Court of Appeals took a different position on the constitutionality of restrictive transfer provisions in the Dallas County, Texas case in December 1960. It did so in the following way:

> . . . with deference to the views of the 6th Circuit it seems to us that classification according to race for purposes of transfer is hardly less unconstitutional than such classification for purposes of original assignment to a public school.[35]

In a later ruling (August 1962) the 5th Circuit Court made it possible for Negro children to transfer freely from schools in which their race is a majority if the transfer of white students leaves it an all-Negro school. The order stated:

> Negro children who attended formerly all-white schools in 1960-61 and 1961-62, and Negro children who have registered for attendance at formerly all-white schools in 1962-63 and subsequent years may not be transferred or assigned to an all-Negro school against their wishes. If the transfer of white students from schools would result in resegregation, the Negro children shall be afforded an opportunity to attend a nearby formerly all-white school without being subjected to tests for transfer under the Pupil Placement Act.[36]

Thus, this ruling removed, in effect, the restrictive aspect of the transfer provision.

A direct challenge to the constitutionality of the restrictive transfer provision came in September 1962, in a ruling by the 4th Circuit Court of Appeals in a Charlottesville, Virginia case. In declaring the assignment and transfer provisions of the Charlottesville plan invalid, the Court said:

> It is of no significance that all children, regardless of race are first assigned to the schools in their residential zone and all are permitted to transfer if the assignment requires the child to attend the school where his race is in the minority, if the purpose and effect of the arrangement is

[33] *Race Relations Law Reporter*, Vol. 4 (1959), pp. 584-603. *(Kelley* v. *Board of Education of the City of Nashville.)*

[34] *Race Relations Law Reporter*, Vol. 7 (1962), p. 36; also p. 39), *(Maxwell* v. *Board of Education of the City of Knoxville; Goss* v. *Board of Education of the City of Knoxville.)*

[35] *Race Relations Law Reporter*, Vol. 5 (1960), p. 1052. *(Boson* v. *Rippy).*

[36] *Race Relations Law Reporter*, Vol. 7 (1962), p. 702. *(Bush* v. *Orleans Parish School Board.)*

to retard integration and retain the segregation of the races. That this purpose and this effect are inherent in the plan can hardly be denied. The School Board is well aware that most of the Negro pupils in Charlottesville reside in the Jefferson zone and that under the operation of the plan white children resident therein will be transferred as a matter of course to the schools in the other zones while the colored children in the Jefferson zone will be denied this privilege. The seeming equality of the language is delusive, the actual effect of the rule is unequal and discriminatory. It may well be as the evidence in this case indicates that some Negroes as well as whites prefer the schools in which their race predominates; but the wishes of both races can be given effect as far as is practicable not by restricting the right of transfer but by a system which eliminates restrictions on the right. . .[37]

It is now quite clear that restrictive transfer arrangements will have to be abandoned as a means of delaying and evading school desegregation; on June 3, 1963, the Supreme Court held unanimously that two pupil transfer plans—one in Knoxville and the other in Davidson County, the suburban area around Nashville—are unconstitutional.

Moreover, in a unanimous decision made just a week earlier in which the Court refused to allow the city of Memphis to desegregate public recreational facilities on a gradual basis, Mr. Justice Goldberg expressed the Court's growing impatience with the South's slow rate of school desegregation. He pointed out that when the Court allowed "all deliberate speed" for integrating schools, it did not mean "indefinite delay in elimination of racial barriers."

Summary

It is clear from the foregoing rulings that token integration plans are under strong attack in the federal courts. Pupil placement plans, initially accepted as constitutional on their face, are being declared unconstitutional as practiced in some school systems and are being rejected as valid plans for desegregation. School closing is being challenged if other public schools in the state remain open, and tuition grants have been stopped in the one county where public schools are closed. Grade-a-year plans are being speeded up, and restrictive transfer provisions that result in resegregation are being rejected. One by one the devices for keeping integration at token levels are being blunted and eliminated by the courts.

Throughout the complex of court rulings runs a clear and consistent thread, namely that school boards must proceed in *good faith* to develop a single school system, without regard to race, and that they must do this with all deliberate speed. These rulings, therefore, strike at the heart of token integration, which as noted, seeks to maintain a dual system of schools in which the races are, in effect, segregated. Ostensibly the plans for keeping integration at token levels have been devised to try to satisfy the courts. It is quite

[37] *Race Relations Law Reporter*, Vol. 7 (1962), p. 719. *(Dillard v. School Board of the City of Charlottesville.)*

obvious now that they are not doing so, and that the courts are becoming less and less patient with the bad faith implicit in them.

The courts have, however, largely deferred the question of teacher and staff desegregation, in order to permit pupil desegregation to reach a fairly advanced stage of development. For example, the 5th Circuit Court held in the Pensacola case (see p. 11) that "the district court may well decide to postpone the consideration and determination of [the teacher desegregation] question until the desegregation of the pupils has either been accomplished or has made substantial progress."

Desegregation as a reality still lies in the future, for it is to be remembered that 99% of the Negro children in the eleven former Confederate states continue to be in all-Negro schools. Just how soon desegregated, non-racial school systems will develop throughout the South depends on several factors. These include the determination of Negro plaintiffs to press for equal treatment, the vigor of the federal government in demanding the elimination of discrimination, and the willingness of school boards and communities to act in good faith in compliance with the Supreme Court decision. It is with this last-mentioned factor that we shall next deal, looking first at some of the costs that resistance to equal treatment has brought and can continue to bring.

Cost of Keeping Integration at Token Levels

If school boards and communities in the eleven resistant states continue to try to maintain *de facto* racial segregation in their public schools, they can be assured of two things. It will be futile in the long run, and it will be costly. The preceding section has shown that federal courts are not going to permit the continuation of racial schools, and states may well be faced with either closing all of their public schools or extending integration beyond token levels.[38] Of course the closing of all schools in a state would be the ultimate in costs and one that no state has yet shown the willingness to pay. But to continue resistance to its dead end will also be costly—in money, in time, in effort, and in disruption of schools and communities. Apparently, some segregationists are willing for their states and communities to pay any price to try to keep a bi-racial school system. And some politicians and school officials believe that it is necessary to offer every possible resistance so that segregationists will be more willing to accept integration when it does come. Regardless of these feelings about resistance, however, it is well for all concerned to realize the enormous price that is exacted for such resistance.

While no precise cataloging of the costs of maintaining token integration can be made, illustrative costs can be cited. For one of these, we may look at estimates of the expenditures on litigation contesting desegregation. The Southern Educational Reporting Service has stated that a total of 293 court cases on school segregation, desegregation, and related issues had been filed in state and federal courts by November 1962.[39] If we take the estimate of Gordon M. Tiffany, first staff director of the United States Commission on Civil Rights, that such cases average in cost about $15,000 each, we reach the figure of $4,395,000 as a total cost. Such litigation has virtually ceased in the compliant states and the District of Columbia, which have had 70 of the cases. The eleven resistant states have had the remaining 223 cases, with the states of Arkansas, Texas, and Virginia accounting for over one half of them. States like Alabama, Georgia, Mississippi, and South Carolina have had comparatively few cases of litigation, but they are fast approaching the time when they will have many if they try to maintain *de facto* segregated school systems.[40]

Another cost is that involved in the drawing up and passing of legislation designed to avoid full compliance with the Supreme Court rulings. Legisla-

[38] It will be recalled that "massive resistance" in Virginia finally reached a point where to have followed it further would have resulted in the closing of schools throughout the state. (See Benjamin Muse, *Virginia's Massive Resistance* (Bloomington, Ind.: University of Indiana Press, 1961.] Most of the states have abandoned massive resistance and substituted token integration. It appears as though time is now running out on token integration.

[39] *Statistical Summary of School Segregation-Desegregation in the Southern and Border States* (Nashville: Southern Education Reporting Service, November 1962), p. 4.

[40] It is of interest to note that the Attorney General of Alabama has asked a legislative finance committee for money "to fight desegregation suits and other federal actions." (Reported in the Birmingham *Post-Herald*, January 30, 1963, p. 1.) Evidently, Alabama is anticipating heavy expense in court cases.

tures of the 16 states have passed a total of 379 new laws designed to prevent, restrict, or control school desegregation, according to a November 1962 report of the Southern Educational Reporting Service.[41] The drafting, debating, and passing of such legislation, much of which has been declared unconstitutional by federal courts, have taken an enormous amount of time, effort, talent, and money. While few of these costs can be measured directly, it can be noted, by way of illustration, that the state of Louisiana held five "Extraordinary Sessions" during 1960 and 1961 to deal with legislation designed to maintain segregation. Appropriations for these extra sessions amounted to $934,000.[42] In order to see just what sort of legislation was passed at these sessions and what the result was, we may refer to comments on the extra sessions by the U. S. Court of Appeals for the 5th Circuit. After observing that the Orleans School Board itself had attempted to act in good faith in complying with court orders to desegregating the schools, the Court had the following to say about the state legislature:

> The Louisiana legislature did not remain idle. The Governor of the state called five consecutive extra sessions of the legislature (unprecedented in Louisiana) for the purpose of preventing the Board from proceeding with the desegregation program. Among other actions, the legislature seized the funds of the Orleans Parish School Board, forbade banks to lend money to the Board, removed as fiscal agent for the state the Bank which had honored payroll checks issued by the School Board, ordered a school holiday on November 14, addressed out of office four of the five members of the Board, then on two occasions created a new School Board for Orleans Parish, still later addressed out of office the Superintendent of Schools in Orleans Parish, and dismissed the Board's attorney. The federal courts declared these and a large bundle of related acts unconstitutional.[43]

Another cost in the maintenance of token integration has been the awarding of tuition grants. Virginia has given more of these grants than any other state. During five years of operation, an estimated 38,000 grants have been made, totaling over seven and three quarter million dollars.[44] A newspaper survey has shown that, ironically, only a minority of students receiving grants have used them to avoid integrated schools.[45] Most of the grants have gone to children who were actually in segregated schools and who wished to attend private schools, or to children who were already in private schools.

Virginia's experience with tuition grants was repeated in Georgia, where the State School Board found that 1,457 of the 1,756 applicants for grants were already in private schools. According to Dr. Claude Purcell, Georgia Superintendent of Education, the total paid in 1962-63 for tuition grants amounted to $215,987. As a result of these disclosures, the Georgia legislature amended the tuition grant law during its 1963 session. Under terms of

[41] See Footnote 39 above.
[42] From tabulations by William C. Havard, Chairman of the Department of Government, of Louisiana State University.
[43] *Race Relations Law Reporter*, Vol. 7 (1962), p. 696. *(Bush* v. *Orleans Parish School Board.)*
[44] Computed from reports in *Southern School News*, November 1960, p. 7 and February 1962, p. 14; Richmond *Times-Dispatch*, September 2, 1962, p. 1.
[45] Richmond *Times-Dispatch*, September 2, 1962, p. 1.

the amendments, most recipients of tuition grants apparently will cease to receive them after this year.

Louisiana has also adopted a tuition grant law. Again, the cost to the state for such grants has been high: state officials reported in January 1963 that $850,216 was spent on grants-in aid to private school pupils during the first four months of the 1962-63 school year. School grants were expected to go to the parents of some 7,000 pupils in 42 private, nonsectarian schools after mid-year registrations.

Still other costs, less tangible but perhaps more significant, have to do with the handicapping of school administrators in improving the quality of education in the public schools. With so much time, energy, and money spent in keeping certain children out of certain schools, less time, effort, and money have been available for strengthening the educational program itself. Dr. Carl F. Hansen, Superintendent of the Washington, D. C. public schools, has pointed out how much more effectively the approach to the education of children as children (*not* as white and Negro children in separate schools) can be made when the issue of desegregation is settled. Hansen says:

> The design for instruction in American education deserves close examination. In the District of Columbia much has been done to overcome mistaken notions about methods of instruction and the relationship of curriculum to the learner. What has been done should not be directly related to desegregation, though . . . it seems clearer now than it did five years ago that desegregation prepared the ground for a total attack upon the improvement of instruction. In the changing design of organization for instruction here, the issues are drawn, not on who should be taught where, but on philosophical principles of education, methods, techniques, and choice of content.[46]

The resources spent by the resistant states in a vain attempt to keep segregation might have been used to improve the standards of their schools. For example, a number of their high schools remain unaccredited. Table 4 gives a comparison of the accreditation status of high schools in 1959 in six of the eleven resistant states, and it reveals that these states have a long way to go to bring all of their schools up to accredited status. The table also shows the great discrepancy existing between white and Negro high schools. When it is remembered that almost all the Negro pupils in the resistant states continue to attend all-Negro schools, it is clear that Negroes in the South are receiving inferior schooling opportunities.[47] Such a low quality of schooling means that the South is paying a great price in not developing its human resources to as full a degree as it might.

Another cost of token integration is the keeping of the race issue alive,

[46] Carl F. Hansen, *Addendum: A Five-Year Report on Desegregation in the Washington, D. C. Schools* (New York: Anti-Defamation League of B'nai B'rith, 1960), pp. 30-32.

[47] Other indications of unequal schooling are found in the report of the North Carolina advisory committee on civil rights that the investment per pupil in school facilities in the state showed that the average per white student was $60.36 above the all-student average, while that for the Negro student was $143.36 below the all-student average. (From the *Southern School News*, August 1960, p. 9) The Georgia Conference on Educational Opportunities reported that in the school year of 1958-59, the current expenditures per pupil in the state of Georgia were $228 for a white child and $191 for a Negro child. From *Georgia's Divided Education* (Atlanta: Ga. Conference on Educational Opportunities, 1960), p. 10.

TABLE 4

NEGRO AND WHITE HIGH SCHOOLS ACCREDITED BY THE SOUTHERN ASSOCIATION OF SCHOOLS AND COLLEGES IN FIVE "RESISTANT" STATES IN 1962 - 1963*

State	*Per Cent of High Schools Accredited*		*Proportion of White to Negro High Schools Accredited*
	White	*Negro*	
Alabama	35.9	21.0	1.7 : 1
Georgia	66.0	43.2	1.5 : 1
Louisiana	67.7	27.4	2.5 : 1
Mississippi	31.3	7.6	3.8 : 1
South Carolina	40.4	14.3	2.9 : 1

* Sources: The 1962-63 educational directories of Alabama, Georgia, Louisiana, Mississippi, and South Carolina, and "Proceedings of the Sixty-Seventh Annual Meeting of the Southern Association of Schools and Colleges."

the catering to racial prejudice, the giving of false hope to segregationists who are led to believe that *de facto* segregation can be maintained. In moving from segregation to desegregation it has been demonstrated repeatedly that when state and local officials act in resolute firmness there has not been violence or serious opposition in carrying out the mandate of the courts—as in Atlanta, Nashville, Memphis, and Lynchburg, Virginia. But when state and local officials have repeatedly warned that there will be trouble and that people will not permit the change, there has been trouble—as in Little Rock and New Orleans.[48] This latter approach results in what sociologists term "self-fulfilling prophecies," for such an approach encourages extreme segregationists to cause trouble, thus making the prediction come true. There is no attempt here to minimize the difficulty of change in the area of race relations where so many people have been conditioned to accept segregation as the proper way of life. Movement toward the elimination of segregation in public education is difficult. The point is that it is made far more difficult and disruptive when officials try to avoid compliance with court orders, either by outright resistance or by more subtle token integration.

Closely related to this last point is the cost that comes from the damage done to the concept of justice in American Democracy. It was almost nine years ago that the highest court in the land concluded that ". . . in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Yet, after this long a time segregation in public schools in the resistant states holds for 99.6% of the Negro children. And a large factor in keeping schools segregated has been the determination of white leaders, first through massive resistance and now through token integration, to thwart the ruling of the Supreme Court. Just what the

[48] The sharp contrast between the acceptance of the first Negro at Clemson College in South Carolina and the resistance accorded James Meredith at the University of Mississippi highlights the part that attitudes of state and school officials play in whether or not violence or peaceful transition takes place.

effect of this blocking of justice has on Negroes seeking to assert their constitutional rights can be easily imagined. Carl T. Rowan, Deputy Assistant Secretary of State for Public Affairs, has expressed the frustrations felt by many Americans. Rowan writes:

> When one considers the heart of the court's argument in outlawing segregated schools and then considers how little really has been done to eradicate the fundamental injustice, it becomes obvious that these token integration schemes are affronts to our concept of justice.
>
> Anyone who has lived in the South, as I have, or has even visited there for a reasonable time, has seen the great mass of Negro youngsters who are handicapped because their parents have been ill-fed, ill-clothed, ill-educated, and ill-treated. It is obvious that without the great liberating force of education, these youngsters will be also-rans in the great American game called the Pursuit of Happiness. . . .
>
> After almost nine years it seems to me that Americans should ask themselves whether we intend to retain a judicial system of undoubted integrity, or whether we are prepared to accept change only as it comes under the pressure of sit-ins and protest demonstrations — only as it flows out of violence and near anarchy. . . .
>
> But we will get no genuine movement until the leaders of our 'token integration' communities realize the price they shall have to pay, in self-esteem and civic development, for their perpetuation of an injustice and sham.[49]

[49] Carl T. Rowan, "The Travesty of Integration: Halfhearted Compliance Frustrates the Law of the Land," *Saturday Evening Post*, January 19, 1963, pp. 6, 8.

Fears Associated with School Integration

Objections to school integration are fundamentally based on emotion, conditioned in large measure by living in racially segregated communities. Yet, these emotions are, from time to time, backed by "reasons" founded on beliefs of what will happen if schools desegregate. While one does not change an emotion by questioning the accuracy of the beliefs asserted in support of it, factual data can weaken the arguments or can, at least, make them shift to other grounds. And, it is to be noted, that the constitutional rights of Americans do not depend on what people think may happen if situations denying those rights are changed. The courts have not allowed unconstitutional practices to continue, no matter how long they have been followed or how much people fear changing them. At the same time it might be helpful to point out fallacies in the assumptions of those who fear the desegregation of schools. We shall look at fallacies in two of those assumptions.

Academic Standards

One has to do with the effect on academic standards and on the performance of white students in integrated schools. Dire consequences have been predicted for the quality of education under desegregation. However, there is no factual support for this prediction. One source of direct challenge comes from superintendents of school systems in which desegregation has taken place. These superintendents have consistently testified that academic standards have not suffered following desegregation, and some have said that they have actually improved. For example, in March 1959, the U. S. Commission on Civil Rights held a conference on education in Nashville, Tennessee. Of the twelve administrators who dealt with the question of the effect of desegregation on academic standards in their school systems not one said that the standards had been lowered or the progress of students harmed.[50] Let us look at the testimony from this conference both from a superintendent whose system had had very little integration and from one where extensive integration had taken place. Mr. W. H. Oliver, Superintendent of the Nashville schools, which at that time had desegregated only its first two grades, stated, ". . . I haven't noticed any effect one way or another on the educational success of the children, either white or colored, where they are together."[51] Dr. John H. Fischer, Superintendent of the Baltimore, Maryland public schools in which 57% of the pupils were attending integrated schools at the time, testified:

> We are frequently asked what effect integration has had upon academic standards. The answer is that academic standards are not changed in any school merely by the presence of a second race. The requirements for an honor's diploma or for a passing grade on an examination are not altered by integration. The tests of successful performance in courses in the skilled

[50] U. S. Commission on Civil Rights, *Conference on Education, Nashville, Tennessee, March 1959* (Washington, D. C.: U. S. Government Printing Office, 1959). [Summarized in *Desegregation and Academic Achievement*, Report No. L-17, March 14, 1960, Southern Regional Council.]

[51] *Ibid.*, p. 92.

trades are the same whether the trade is being learned by a white boy or a colored boy. A child's standing on a nationally standardized reading test is determined not by his race but by his ability and background. . . . There is no doubt at all that Negro children are receiving better educational opportunities in Baltimore now than they did under segregation. The opportunities of white children have been in no way diminished. Indeed, they have been increased, not as a result of desegregation, but by our general effort to improve our offerings for all children over the past 5 years.[52]

Besides testimony of those best in a position to observe the effect of racial integration on academic study, there are statistical reports on academic achievement under desegregation. Again, we find general consensus that integration has not lowered the academic achievement of either white or Negro students. As examples, let us see the reports on a system with little integration and ones with a high amount of integration. In the Austin (Texas) Independent School District, Negroes composed fewer than 7% of the pupils in the two ninth grades compared in Table 5. It can be seen that no significant changes occurred in the median scores on reading and arithmetic achievement tests following integration.

In Louisville achievement tests were given to pupils in the second, sixth, and eighth grades for the year prior to integration (1955-56), and the results of these tests were compared with those given in the same grades the year following integration (1957-58), when 78.2% of all pupils were in integrated schools. Even with such rapid integration, it was found that academic standards were not hurt; indeed, substantial gains were shown in scholastic achieve-

TABLE 5

ACHIEVEMENT TESTS MEDIANS AT NINTH GRADE LEVEL IN TWO SCHOOLS IN AUSTIN, TEXAS, BEFORE AND AFTER INTEGRATION

Type of School and Number of Negro Pupils in Each	*Median Scores on California Reading and Arithmetic Achievement Tests*			
	Two Years Before Integration (1955-56)		*Second Year After Integration (1958-59)*	
	Reading	*Arithmetic*	*Reading*	*Arithmetic*
Generally low Socioeconomic Background of Pupils; 20 Negroes among 300 Pupils, as an Average	7.5	7.7	7.7	8.3
Widely Diversified Socioeconomic Background of Pupils; 15 Negroes among 275 Pupils, as an Average	9.5	9.5	9.6	9.7

Source: Office of the Superintendent, Austin Independent School District.

[52] *Ibid.*, p. 149.

ment, with Negroes making greater gains than whites. The following is a conclusion of the study:

> Perhaps the safest generalization that can be drawn from the study is that for the period of time considered, integration need not adversely affect the scholastic achievement of white pupils and it can favorably affect that of the Negro pupil. The study, therefore, offers re-assurance to those who fear that the immediate effect of integration must automatically lower the level of achievement.[53]

A follow-up study of achievement in the third year of integration in the Louisville schools (1959-60), when the percentage of children in integrated schools had risen to 85.6 per cent, reached the following conclusion:

> At the end of the three-year period following integration results were even more encouraging. Louisville pupils at the third, fourth and fifth grade levels were exactly on the national norms. At the 6th grade level they were 2 months ahead of the national norms. While the eighth grade pupils were still behind national norms the figures show that progress was being made."[54]

A comparison of median achievements in the Washington, D. C. schools made during the second year of integration (1955-56) with those made during the fifth year of integration (1958-59) shows that a gain was made in every subject tested at every grade level where the tests were given.[55] Furthermore, academic achievement rose at the same time as the proportion of Negro students rapidly increased in the nation's capital. Not only were the median scores increased, but the test scores of the honors group and college preparatory group were increased as well. The study comments: "This clarifies two points: Integration has not retarded the advancement of high ability students, Negro or white, and educational standards in the District public schools when examined in relation to students' preparation and ability for learning, are high."[56]

It is safe, therefore, to conclude that academic achievement levels need not be lowered when schools are integrated. Testimony of school superintendents and comparisons of test scores before and after desegregation reveal that integration has not had an adverse effect on the average achievement of white or Negro pupils, nor has it had an adverse effect on the achievement of the most gifted of either race.

Social Adjustment

Another type of fear has to do with the social adjustment of pupils in integrated schools. Concern has been expressed that Negroes and whites will be unable to get along in the same school, that the strains of integrated schooling will be too great for many Negro and white children, and that moral standards will be lowered by interracial contact. Again, we find no evidence to support such fears.

[53] Frank H. Stallings, "Changes in Academic Achievement since Integration in the Louisville Public Schools," in *Second Annual Conference on Education, Gatlinburg, Tennessee,* March 1960, by the U. S. Commission on Civil Rights (Washington, D. C.: U. S. Government Printing Office, 1960), p. 149.
[54] *Ibid.*, p. 150.
[55] Hansen, *op. cit.*, p. 21.
[56] *Idem.*

That there have been problems of adjustment to integrated schooling by white and Negro pupils is not denied. The change in a segregated system practiced for such a long time, particularly when parental reactions are carried over into their children, cannot help but make for strain. But there is clear evidence that school children have been able to accommodate themselves to the new situation.

The conduct of extracurricular school activities within integrated schools has been reported on from time to time by school officials. These reports have revealed little basis for belief that integration necessarily disrupts these activities. While different schools have handled these activities differently, the following statement in 1959 by Dr. John H. Fischer, who was then the Superintendent of Baltimore public schools, shows how an adjustment by an interracial student body can be made in a city which has most of its children in integrated schools. Dr. Fischer has stated, in regard to school activities:

> In our senior high schools Negro students now participate in all sports. Although in the early years there was some apprehension about the advisability of interracial competition, particularly in contact sports, the problem no longer causes any concern. . . . All our traditional social activities have continued in the newly integrated schools just as they were carried on prior to 1954. The conduct of the boys and girls usually reflects the pattern of the community as a whole. Students dance with their own dates or with the members of the small parties in which they come to the dances. This means that boys and girls ordinarily associate socially with others of their own race.
>
> In school clubs and other similar activities racial differences create no problems. In voluntary activities outside the school, their is relatively little integration. Most children choose their personal friends from among members of their own race, as is true in the community generally, not many close friendships involving home visiting are formed across racial lines.[57]

In his five-year report on desegregation in the Washington, D. C. Schools, Dr. Carl F. Hansen, Superintendent, reveals an actual decrease in the juvenile delinquency rate for the District. He cites the District of Columbia Commissioners' 1959 report on the state of the nation's capital to the Congress of the United States which gives the following delinquency rates for children 5 to 17: "For non-white children a decline from 37.1 cases per thousand in 1954 to 21.2 cases in 1958. For white children, 15.3 cases per thousand in 1954, to 15.2 cases in 1958." The Superintendent adds, "The schools do not claim credit for this development. But one conclusion is clear: Desegregation has not resulted in an increase in the rate of juvenile delinquency."[58]

Problems of adjustment are involved when segregated schools become integrated, and one would be naive to think otherwise. However, we have illustrated that these problems can be met without undue disruption. The fears usually expressed by those opposed to integration have been found to be unwarranted.

[57] U. S. Commission on Civil Rights, *Conference on Education, Nashville, Tennessee, March 1959*, pp. 149-150.
[58] Hansen, *op. cit.*, p. 26.

Racism: The Heart of the Problem

Underlying the fears of integration and the consequent attempt to keep it at token levels are attitudes and beliefs that can be designated as "racism." Racism revolves around the conviction that a person's race is a very important, if not the most important, thing about him. A person is, first of all, a member of a race, and only after this categorization is made clear does he become a separate and unique individual. Furthermore, this categorization by race becomes the basis for differential treatment, for a part of racism is the belief in the inferiority of some races and the superiority of others.[59] Racism is the cornerstone of compulsory racial segregation—its rationale and its justification. And racial segregation, in turn, nourishes and promotes racism, for it provides the conditions for unequal treatment and educates that racial differentiation is of paramount importance.

Those who are convinced of the fundamental importance of a person's race as a determinant of his character, intelligence, and behavior may well be sincere in their belief and consequent support of the pattern of forced segregation. But sincerity is not necessarily related to accuracy, and the beliefs that make up racism are not supported by scientific investigation of race.

Scientists agree that all members of mankind belong to the same species. There is less agreement, however, on many races or divisions the species is composed of, although many recognize three major ones. Granted that biological designations of race are possible, although difficult, the question follows as to whether the genes which determine racial characteristics (color of skin, form of hair, shape of nose, etc.) determine anything else about the person or are invariably found in combination with other genes that do. In the opinion of the great majority of scientists there is no conclusive evidence to suggest that behavior, character, or the capacity to learn have anything to do with race directly. Among the statements and conclusions by scientists on race differences, we shall cite only two.[60] One group of 14 internationally known geneticists and physical anthropologists from six nations has drafted a statement saying that their studies provide no basis for assuming that intellectual, emotional, and cultural differences among men are a function of race.[61] In part, their statement reads: "Available scientific knowledge provides no basis for believing that the groups of mankind differ in their innate capacity for intellectual and emotional development. . . . Vast social changes have occurred that have not been connected in any way with changes in racial type. Historical and sociological studies thus support the view that

[59] There are Negro racist groups in America, just as there are white. Of course these groups differ as to which race is considered inferior. For the white supremacists it is the Negro; for the black supremacists (e.g., the Black Muslims) it is the white.

[60] Other summaries and reference can be found in: "Intelligence of the American Negro," *Research Reports*, Vol. 3, November 1956 (published by the Anti-Defamation League of B'nai B'rith); R. M. Dreger and K. S. Miller, "Comparative Psychological Studies of Negroes and Whites in the United States," *Psychological Bulletin*, 57 (1960), pp. 361-402; any reliable anthropological text, e.g., Ralph Beals and Harry Hoijer, *An Introduction to Anthropology*, Second Edition, (New York: Macmillan, 1959).

[61] *Unesco. Race and Science* (New York: Columbia University Press, 1961), pp. 502-506.

genetic differences are of little significance in determining the social and cultural differences between different groups of men."[62]

The Council of the American Anthropological Association, composed of 192 Fellows of the Association, unanimously adopted the following resolution in November 1961:

> The American Anthropological Association repudiates statements now appearing in the United States that Negroes are biologically and in innate mental ability inferior to whites, and reaffirms the fact that there is no scientifically established evidence to justify the exclusion of any race from the rights guaranteed by the Constitution of the United States. The basic principles of equality of opportunity and equality before the law are compatible with all that is known about human biology. All races possess the abilities needed to participate fully in the democratic way of life and in modern technological civilization.[63]

The statements of the scientists cited above do not imply that races are "equal" in innate ability, for such a view would mean that race, *per se,* in some way determines the "equality" The implication is that race, as such, is not relevant to innate capacities of the individual for the development of character and intelligence. Likewise, these statements do not mean that those adhering to them are "environmentalists," as is sometimes charged. Anthropologists, genetists, and others who are students of race recognize, of course, the fundamental role of heredity in behavior. The point is that there is no basis for believing that race itself determines inheritance beyond those physical characteristics that themselves are used to categorize races.

Racists admit that wide range of difference appear among members of the same race and that members of both the Negro and white races fall into the highest and lowest percentiles in achievement and ability tests But the racists claim that a member of a race must be judged by the "average" of the race to which he has been assigned, again reflecting belief in the all-important place of race. Such a claim does not make sense to the person following the views of the scientists quoted above, namely that one's race does not determine innate capacities to learn and to act. Thus, one may deal with an individual in terms of his own abilities and character and not in terms of an abstract "average" of a category of mankind. There is no soundly supported basis for prejudging individuals, lumping them into categories, and artificially curtailing their opportunity. Americans can be treated as individuals rather than as members of races, and they can be given equal opportunity as individuals to develop their abilities, without fear of any consequences known to science.

[62] *Ibid.*, pp. 505-506.
[63] Reprinted in *Report L-29* of the Southern Regional Council, Atlanta, December 4, 1961.

Toward True Democracy in Public Schools

The democratic ideal of the worth of the individual cannot be realized while racism is nourished and enforced through compulsory segregation, in outright form or through token integration. Since racism is an emotionally conditioned set of attitudes and beliefs, it is difficult to challenge through scientific findings that question its logic. A necessary condition for overcoming it to any great extent is to eliminate the pattern of compulsory segregation itself.

The Supreme Court, in support of its 1954 ruling, stated that to separate Negro children in grade and high schools from others of similar age because of race alone ". . . 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." It might be added that such separation also affects white children by making it difficult for them to accept Negro children as persons like themselves. Token integration perpetuates separation of the great majority of white and Negro children so that they have difficulty in getting to know each other as persons. Yet, experience with genuine desegregation in public schools where children are treated as children (not as Negro or white children) shows that one need not be afraid of implementing the democratic ideal. Again, we refer to Dr. Fischer's report on the outcome of desegregation in the Baltimore public schools as an indication of what can happen:

> In general, our experience in Baltimore has demonstrated conclusively that children of both races can attend school together, can learn together, and can develop positive, friendly, effective relationships.
>
> We have found that children can be taught quite well by teachers who are not members of their own race. Teaching competence is not related to race, but to the teacher's personality, his own education and cultural background, and his ability to understand young people.
>
> We have learned that, after a period of adjustment to an unaccustomed situation, children, teachers, and parents have found that having representatives of both races in the student body and in the faculty in no way diminishes the effectiveness of the school.
>
> We believe that our experience supports the generalization that school integration can be successful if the policies and procedures by which it is carried forward are simple, firm, fair, flexible, clearly stated, consistently applied.
>
> After five years, it appears that no small part of the success of the effort in Baltimore was due to the determination of the school board to move promptly and to act, as the board once said, 'without fear and without subterfuge'.[64]

Token integration operates on the bases of fear and subterfuge, fear of integration itself and subterfuge in complying with the Supreme Court directive. While difficult problems can arise as communities change a bi-racial

[64] U. S. Commission on Civil Rights, *Conference on Education, Nashville, Tennessee, March 1959*, p. 150.

school system into a non-racial one, compliant states have demonstrated that this change can be made creatively and successfully. On the other hand, to act in fear and duplicity leads to clashes with the federal courts, disruption of schools, encouragement of prejudiced reactions, and the waste of energy, talent, and money. Communities can proceed to develop a single school system in which race is not a criterion of assignment with confidence that both education and democracy will be strengthened by such a move.

APPENDIX

STATUS OF SEGREGATION-DESEGREGATION IN SOUTHERN AND BORDER SCHOOL DISTRICTS

Total Number of Districts	*Number of Bi-racial Districts*	*Number of Desegregated Districts*	*Negroes in Schools with Whites*	*Percentage of Bi-racial Districts Desegregated*
		ALABAMA		
114	114	0	0	00.0
		ARKANSAS		
417	228	12	247	5.3
		DELAWARE		
87	87*	87	9,498	100.0
		DISTRICT OF COLUMBIA		
		(Constitutes a single desegregated school district)		
1	1	1	87,749	100.0
		FLORIDA		
67	67	10	1,551	14.9
		GEORGIA		
198	182	1	44	.54
		KENTUCKY		
206	167	150	24,346	89.8
		LOUISIANA		
67	67	1	107	1.5
		MARYLAND		
24	23*	23	69,147	100.0
		MISSISSIPPI		
150	150	0	0	00.0
		MISSOURI		
1,633	Est. 214	Est. 203	35,000	Est. 94.9
		NORTH CAROLINA		
173	173	18	879	10.4
		OKLAHOMA		
1,180	240	196	10,557	81.7
		SOUTH CAROLINA		
108	108	0	0	00.0
		TENNESSEE		
154	143	26	1,810	18.2
		TEXAS		
1,461	919	177	7,000	19.3
		VIRGINIA		
134	132	31	1,230	23.5
		WEST VIRGINIA		
55	43	43	15,500	100.0

Source: *Statistical Summary*
Southern Education Reporting Service, November, 1962 and later information from *Southern School News.*

* In Delaware, only 33 school districts actually have Negroes attending classes with whites; the other 54 are desegregated in policy only. In Maryland, of 23 desegregated districts, three are desegregated in policy only.

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