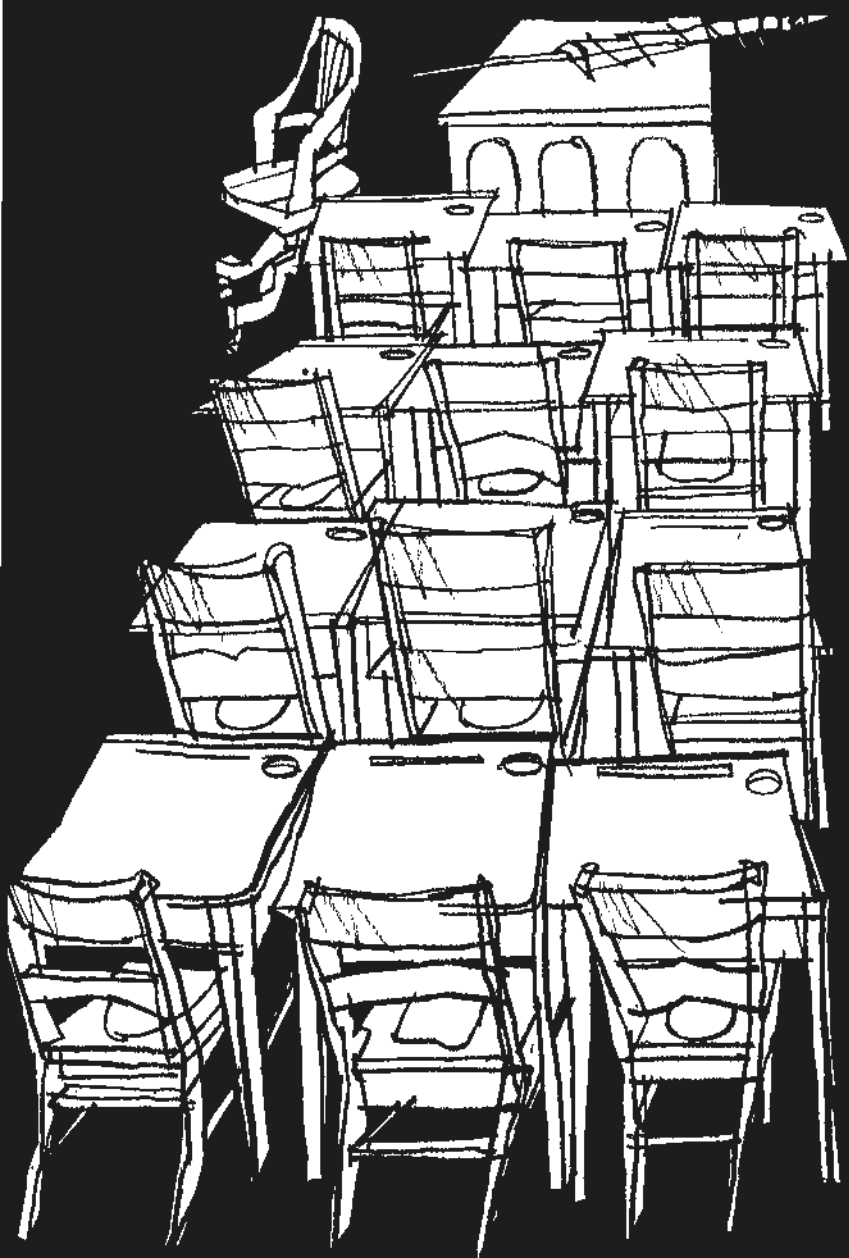


EDUCATION

1961 United States Commission on Civil Rights Report

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EDUCATION

1961 Commission on Civil Rights Report

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Foreword

The United States Commission on Civil Rights was created by the Civil Rights Act of 1957 as a bipartisan agency to study civil rights problems and report to the President and Congress. Originally created for a 2-year term, it issued its first comprehensive report on September 8, 1959.

On September 14, 1959, Congress extended the Commission's life for another 2 years. This is the second of five volumes of the Commission's second statutory report.

Briefly stated, the Commission's function is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, or national origin. The Commission has no power to enforce laws or correct any individual wrong. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country, and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

. . . its function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

Specifically, the Civil Rights Act of 1957, as amended, directs the Commission to:

- Investigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin;
- Study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution;

- Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;
- Prepare and submit interim reports to the President and the Congress and a final and comprehensive report of its activities, findings and recommendations by September 9, 1961.

The Commission's 1959 *Report* included 14 specific recommendations for executive or legislative action in the field of civil rights. On January 13, 1961, an interim report, *Equal Protection of the Laws in Public Higher Education*, containing three additional recommendations for executive or legislative action, was presented for the consideration of the new President and Congress. This was a broad study of the problems of segregation in higher education.

The material on which the Commission's reports are based has been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys and related research, the Commission has had the cooperation of numerous Federal, State, and local agencies. Private organizations have also been of immeasurable assistance. Another source of information has been the State Advisory Committees which, under the Civil Rights Act of 1957, the Commission has established in all 50 States. In creating these committees, the Commission recognized the great value of local opinion and advice. About 360 citizens are now serving as committee members without compensation.

The *first statutory duty* of the Commission indicates its major field of study—discrimination with regard to voting. Pursuant to its statutory obligations, the Commission has undertaken field investigations of formal allegations of discrimination at the polls. In addition, the Commission held public hearings on this subject in New Orleans on September 27 and 28, 1960, and May 5 and 6, 1961.

The Commission's *second statutory duty* is to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution." This takes in studies of Federal, State, and local action or inaction which the courts may be expected to treat as denials of equal protection. Since the constitutional right to equal protection is not limited to groups identified by color, race, religion, or national origin, the jurisdiction of the Commission is not strictly limited to discrimination on these four grounds. However, the overriding concern of Congress with such discrimination (expressed in congressional debates and in the first subsection of the statute) has underscored the need for concentrated study in this area.

Cases of action or inaction discussed in this report constitute "legal developments" as well as denials of equal protection. Such cases may have been evidenced by statutes, ordinances, regulations, judicial decisions, acts of administrative bodies, or of officials acting under color of law. They may also have been expressed in the discriminatory application of nondiscriminatory statutes, ordinances or regulations.

Inaction of government officials having a duty to act may have been indicated, for example, by the failure of an officer to comply with a court order or the regulation of a governmental body authorized to direct his activities.

In discharging its *third statutory duty* to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission evaluates the effectiveness of measures which by their terms or in their application either aid or hinder "equal protection" by Federal, State, or local government. Absence of Federal laws and policies that might prevent discrimination where it exists falls in this area. In appraising laws and policies, the Commission has considered the reasons for their adoption as well as their effectiveness in providing or denying equal protection.

The *1959 Report* embraced discrimination in public education and housing as well as at the polls. When the Commission's term was extended in 1959, it continued its studies in these areas and added two major fields of inquiry: Government-connected employment and the administration of justice. A preliminary study looked into the civil rights problems of Indians.

In the public education field, the problems of transition from segregation to desegregation continued to command attention. To collect facts and opinion in this area, the Commission's Second Annual Conference on Problems of Schools in Transition was held March 21 and 22, 1960, at Gatlinburg, Tenn. A third annual conference on the same subject was held February 25 and 26, 1961, at Williamsburg, Va.

To supplement its information on housing, education, employment, and administration of justice the Commission conducted public hearings covering all of these subjects in California and Michigan. On January 25 and 26, 1960, such a hearing was held at Los Angeles; and on January 27 and 28, 1960, in San Francisco. A Detroit hearing took place on December 14 and 15, 1960.

Commission membership

Upon the extension of the Commission's life in 1959, and at the request of President Eisenhower, five of the Commissioners consented to remain in office: John A. Hannah, Chairman, president of Michigan State University; Robert G. Storey, Vice Chairman, head of Southwestern Legal Center and former dean of Southern Methodist University Law School; Doyle E. Carlton, former Governor of Florida; Rev. Theodore M. Hesburgh, C.S.C., president of the University of Notre Dame; and George M. Johnson, professor of law and former dean of Howard University School of Law.

John S. Battle, former Governor of Virginia, resigned. To replace him the President nominated Robert S. Rankin, chairman of the depart-

ment of political science, Duke University. This nomination was confirmed by the Senate on July 2, 1960.

On March 16, 1961, President Kennedy accepted the resignations of Doyle E. Carlton and George M. Johnson. A few weeks later he nominated Erwin N. Griswold, dean of Harvard University Law School and Spottswood W. Robinson III, dean of the Howard University School of Law, to fill the two vacancies. The Senate confirmed these nominations on July 27, 1961.

Gordon M. Tiffany, Staff Director for the Commission from its inception, resigned on January 1, 1961. To replace him, President Eisenhower appointed Berl I. Bernhard to be Acting Staff Director on January 7, 1961. He had been Deputy Staff Director since September 25, 1959. On March 15, 1961, President Kennedy nominated him as Staff Director. The Senate confirmed his nomination on July 27, 1961.

Part IV. Education

1. Introduction

Our progress as a Nation can be no swifter than our progress in education. Our requirements for world leadership, our hopes for economic growth, and the demands of citizenship itself in an era such as this all require the maximum development of every young American's capacity. The human mind is our fundamental resource.

President JOHN F. KENNEDY.

The Supreme Court pointed out in *Brown v. Board of Education of Topeka*,¹ or the *School Segregation Cases*, that education is perhaps the most important modern function of State and local government. "In these days," the Court said, "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."² But, like all governmental functions, this one must be carried out in conformity with the Constitution which requires that education provided by State and local governments be available to all persons on equal terms.

The heavy cost of discrimination in the schools, both to those denied equal opportunity and to the Nation as a whole, led the Commission in the Spring of 1958 to include public education in its studies. This decision rests on the authority granted by the Civil Rights Act of 1957 which directs the Commission to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution," and to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."³

The Commission has issued two previous reports on the denial of constitutional rights in the field of education. The first, a part of the *1959 Report*, dealt with public elementary and secondary schools. The second, in January 1961, was confined to public higher education.⁴ The present report returns to the subject of the first: denial of equal protection in public elementary and secondary schools.

Since the *1959 Report* went to press, there have been developments in the field of public education of great import to the future of America. One school system closed its doors in September 1959 to avoid the necessity of abandoning racial segregation as required by court order and they were still closed during the school year 1960-61. Tuition grants disbursing State and local funds to pupils who prefer to attend nonsectarian private schools have been widely used in one State, thus weakening the financial support of its public education system. Legislation adopted in other Southern States suggests the possibility of further school closings and extension of the tuition-grant system. Statewide compulsory school attendance laws, effective in all States except Alaska since 1918, are being repealed in the South. As a result, early school dropouts are increasing at a time when far more education than the minimum assured by such laws is needed to develop the full potential of the Nation's youth. Extreme official action to maintain segregation in spite of a Federal court order, and the accompanying civic disorder and white boycott of two public schools in one city in 1960-61, has been a national and international embarrassment. Harassment and economic reprisal against the few whites courageous enough to attempt attendance at these schools continues. The success of extra-legal activities in this city has strengthened the position of those bent on similar opposition elsewhere.

Measured by the number of school districts initiating or extending desegregation each year, progress in 1959-61 was at a much slower pace than in earlier years. Conflicting and confused lower court decisions have created prolonged uncertainty and invited more litigation.

The Commission believes that it can contribute most by an analysis of relevant court decisions, principally those of the past 2 years. This report will begin with the Supreme Court doctrine that racial segregation in the public schools is inherently unequal. It will consider all pronouncements of the Supreme Court indicating what a racially non-discriminatory system is, and how the change from segregation to non-discrimination may be achieved. Then the implementation of these principles at the local level (both with and without court approval) will be analyzed to show how they are being interpreted and, in some instances, misinterpreted.

Progress in desegregation in the school years 1959-61 will be recounted, as will the measures adopted by some Southern States to restrict or limit school desegregation. The threat to the very foundation of public education arising from the closing of public schools and the provision of tuition grants to avoid desegregation will also be discussed.

Of course segregation exists widely in public schools in the North although there it presents somewhat different legal problems. The *School Segregation Cases* dealt with racial segregation by explicit legislative measures (which in 1954 were compulsory throughout 17 Southern States and permissive in 3 more).⁵ In the North no laws explicitly

require or permit segregation by race in the public schools. Yet segregation of Negroes, Mexican-Americans, and Puerto Ricans is not uncommon. If this is the result of official action, or under some circumstances of official inaction, the fundamental principle of the *School Segregation Cases* should also apply.⁶ In the North and most of the West, therefore, the problem is to determine whether existing segregation in the schools is the result of official action or culpable inaction. This will be considered.

Limitations of time and staff have not permitted a general appraisal of Federal laws and policies for this report. Attention will be directed only to one Federal program in aid of education—that provided by the Library Services Act of 1956.⁷ In addition the powers and performance of the Attorney General under the Civil Rights Act of 1960⁸ and by virtue of his responsibility for enforcement of Federal court orders will be examined.

The Commission said in its 1959 *Report* that the Nation's most urgent domestic issue is how to adjust the operation of our public school systems to constitutional demands while continuing to improve the quality of education for all children.⁹ This question is not generally discussed by most writers as a single issue, which the Commission believes it to be, but as two issues. These must be merged and solved together because of the danger that desegregation, without a plan to meet the attendant educational problems, may seriously impair public education. On the other hand measures to improve public education without regard for constitutional requirements may accentuate and perpetuate existing inequalities.

For these reasons the present report will include an account of programs that have been developed by public and private organizations to overcome educational handicaps resulting from generations of segregation. Some of these measures have accompanied or followed desegregation; others have preceded it. All indicate that there are ways to adjust the operation of a public school system to constitutional requirements while continuing to improve the quality of public education for all children.

It is often said that the Civil War centered on the unresolved question of the continuation or abolition of slavery. But Bruce Catton, the celebrated historian of that war, recently said that by 1861 the abolition of slavery was an empty question; that the only really pertinent issue—*how its extinction was to come about*—was not discussed at all.¹⁰ Surely the American Negro would not still be struggling for first-class citizenship if the real problem of abolishing slavery and preparing the former slave for citizenship had been met a century ago. In 1961 the doom of compulsory racial segregation in public schools is perhaps even more clear than the end of slavery was in 1861. If the Nation today can profit from the lesson that problems not faced are not solved, the present issue will be faced and truly solved by united efforts.

2. Supreme Court Opinions

The decisions of the Supreme Court interpreting the requirements of the 14th amendment in public education set the framework within which desegregation must be worked out. Any discussion of these problems must start with an analysis of that framework. The Court's decisions have been few but firm. The basic principles governing the application of the 14th amendment to public education are clear, but many questions remain to be answered.

THE SCHOOL SEGREGATION CASES

In its historic decision in the *School Segregation Cases*, on May 17, 1954, the Supreme Court held that enforced racial segregation in public education is a denial of equal protection under the 14th amendment. The decision recognized that the Negro and white schools involved had been, or were being, equalized, in all tangible respects.¹ Yet "separate educational facilities," the Court held, "are inherently unequal."² The Court said that the opportunity for an education, "where the State has undertaken to provide it, is a right which must be made available to all on equal terms."³

THE SECOND BROWN DECISION

A year later in the second *Brown* decision the Court addressed itself to the question of how desegregation should be effectuated. After reaffirming the principle that racial discrimination in public education is unconstitutional, it said that "[a]ll provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle."⁴

Prior to the second *Brown* decision, the Supreme Court of Delaware had recognized that the effect of the 1954 decision was to nullify all State constitutional and statutory provisions requiring separate schools

for the two races.⁵ After the clear statement in the second *Brown* decision, quoted above, many other courts so held.⁶

Although constitutional rights of this type have often been declared to be "personal and present,"⁷ the Court did not order immediate admission of the plaintiffs to the schools from which they had been barred. Since the actions were class suits, all persons in the position of the plaintiffs in the defendant school districts were, of course, entitled to intervene and seek the same relief. The plaintiffs' constitutional rights (if not their immediate legal remedy) were no greater than the rights of 3 million other Negro, and 7 million white, pupils attending compulsorily segregated public schools in almost 3,000 biracial school districts in 17 Southern States.⁸

The Supreme Court recognized the magnitude of the problem, saying: "Full implementation of these constitutional principles may require the solution of varied local school problems."⁹ It placed "primary responsibility for elucidating, assessing, and solving these problems" on local school authorities, and gave the Federal district courts the duty of deciding "whether the action of the school authorities constitutes good faith implementation of the governing constitutional principles."¹⁰

The district courts were directed to observe "equitable principles" in reconciling public and private needs. The public interest was said to be the elimination in a systematic and effective manner of the obstacles to operation in accordance with constitutional principles.¹¹ The private and personal interest of the plaintiffs was declared to be the realization of their constitutional right of admission to public schools on a nondiscriminatory basis as soon as practicable.¹²

Although not expressly stated, the rationale of the Supreme Court's decision to permit a delay in the enforcement of the plaintiffs' rights appears to be that the public interest in an orderly administration of public schools in one-third of the Nation could, for a limited period, outweigh their personal interest—at least in the factual situation presented.

Hence the Court provided for a period of transition from a segregated to a nondiscriminatory school system and, after admonishing the lower courts to require "a prompt and reasonable start toward full compliance with our May 17, 1954, ruling,"¹³ enumerated the factors that may be considered in determining what additional time, if any, might be "necessary to carry out the ruling in an effective manner."¹⁴ The burden of proof that additional time was required was placed upon the school authorities.

Problems of adjustment

The factors that the lower courts were authorized to consider in granting additional time for good faith compliance at the earliest practicable date were:¹⁵

. . . problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems.

The courts were further instructed to consider the adequacy of the plans proposed by school authorities to meet the particular problems listed above and "to effectuate a transition to a racially nondiscriminatory school system . . . with all deliberate speed." ¹⁶

The Supreme Court specifically noted that "the vitality of these constitutional principles (set forth in the May 17, 1954, decision) cannot be allowed to yield simply because of disagreement with them." ¹⁷

THE LITTLE ROCK CASE

Three years later in *Cooper v. Aaron*, or the *Little Rock* case ¹⁸ the Supreme Court amplified both the constitutional principle announced in the *School Segregation Cases* and its instructions concerning implementation. In doing so it invalidated an order granting a 2½-year reversion to segregated operation of the Little Rock high schools that had been desegregated under a court-approved plan in the previous fall.

As to the constitutional principle, the Court said that its previous decision "forbids States to use their governmental powers to bar children on racial grounds from attending schools where there is State participation through any arrangement, management, funds, or property." ¹⁹ It further stated the constitutional rights of these school children "can neither be nullified openly and directly by State legislators or State executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'" ²⁰

As to implementation, the Court clarified the principles laid down in the second *Brown* decision. Good faith compliance with constitutional principles, it said, requires a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools. Hostility to desegregation could be neither a ground for delay nor for reverting to segregation after a start had been made. In many locations, the Court observed, obedience to the Constitution "would require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes, at particular schools." ²¹ A

district court might conclude after analysis of all relevant factors "that justification existed for not requiring the present nonsegregated admission of *all* qualified Negro children." ²² If immediate, general admission of all qualified Negro children is *not* required, however, the program of the school authorities must point toward completion of desegregation at the earliest possible date, and the appropriate steps to put such program into effective operation must have been taken before additional time may be granted. The Court emphasized the duty to end segregation, saying that State authorities (which includes local school boards and superintendents as agents of the State) are "duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." ²³

THE SHUTTLESWORTH CASE

Shortly after the second *Brown* decision, the legislatures of several Southern States ²⁴ seizing upon long-recognized power of school authorities to designate the school each child is entitled or required to attend, authorized and directed school boards to assign children to schools in accordance with specified criteria *other than race*. These measures are designated as pupil placement, enrollment, or assignment laws.

Two months after the decision in the *Little Rock* case, the Supreme Court affirmed without opinion the judgment of a three-judge district court in *Shuttlesworth v. Birmingham Board of Education* ²⁵ "upon the limited grounds on which the District Court rested its decision." This decision gave great impetus to reliance on pupil placement plans by Southern States as a means of meeting legal requirements with little or no actual desegregation. The *Shuttlesworth* case in the district court turned entirely on a single issue, namely, whether the Alabama School Placement Law was void *in toto*.²⁶ The law in question enumerated 14 factors to be considered with respect to the assignment of pupils and it had a severability provision. The plaintiff in the lower court conceded that some of the assignment factors were valid. Thus the law could not be held invalid *in toto* because of the severability clause. The district court stated: ²⁷

. . . The School Placement Law furnishes the legal machinery for an orderly administration of the public schools in a constitutional manner by the admission of qualified pupils upon a basis of individual merit without regard to their race or color. We must presume that it will be so administered. If not, in some future

proceeding it is possible that it may be declared unconstitutional in its application. . . .

Thus, it is clear that the Supreme Court decision in the *Shuttlesworth* case, which merely sustained the lower court upon the limited ground of its decision, was *not* an approval of all of the 14 factors enumerated in the Alabama School Placement Law. It was at most only a declaration that they are not *all invalid*, and that assignment of pupils to public schools on criteria *other than race* is not intrinsically unconstitutional.

THE GIRARD COLLEGE CASE

The Supreme Court decision in the case of *Pennsylvania v. Board of Directors of City Trusts*,²⁸ or the *Girard College* case, must be mentioned in view of the statement in the *Little Rock* case that the desegregation rule applies to schools "where there is State participation through any arrangement, management, funds, or property."²⁹ The issue in the *Girard College* case was whether a college established and financed by a private trust was subject to the provisions of the 14th amendment because of its administration by the board of directors of city trusts of the city of Philadelphia. Rejecting the argument that the city officials were acting in a fiduciary, not a governmental, capacity and were not, therefore, subject to the 14th amendment, the Supreme Court said:³⁰

The Board which operates Girard College is an agency of the State of Pennsylvania. Therefore, even though the Board was acting as a trustee, its refusal to admit Foust and Felder to the college because they were Negroes was discrimination by the State. Such discrimination is forbidden by the 14th amendment. *Brown v. Board of Education*, 347 U.S. 483.

It should be noted that under the terms of the trust the city was named trustee and given the entire management and control of the college. Thus, the case presented no question as to the degree of State control essential to constitute State action within the meaning of the 14th amendment.

SUMMARY

Supreme Court pronouncements concerning equal protection of the laws in public schools and the rules governing their implementation in the cases discussed above can be summarized as follows:

1. State-imposed racial segregation in public educational facilities creates inequality and therefore constitutes a denial of equal protection of the laws under the Constitution. All schools in which a State participates through any arrangement, management, funds, or property are subject to this rule. All provisions of Federal, State, or local law requiring or permitting racial segregation in public schools are void.

2. All school authorities operating segregated school systems have a duty to make a prompt and reasonable effort in good faith to comply with the Constitution. The primary responsibility for elucidating, assessing, and solving the problems of desegregation rests with the local school authorities.

3. In many locations this duty would require immediate general admission of Negro children. In others justification for not requiring immediate general admission of all qualified Negro children may exist. Hostility to racial desegregation is, however, not a ground for delay.

4. If immediate general admission of all qualified Negro children is not required, the desegregation program must: (a) point toward complete compliance at the earliest possible date; and (b) be in effect before additional time may be granted. "The burden rests upon the defendants to establish that such time is necessary . . ." ²¹

5. In fixing the limits of the transitional period for the complete effectiveness of a desegregation plan the courts may consider problems related to administration arising from: (a) the physical condition of the school plant; (b) the school transportation system; (c) the school personnel; (d) the need to revise school districts and attendance areas; and (e) the need to revise local laws and regulations.

6. A pupil placement law listing factors which are to govern the assignment of pupils without regard to race or color is not necessarily invalid and may furnish the legal machinery for orderly administration of public schools in a constitutional manner. The constitutionality of the administration of a pupil placement law is, however, a legal question distinct from the constitutionality of the law itself.

QUESTIONS ARISING FROM THE RULES

Although the rules summarized above seem reasonably clear, they leave room for debate on three general questions. First, what distinctions in admission and assignment of pupils to public schools are constitutionally

forbidden? Second, what are the attributes of nondiscriminatory operation of a public school system? Third, how can nondiscriminatory operation of a public school system be achieved under the rules enumerated by the Court?

Unlawful discrimination in public schools

The *School Segregation Cases* establish the proposition that enforced assignment of pupils to public schools on the basis of race is constitutionally forbidden. But what of segregation that results not from the operation of a dual school system, but from a gerrymander of school attendance zones or from the selection of a site for a new school for the purpose of causing or perpetuating segregation of the races?

The discrimination presented in the *School Segregation Cases* related to Negroes. The rule applies equally to other minority groups such as Puerto Ricans, Mexican-Americans, and American Indians. What classification of pupils other than by minority-group status would be considered arbitrary and, therefore, discriminatory? Is classification by the amount of education or the social or economic position of a child's parents permissible? To what extent can any factors that do not relate directly to education or the educational process be the basis for classifying schools or pupils without offending constitutional principles?

All of the school boards before the Supreme Court in the *School Segregation Cases* operated public school systems supported entirely with public funds. But must a school be entirely owned and operated by a public agency and supported with public funds to be subject to the constitutional rule of nondiscrimination? In the *Girard College* case sole control of the school by public officials without ownership or financial support brought the school under the 14th amendment. The Supreme Court said in the *Little Rock* case that the rule "forbids States to use their governmental powers to bar children on racial grounds from attending schools where there is State participation through any arrangement, management, funds, or property." But what do these words mean in application?

Complete control alone was sufficient to bring the school within the scope of the rule in the *Girard College* case. How much less than complete control or what combination of some control and some financial support would bring the same results? If a State or its agency grants a school a license to operate, or approves a private school as satisfying compulsory school attendance laws, is there sufficient State participation to bring the school within the constitutional ban? If there is no public control, is a privately owned and operated school subject to the constitutional ban solely by reason of indirect public support?—by tuition

grants, for example? If so, what proportion of its funds must come from public sources?

A related problem is the abandonment of public schools to avoid the necessity of compliance with a court order to desegregate. In the *School Segregation Cases* the Supreme Court said “. . . education is perhaps the most important function of State and local governments. . . . Such an opportunity (for an education), where the State has undertaken to provide it, is a right which must be made available to all on equal terms.”⁸² Does this mean that the State has no duty to provide free public education or that having assumed that duty may abandon it at will?

In the absence of action that might be construed to be an evasive scheme to perpetuate segregation with State support, can the operation of public schools be abandoned for the purpose of avoiding compliance with a court order? Can an individual school district close its public schools without denying equal protection if other public schools in the State remain open?

Attributes of a nondiscriminatory system

The Supreme Court has held a dual school system based upon race unconstitutional but it has been less specific as to what satisfies constitutional requirements. Does full compliance require the elimination of a dual, and the achievement of a single, unified public school system? Several of the Court's statements suggest that it had a unified system in mind: For instance, the fact that it specified, among the factors that might be taken into consideration in determining how much time could be allowed for the achievement of full compliance, the revision of school districts and attendance zones and the need of revision of local laws and regulations.⁸³

The *Shuttlesworth* case indicates that assignment of pupils individually by nonracial criteria is an acceptable manner of achieving desegregation. What other methods—in addition to rezoning which the Court has suggested—would satisfy constitutional requirements?

Achievement of full compliance

Weighing the public interest against the private, the Court has not insisted upon immediate, universal desegregation. After a prompt and reasonable start has been made, full compliance is to be achieved with all deliberate speed. The first and most obvious question is whether delayed compliance is limited to the factual situation presented in the *School Segregation Cases* where all tangible factors were equal or being equalized. If segregated school facilities are patently unequal must the

plaintiffs be admitted to the superior school forthwith, or does the rule of all deliberate speed still apply?

Another question relates to the rights, if any, of the individual plaintiffs. In the second *Brown* decision the Supreme Court said that the plaintiffs' realization of their constitutional right of admission to public schools on a nondiscriminatory basis may be deferred. But can they be forever barred from qualifying for nondiscriminatory admission by the terms of a desegregation plan? For example, a grade-a-year plan beginning at grade 1 gives no relief to individuals who are in grade 2 and above when the plan is put into effect. Since suit cannot be brought on behalf of a child until he is eligible for admission, all plaintiffs will be in grade 2 at least when litigation is concluded and such a plan put into effect.

The Supreme Court said that school authorities have a duty to initiate desegregation and bring about a constitutional operation of their school systems. Did this duty arise immediately after the second *Brown* decision, June 1, 1955, or does it arise only when a Negro pupil first asserts his constitutional rights? This question has considerable pertinence because 6 years have elapsed since the second *Brown* decision and many school boards have not yet taken any action to desegregate. Are they to be allowed as much time now as boards which started working out plans in 1955?

Lower courts were admonished in the second *Brown* decision to judge whether or not the action of school boards constitutes "good faith implementation of the governing constitutional principles." What is good faith? Is it what the school board believes is best for the plaintiff, other pupils, or the community as a whole? Or does "good faith" relate to the result to be achieved, i.e., full compliance?

The Supreme Court enumerated six factors that courts may consider in fixing the time limits of the transitional period. Are these six factors exclusive of all others?

During the transitional period fixed by a court as reasonable under all the circumstances, to what extent, if any, may race be considered? Does the extent to which race may be considered during a transition period approved by a court depend at all upon the type of desegregation plan adopted? For example, is the extent to which race may be considered the same in a grade-a-year plan based on rezoning and in a grade-a-year plan using individual pupil placement?

It has been said that the Alabama Pupil Placement law (although not the individual criteria) was approved by the Supreme Court in the *Shuttlesworth* case as not unconstitutional *in toto*. What action on the part of a school board is required to implement such a law? May the board continue to assign all pupils on a racial basis and merely consider individual requests for transfer to another school?

If initial assignments by race subject only to the right to transfer are not constitutionally acceptable, how can a gradual implementation of a pupil placement plan be achieved? Application of the law each year to all new pupils (kindergarteners or first graders, new residents, graduates from elementary school or junior high) is one possibility. A grade-a-year is another. Do either or both meet the requirements of deliberate speed? If such a transition period is approved, to what extent, if any, may race be a basis of pupil assignment during the transition?

In following chapters answers to these questions as they now appear will be discussed. In chapter 3, those that arise in the desegregation of a school system will be analyzed in the light of Supreme Court pronouncements and lower court decisions. These are, of course, suits brought in Southern States seeking desegregation or challenging the method of carrying it out. Questions relating to indirect State support of private segregated schools and the closing of public schools will be covered in chapter 6. Some of the questions posed are more applicable at the present time in the North and the West than in the South. These will be taken up in chapter 7.

3. The Law of Desegregation

Paraphrasing the Supreme Court's rules governing school desegregation is much simpler than applying them. Seven years of litigation has not brought uniformity among lower court decisions as to what does, and what does not, satisfy constitutional requirements. Part of the difficulty may arise from the fact that some lower courts have not recognized that each desegregation plan raises three interrelated questions. First, does it provide for a prompt and reasonable start in good faith toward full compliance? Second, if carried out completely will it result in a racially nondiscriminatory operation of the school system? Third, does the time schedule for complete execution of the plan meet the test of all deliberate speed? Only affirmative answers to all three questions appear to meet the rules laid down by the Supreme Court. This chapter sets forth the answers to these questions found in lower court decisions. They will be analyzed in the light of the pronouncements of the Supreme Court in an attempt to delineate the law of desegregation.

PROMPT AND REASONABLE START

In the first years after the *School Segregation Cases* in 1954, lower courts took a tolerant view of what constituted "a prompt and reasonable start" toward good-faith compliance. The formation of a citizens' committee to study the problems of desegregation, or study and planning by a school board, was held to be such a start.¹

Now it is clear that such gestures are not enough. In the *Little Rock* case, decided in the fall of 1958, the Supreme Court emphasized that State authorities, including local school boards, are "duty bound to devote every effort toward *initiating* desegregation and bringing about the elimination of racial discrimination in the public school system."²

As the Court put it in *Bolling v. Sharpe*, “. . . the equal protection clause of the 14th amendment prohibits the States from *maintaining* racially segregated public schools.”³

In *Brewer v. Hoxie School District*, the Court of Appeals for the Eighth Circuit recognized the legal duty of the school board to act even though it was not under court order to do so:⁴

The principles enunciated by the Supreme Court in the *School Segregation* cases are binding upon plaintiffs in this case, as well as on all other school boards or school officials administering public education programs. For in practical effect, the rights and duties of not only the immediate parties to the cases before the Supreme Court were at issue but also the rights and duties of all others similarly situated.

A plan for a prompt and reasonable start apparently is no longer enough. The test of whether or not a plan is in “good faith” is action, not words.⁵ Furthermore the “good faith” demanded is objective, not subjective. Immediately after the Supreme Court’s decision in the *Little Rock* case, a Federal district court instructed a school board as to the “good faith” required of it.⁶

. . . the Supreme Court did not intend that the “good faith” to be exercised by school authorities should be confined solely to what you honestly and sincerely may believe is for the best interest of the child, the children in the affected school, and the public in general.

. . . At no time has the Supreme Court used the words “good faith” as we would ordinarily interpret the same, and, you will observe, the granting of additional time presupposes that a prompt and reasonable start toward full compliance has been made.

In the *Dollarway* case (1960) a Federal district court had upheld a desegregation plan based on the Arkansas placement law and a general policy against transfer of pupils already enrolled in school. It said this plan would give at least some Negro first-graders a reasonable chance of being assigned to a white elementary school.⁷ But the Eighth Circuit reversed the decision, saying:⁸

. . . after a lapse of 6 years, we think a board should be required to come forth with something more objectively indicative as a program of aim and action than a speculative possibility wrapped in dissuasive qualifications.

It appears that good faith now requires action; unimplemented plans no longer meet the requirement of a prompt and reasonable start.

FULL COMPLIANCE

Three basic types of plan for implementing desegregation have emerged: (1) free choice of school (all schools in the system are open to any eligible pupil without regard to race or residence); (2) rezoning of attendance areas for all schools, white and Negro (all pupils living within a delineated area are automatically assigned to the school therein); (3) individual pupil assignment (each pupil is judged by established criteria and assigned to the school found to be appropriate).

Free choice of school

Baltimore is the only city known to have adopted the free choice of school method as a means of abandoning segregated schools, but even Baltimore's plan includes elements of rezoning and pupil assignment. Only two limitations are placed on the pupil's free choice of school: First, where there are overcrowded schools, attendance is limited to residents of the neighborhood—a limitation removed as soon as the crowded condition is relieved; second, there are certain special-purpose schools with scholastic admission requirements. In the absence of gerrymander of attendance zones, or discriminatory administration of admission requirements for the special-purpose schools, neither of which is suggested to exist in Baltimore, these two variations on the free-choice-of-school plan, like the plan itself, seem constitutionally sound.

The Baltimore desegregation was initiated throughout the city in September 1954; its impact has been considerable. In October 1954, there were 53 schools attended by whites only, 61 attended by Negroes only, and 49 in which both white and Negro pupils were enrolled.⁹ In other words there were 114, or 69 percent, of all schools attended only by white or Negroes. Six years later there were 100 schools attended only by whites or Negroes and 93 biracial schools.¹⁰ The percentage of all schools attended by members of one race had dropped to 52. Does the fact that this kind of racial segregation persists in over 50 percent of the schools after 6 years of desegregation make the free-choice-of-school plan constitutionally vulnerable? It would seem not. The persistence of segregation under any plan certainly may place the burden on the school authorities to prove that all of their administrative practices are in fact nondiscriminatory; but, as many courts have said,¹¹ a free, private choice of segregation does not violate the Constitution. In Baltimore most pupils choose to attend the school in the neighborhood of their homes and, therefore, to a large extent the enrollment of the schools reflects residential patterns. Since there is no legal *compulsion* in their choice of schools, no constitutional question as to the desegregation plan

seems to arise. The cost of public transportation may be a deterring factor in the choice of a school outside of the pupil's residential area, but no court has said that school authorities are obliged to provide transportation for out-of-zone pupils. When a school system offers free transportation, it must do so without regard to race, but race alone would not appear to entitle one to free transportation. Therefore, although there has been no legal test of the constitutionality of the Baltimore free-choice method of desegregation, it appears to be constitutionally valid.

Several school systems have attempted unsuccessfully to get court approval of desegregation plans offering a choice between racially segregated and biracial schools. Such attempts have relied on the proposition that segregation by choice is constitutionally acceptable. The first such plan was rejected by a Federal district court in *Kelley v. Board of Education of Nashville*,¹² on the ground that a choice between a segregated and nonsegregated school was merely a preliminary step to the establishment of schools based on racial distinctions—white as well as Negro pupils would be barred from *some* schools on the basis of race alone. The doctrine of the *School Segregation* cases, the court held, applies to individual schools as well as school systems: “. . . discrimination is clearly not eliminated by maintaining and operating some schools in the system on a racially segregated basis and others with the discrimination removed.”¹³ The plan could not meet the test of constitutionality because, when fully effective, racial discrimination would still exist.

Recently two similar plans have been rejected. A Federal district court in *Ross v. Peterson*¹⁴ (the *Houston* case), rejected the Houston School Board's “salt and pepper” plan as “a palpable sham and subterfuge designed only to accomplish further evasion and delay.”¹⁵ This plan called for the opening to 1 high school, 1 junior high school, and 1 elementary school (out of a total 173 schools) to voluntary enrollment by both whites and Negroes. The particular schools to be opened to biracial enrollment were to be selected by a study of the results of a referendum on the question of desegregating schools.

In *Borders v. Rippey*,¹⁶ a “salt and pepper” plan, presented by the Dallas School Board at the urging of the Federal district court, was approved, but struck down on appeal.¹⁷ Like the Houston plan, it provided for separating and grouping schools into white, Negro, and mixed. It also provided for canvassing parents and pupils to ascertain their preferences. The U.S. Court of Appeals for the Fifth Circuit observed that the “plan evidences a total misconception of the nature of the constitutional rights”¹⁸ of the plaintiffs: ¹⁹

. . . Negro children have no constitutional right to the attendance of white children with them in the public schools. Their constitu-

tional right to "the equal protection of the laws" is the right to stand equal before the laws of the State; that is, to be treated simply as individuals without regard to race or color.

The plan was rejected as one in which some segregation would be required by law.

A variant of the free choice plan is choice within a limited geographic area. After rejecting Houston's "salt and pepper" plan, the court ordered that a grade-a-year plan be put into effect under which ²⁰—

Each student entering the first grade (. . . as distinguished from the kindergarten) may, at his option, attend the formerly all-white, or the formerly all-Negro school within the geographic boundaries of which such student may reside, . . .

To this limited free choice, the court added: ²¹

Nothing herein shall be construed to prevent the transfer of a student at his request, or pursuant to reasonable transfer rules promulgated by the school authorities, provided only that, in the latter case, the color or race of the student concerned shall not be a consideration.

After the desegregation of the 12th grade in September 1971, "any grade or class not heretofore specifically referred to" ²² (i.e., the kindergarten) will be desegregated in the same way.

The effect of the court order, of course, is entirely dependent upon the existence or absence of an overlap of white school zones and Negro school zones. About 25 percent of both the public schools and school population of Houston is Negro.²³ Negro, as well as white, schools are scattered throughout the city which is zoned into attendance areas for segregated white and Negro elementary schools. The Negro zones are much larger because there are fewer Negro schools, so that the geographic area covered by a Negro zone may include two or more white zones. Thus, it appears that every Houston school child lives within the geographic boundary of both a white and a Negro school.

Under the terms of the court order, each first-grader was given the option of attending the white or the Negro school in his area. He also had the right to apply for transfer to another school, presumably one outside of his residential zone; or he could be transferred without request under the board's transfer rules so long as they were reasonable and did not include race.

On its face, the plan would seem to be one that would lead to full compliance at the end of the grade-a-year progression. However, the school board required Negro pupils enrolled in kindergarten to "transfer" to the first grade. Then it issued a transfer rule requiring

children of the same family to attend the same school.²⁴ Thus, first-grade Negro pupils having older brothers and sisters in a Negro elementary school have been denied transfers. Here, then, is a case where a normally free choice plan was transformed, by administrative action, into a pupil placement plan of doubtful constitutionality.²⁵

Rezoning

Attendance zones constitute the time-honored method of apportioning children among schools, and without more are unquestionably valid because the two criteria for assignment—residence and capacity of the school—have no relation to race. A number of desegregation plans are based on the revision of the school attendance areas of all schools in the district without regard to race. However, all school districts which are known to have selected this method of desegregation have some provision for voluntary transfer of pupils to a school in another attendance zone upon request. Thus, a degree of personal choice is added to a purely geographic assignment. The provisions for transfer of students between zones are crucial. Three types prevail: free, discretionary, and restricted. Free transfer provisions give the pupil the right to request and receive a transfer to any other school of the appropriate grade level, limited only by the capacity of the school selected. Discretionary transfers depend upon various stipulated criteria which the school board must consider in granting or withholding school-change requests. Restricted transfers are those limited by nondiscretionary standards which vary with each plan.

The free transfer approach (used, for example, in Louisville)²⁶ seems constitutionally sound. The discretionary transfer presents the same constitutional questions raised by pupil placement; these are considered below in conjunction with that subject. The restricted transfer is a limitation on the effect of rezoning and will be considered here.

The restricted transfer is exemplified by the transfer right included in the Nashville plan approved by the U.S. Court of Appeals for the Sixth Circuit.²⁷ Under this plan a pupil is entitled to receive a transfer from the school in which the rezoning placed him, if he finds himself assigned to a school that previously served the other race, or to a school or class in which members of the other race are in the majority.²⁸ In considering the constitutionality of this provision, the court of appeals seems to have thought of it only as a provision to permit Negro children to *retreat* to segregation, and not also as one which, by permitting white pupils to transfer out of schools formerly serving only Negroes or mostly Negroes, *re-creates* segregation from which under the rule the Negro pupil assigned there cannot escape. The court said: ²⁹

. . . There is no evidence before us that the transfer plan is an evasive scheme for segregation. If the child is free to attend an

integrated school, and his parents voluntarily choose a school where only one race attends, he is not being deprived of his constitutional rights. It is conceivable that the parent may have made the choice from a variety of reasons—concern that his child might otherwise not be treated in a kindly way; personal fear of some kind of economic reprisal; or a feeling that the child's life will be more harmonious with members of his own race. In common justice, the choice should be a free choice, uninfluenced by fear of injury, physical or economic, or by anxieties on the part of a child or his parents. The choice, provided in the plan of the Board, is, in law, a free and voluntary choice. . . .

The court here apparently was considering only one-half of the transfer provision—that allowing the Negro pupil assigned to a white school to elect to return to the Negro school. But in practice it is the white pupils' exercise of transfer rights that is significant. In 4 years of operation in Nashville, *all* white children assigned to formerly Negro schools or schools predominantly Negro in enrollment have requested and received transfers, leaving the enrollment 100 percent Negro.³⁰ The Negro children originally assigned there must remain, as the rule does not permit them to transfer. As to these children the *operation* of the restricted transfer rule creates compulsory segregation. The original assignment is not based on race, but the transfer right is. Moreover, the transfer provision does not appear to be a transition measure because no date for its termination is set and the court did not so classify it. Thus the Nashville plan, fully implemented, will preserve in part the existing patterns of segregation, for under it Negroes living in the attendance areas of formerly Negro schools will still be attending, by no choice of their own, all-Negro schools. Plans incorporating the Nashville transfer provision in a similar context have been approved by Federal district courts for school systems in Knoxville,³¹ Davidson County,³² and Chattanooga, Tenn.,³³ and in Warren County, Va.³⁴

In the *Dallas* case³⁵ the U.S. Court of Appeals for the Fifth Circuit approved a grade-a-year plan, but deleted similar transfer provisions "because . . . [they] recognize race as an absolute ground for the transfer of students, and . . . [in] application might tend to perpetuate racial discrimination."³⁶

The court noted that although the Supreme Court denied review of the *Nashville* case, three Justices thought that certiorari should be granted³⁷ because of doubts as to the constitutionality of the transfer provision. The Fifth Circuit shared those doubts even though it recognized the "practicality" of the Sixth Circuit's views:³⁸

Nevertheless, . . . 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.

The Fifth Circuit appears to be on firm constitutional ground. In addition to the dubious constitutionality of considering race, the restricted transfer provision seems to lead to compulsory segregation and, the plan therefore does not move toward and can never reach full compliance.

Pupil assignment

All of the former Confederate States have adopted laws since May 1954 empowering and directing a State or local board to enroll and assign pupils individually to its various schools.³⁹ Essentially, there are two types of placement plans: the North Carolina plan⁴⁰ and the Alabama plan.⁴¹

The former, which is followed with procedural variations by Virginia (South Carolina has a similar law, not yet applied), directs that the assignment of pupils to particular schools shall be guided by the following considerations: orderly and efficient administration of the school; effective instruction; and the health, safety, and general welfare of the pupils. The North Carolina law vests complete and final enrollment authority in the local board. In Virginia⁴² this power is in the State pupil placement board unless a local board has exercised its option to assume this function—(four local systems have recently done so).⁴³

Under the Alabama plan, in effect in eight States, local school boards are directed to assign pupils in accordance with many detailed criteria which do not include race. These criteria fall generally into the following classifications: (1) available school plants, staff, and transportation; (2) school curriculums in relation to each pupil's academic preparation and scholastic abilities; (3) the pupil's morals, conduct, health, personal standards, home environment; and (4) effect of admission of the pupil on other pupils and the community.

Under both plans, after the appropriate board has made an original assignment, the parent or guardian of any child may request his transfer to another school. If transfer is denied, provision is made for protest and hearing and, in some cases, appeal to a higher board or court. Some States make no administrative provision for the protest of the initial assignment, which may be of significance in determining when a pupil may resort to the courts for relief from allegedly unconstitutional administrative action.

If the criteria used are not arbitrary or unreasonable and do not relate to race, it seems clear that an impartial assignment of each pupil to the appropriate school is permissible. However, constitutional questions may arise both as to the criteria and their administration. It must be remembered that the *Shuttlesworth* case⁴⁴ did not uphold the constitutionality of each criterion for pupil assignment in the Alabama law. That decision merely held in effect that there was at least *one* valid criterion included therein.

As to administration the questions are: (1) what sort of board action on pupil assignment constitutes desegregation? (2) can initial assignments be made on a racial basis? and (3) can assignments be made on the basis of the prescribed criteria without first classifying schools by the same criteria?

Board action required.—Court decisions are in conflict as to whether the mere existence of an assignment law in and of itself constitutes a desegregation plan for each local school district in the State or whether it merely provides the legal machinery for one. This question is important because only a few school boards in 5 of the 11 States having pupil placement laws have made any pretense of using them.

If a pupil placement law is not deemed a desegregation plan but merely machinery which may be used to achieve a nondiscriminatory operation of a school system, some affirmative action by the school board is needed to put it into effect. In the absence of any action by the board, a class suit can be brought to force the board to act.⁴⁵ If on the other hand the mere existence of a placement law, without any action to implement it, constitutes a desegregation plan, those seeking relief from segregation may be required to exhaust available administrative remedies individually before bringing suit. The latter requirement is often extremely onerous.

The courts have taken three positions on this issue. The Fourth Circuit has viewed the North Carolina pupil assignment and enrollment act as constituting a desegregation plan; therefore it has dismissed desegregation suits when plaintiffs' administrative remedies had not been exhausted.⁴⁶

The Fifth Circuit took the opposite view in *Gibson v. Board of Public Instruction of Dade County*,⁴⁷ holding that the Florida pupil placement law provides merely the legal machinery for effectuating desegregation. Therefore, administrative remedies did not have to be exhausted before suit was brought. In this case, the court said: ⁴⁸

. . . we cannot agree with the district court that the pupil assignment law, or even that the pupil assignment law plus the implementing resolution, in and of themselves, met the requirements of a plan of desegregation of the schools or constituted a "reasonable start toward full compliance" with the Supreme Court's May 17, 1954, ruling. That law and resolution do no more than furnish the legal machinery under which compliance may be started and effectuated. Indeed, there is nothing in either the pupil assignment law or the implementing resolution clearly inconsistent with a continuing policy of compulsory racial segregation.

The Eighth Circuit appears to have taken a middle ground. In *Dove v. Parham* ⁴⁹ the district court held that the plaintiffs were not required

to exhaust administrative remedies before bringing suit because the school board had failed to prove that it had used the laws in good faith. The court of appeals reversed, saying: ⁵⁰

If there could be any right on the part of the courts to disregard the placement or assignment statute before use and application of it, it would only be on the basis that it was legally certain that it was going to be used as a subterfuge for effecting an unconstitutional result.

Nevertheless, the court did not order the action dismissed (as the Fourth Circuit consistently has), but directed the lower court to enjoin the school board from continuing to maintain a segregated school system and to retain jurisdiction of the controversy.⁵¹

The Fifth Circuit advances what seems to be the more solid reasoning. In its later decision in *Mannings v. Board of Public Instruction of Hillsborough County*,⁵² it again held that the plaintiffs were entitled to prove that the board was continuing to operate its schools on a racially segregated basis; exhaustion of all "remedies" under the pupil placement law was not required. The court said: ⁵³

We conclude that, without being required to make application for assignment to a particular school, the individual appellants, both for themselves and for the class which they represent, are entitled to have the trial court hear their evidence and pass on their contention that the pupil assignment plan has not brought an end to the previously existing policy of racial segregation.

The point is that of itself, the law on the statute books does nothing. And as the Fifth Circuit said in the *Gibson* case, the adoption of a resolution declaring an intention to carry out the law does no more.

If the Fifth Circuit's reasoning is accepted, then class actions—actions on behalf of a group of Negro children—can be brought; under the Fourth Circuit's reasoning only *individuals* can get relief and only after exhausting often illusory administrative remedies. It is not clear in some of the Fourth Circuit cases whether the contention was that the placement law was not used at all, or that it was used in a discriminatory fashion. If the former, then a class action on behalf of the Negro schoolchildren to get the desegregation process underway, seems warranted, and would be permitted under the Fifth Circuit rule. If the latter, the plaintiffs should have been allowed an opportunity to show discrimination since the North Carolina statute provides no remedy for the purpose of protesting an original assignment. (North Carolina's administrative procedures begin when someone is denied a transfer request.) The Fourth Circuit's position seems to give encouragement to

school boards that pay lip service to pupil placement laws, and continue to make all initial assignments on a racial basis.

Assignments by race.—In practice most school boards under the cover of pupil placement laws first assign all white pupils to white schools and all Negro pupils to Negro schools, subject to the right of any pupil to apply for reassignment. (The Virginia State Pupil Placement Board is the exception. It requires application for original assignment from all pupils entering the school system or graduating to a new level.)⁵⁴ When initial assignments are made racially, the Negro pupil has the burden of seeking assignment or reassignment to a white school and of establishing his eligibility therefor under the board's criteria. School boards seem to take the position that if a Negro child does not seek transfer, he has consented—indeed, chosen—to stay in a segregated school.

In *Beckett v. School Board of Norfolk*,⁵⁵ a Federal district court found that the Virginia State Pupil Placement Board was making all initial assignments on a racial basis, and then requiring Negro children to seek transfer under the placement law if they wished to attend a nonsegregated school. This practice, the court found, imposed burdens and requirements on Negro children not imposed upon other children, and therefore constituted a denial of equal protection of the laws and also was plainly in derogation of the placement law.

In the case of *Dodson v. School Board of Charlottesville*,⁵⁶ the Court of Appeals for the Fourth Circuit considered the administration of the court-approved desegregation plan for that city. At the elementary level the plan required initial assignment to the school of the zone of residence, subject to the right to apply for transfer. The court found, however, that Negro children living in the zone of a former white school were initially assigned to the Negro school in another zone, while white children living in the zone of the Negro school were initially assigned to a white school. The court pointed out that under the plan there was one criterion to be applied in making initial assignments—residence—and it was not being applied. Race was the basis of assignment, except for white pupils living in the zone of white schools and Negroes living in the zone of the Negro school. "There can be no question," the court said, "that these practices are forbidden by the 14th amendment to the Constitution of the United States."⁵⁷

This decision clearly stands for the principle that initial assignments based on race violate the Constitution even though there are provisions for transfer.

Norwood v. Tucker,⁵⁸ or the second *Little Rock* case, is similar to the *Charlottesville* case. The original court-approved desegregation plan established attendance zones. After the Arkansas pupil placement law⁵⁹ was adopted, the board proceeded to make all assignments and reassignments under the criteria of that law.⁶⁰ Before the opening of school in August 1959 the school board announced that all Negro

students wishing to do so could register at the Negro high school without regard to their residence. White students living in the zone of the Negro school were given a similar privilege regarding the white high school. Fifty-nine Negro students chose not to exercise this option and registered at the white school in their residential zone.⁶¹ Their registration forms were marked with a special identifying symbol.

In making original assignments (registration apparently being considered an application therefor) of 2,600 students "en masse," the board assigned 3 Negroes to each of 2 formerly white schools where they had registered, and all of the other 53 Negroes to the Negro school, despite their areas of residence or their places of registration. All white students were assigned where they registered. The U.S. Court of Appeals for the Eighth Circuit held these initial assignment procedures invalid: ⁶²

. . . It is established without any serious dispute that the board's assignment criteria under the pupil placement laws was [sic] not applied to any white student in making these initial assignments; that no white student was refused assignment to the school of his residence area or registration; and although controverted, the evidence convincingly establishes that in making the initial assignments of plaintiffs and other Negro students, the board's action was motivated and governed by racial considerations.

In the consolidated cases of *Wheeler v. Durham City Board of Education* and *Spaulding v. Durham City Board of Education*,⁶³ the court specifically condemned the school board's practice of assigning elementary students on the basis of two sets of city maps, one zoned exclusively for white students and the other for Negroes. It also criticized plaintiffs for giving little information (other than the desire to attend an integrated school) as to why reassignment was requested. The court said plaintiffs were in fact seeking a totally integrated school system rather than reassignment to any particular school. Citing *Briggs v. Elliott* ⁶⁴ and *Thompson v. County School Board of Arlington County*,⁶⁵ it repeated, "the Constitution of the United States does not require integration, but merely forbids discrimination." ⁶⁶

The problem here as in other North Carolina cases is that plaintiffs were attempting to challenge initial assignments by race as a continuation of the segregated system, but the Fourth Circuit rule required them to apply for reassignment and protest the denial of reassignment. Nevertheless, the court held specific practices of the board "discriminatory and thus forbidden by the 14th amendment." ⁶⁷ In addition to assignment by a dual system of attendance areas and the lateness of notice, it condemned "the failure of the board to adopt any criteria or standards for considering applications for reassignment, and the failure of the board to apply such criteria or standards equally to whites and

Negroes in the same situation.”⁶⁸ The court suggested that residence and academic preparedness have been uniformly approved as appropriate standards for considering transfers and that there may be others.

Since the record clearly showed that the board had not considered them on their individual merits, the applications of the 133 plaintiffs who had exhausted administrative remedies were returned for reconsideration.^{69a}

The condemnation of initial assignment by a dual system of attendance areas is essentially an interdiction of initial assignment by race. Elimination of racial assignments in the first instance and the establishment of definite standards for reassignment, applicable alike to whites and Negroes, would seem to accomplish a constitutional operation of the Durham public schools. Some district courts, however, continue to permit initial assignments by race.

In *Griffith v. Board of Education of Yancey County*,⁶⁹ the Negro plaintiffs exhausted their administrative remedies as required by the Fourth Circuit rule and joined in a suit against the board for refusing, because of their race, to assign them to particular schools. All plaintiffs, grades 1 to 12, inclusive, were originally assigned by the board to a two-room Negro school and their individual applications for transfer were denied. The court ordered the admission of all of the high school pupils to one of the two accredited white high schools in the county. The order as to the high school students seems to have been based on the inferiority of the two-room Negro school as compared with the white high schools, rather than on the racial character of the assignments made by the board. As to the elementary school pupils, the court said:⁷⁰

. . . One would be naive not to feel that the . . . [two-room school] was constructed for the sole use of the Negro children of Yancey County who possess the elementary school qualifications, and on its face it would appear that the board is attempting to maintain a policy of segregation. . . . Accordingly in the light of the overcrowded [white school] and the construction of the new [two-room Negro] school, I am of the opinion that the matter of the assignment of the minor plaintiffs qualified for admittance to the elementary schools of Yancey County should be reconsidered by the board. . . .

By its reference to the overcrowded condition of the white schools and the apparently ample facilities of the Negro school, the court thus seemed to countenance a possible initial assignment essentially on racial grounds. If so, this decision was not in line with the rule later announced by the Fourth Circuit in the *Charlottesville* case, condemning the use of race as a criterion in original assignments.⁷¹

In *Northcross v. Board of Education of Memphis* ⁷² a Federal district court dismissed a suit asking for relief from the segregated operation of the Memphis schools, on the ground that plaintiffs had not exhausted their administrative remedies under the Tennessee pupil placement law. It also held that the board's announced intention of using the placement law was equivalent to a start toward desegregation, even though it continued to make all assignment by race: ⁷³

The Memphis Board . . . has fully realized it is under a clear legal duty to initiate and to bring about an elimination of racial segregation. The court finds it has already done that, as a matter of fact, when they set up operations under the Tennessee pupil placement plan.

The court expressly followed the Fourth Circuit rule with regard to exhaustion of legal remedies. (That circuit's rule condemning initial assignments based on race (the *Charlottesville case*) was not available since it was handed down on the same day.) The Sixth Circuit, to which Tennessee belongs, has not had occasion to rule on these questions.

Need for classifying schools.—Courts have found error in the rejection of Negro applications for transfer to a white school when the grounds for rejections were not applied to white students seeking admission to, or already in, the school. ⁷⁴ Among the grounds for rejection that have been struck down are overcrowding, if new white students were being admitted; ⁷⁵ lack of mental or emotional stability or other psychological criteria, when not shown to be apposite; ⁷⁶ and low academic achievement or mental capacity, when some white students in the school had the same or lower achievement or mental capacity. ⁷⁷

Underlying these decisions, although not expressly recognized in them, appears to be the lack of a classification of schools to match the admission criteria that were being applied. In the absence of such a classification of schools, the school board that applies academic criteria to Negroes seeking to enter a white school appears to be in the untenable position of having implicitly classified all white schools as for superior students only, and all Negro schools as for inferior students only, and as having at least preliminarily determined that all white pupils are superior to all Negro pupils. This, of course, would be an arbitrary classification based on race alone. In the second *Little Rock* case, for instance, it appeared that citywide tests showed a graduation in the median IQ and achievement scores from Mann (the Negro school), through Technical (the trade school), to Central and Hall (the white schools), in that order. ⁷⁸ But it was conceded in testimony "that in all schools there would naturally be students who fell below and rose above these median figures, and that there are bright, average, and dull students in all of the schools." ⁷⁹

Courts seem to be seeking a solid basis for classification in saying that the Negro applicant cannot be rejected for reasons not applied to white applicants,⁸⁰ or for low IQ or achievement when there are white students in the school of as low or lower IQ or achievement.⁸¹ What they have not explicitly recognized is that the only practical solution is a system of definite classification of the various schools.

Classification of schools by purpose is not new. At the high school level curriculum is often the basis of classifications; e.g., college preparatory, scientific, technical, commercial, vocational, and industrial. Scholastic qualifications for admission, if applied equally to all, are certainly constitutionally unobjectionable. At all levels in some systems there are separate schools for the physically handicapped, retarded, emotionally disturbed, and incorrigible. Some form of certification as to the particular disability is usually required before a child can be assigned to such a special school.

A great deal of the confusion, inconsistency, injustice, frustration, and litigation arising out of the administration of pupil placement laws could be eliminated if school boards classified their schools and related their placement criteria thereto. For example, if IQ or achievement were the criterion, one school could be designated for pupils scoring 100 or better, and another for pupils having an IQ score of 99 or less.

Bringing school classification and placement criteria into line would also solve the problem of arbitrary and unreasonable criteria. Clearly a constitutional classification of schools must relate to such things as curriculums, academic standards, or teaching methods. Special teaching methods are required for certain types of schools, such as schools for the physically handicapped, the retarded, the blind, and the deaf. Obviously, public schools could not be classified by the morals of the pupils or their parents, by home background, by general health or personal standards. These factors do not relate to education or educational processes. The day of special public schools based on social classification such as existed in the early days of the Republic is long since past.⁸² An attempt to do so now would certainly be held a denial of equal protection of the laws.

In the second *Little Rock* case, the court of appeals found that in considering Negro students' applications for transfer, "the board was preoccupied with considerations not ordinarily deemed relevant to normal school criteria, and that, consciously or otherwise, the standards and criteria were applied by defendants for the purpose of impeding, thwarting and frustrating integration. . . ." ⁸³ One of the board's pre-occupations was with the "attitude" of the applicants at the hearing on their transfers. It found some were "evasive," "disrespectful," "hostile," "uncooperative" or "improper." Several applications were denied on such grounds. One student, who was found to be academically qualified and unobjectionable from the standpoint of morals, health, and personal

standards, was rejected on "attitude and ability to adjust and home environment." The court noted that at the hearing of this child's application, the father of the student, a doctor, gave the board a rather spirited lecture as to its constitutional duties.

Since the procedures used by the board in making initial assignments had been found discriminatory, it was not necessary for the court to pass upon individual denials of reassignments. Hence, no specific criterion or group of criteria were condemned as irrelevant. But it does appear that this court believed that the criteria used in placing pupils must be relevant to the business of operating schools. This would be assured if it were explicitly required that criteria used for assignment of pupils be related to a definite classification of the schools.

Judicial guidelines.—Although about 40 court cases have considered the rejection of applications for transfer, few definitive guidelines have emerged. Residential proximity to a school without regard to zoning is almost universally upheld⁸⁴ as a basis for determining school assignments,⁸⁵ as is residence in a properly established attendance area.⁸⁶ (The propriety of the attendance areas seems questionable where they were established under a dual system of racial schools and not revised, but this has been upheld.)⁸⁷ A Negro living in the appropriate attendance area cannot be subjected to transfer tests which his fellow white students are not given.⁸⁸ In one case, after a special survey showed that the applicant for transfer lived 15 feet nearer to the Negro school than the white school for which he applied, a forced assignment to a Negro school was upheld.⁸⁹

Scholastic achievement has been held a valid factor for consideration with respect to an application for transfer. However, a Negro applicant cannot be barred from a white school if white students are not excluded on the same basis,⁹⁰ or, where achievement is the criterion applied, if the applicant's achievement is equal to or better than that of the lowest white student in the class to which he seeks admission.⁹¹

Overcrowding has been upheld as a ground for denial of midyear transfer of a Negro student,⁹² but the same court rejected this as a reason for denying transfer the following fall when new classes were being made up.⁹³

The educational undesirability of repeated transfers was sufficient to deny a transfer to a student who lived closer to a new Negro school about to be completed than to the white school for which he applied, since he would be subject to transfer to the new school when completed.⁹⁴ Likewise, the denial of transfer of a high school senior was upheld when he had only a few more months to go to complete high school.⁹⁵

Possible racial tension and violence,⁹⁶ or threat of friction and disorder,⁹⁷ as criteria for denying transfer have been held to conflict with the Supreme Court decision in *Cooper v. Aaron*.⁹⁸ "Isolation" in school

is a legally insufficient reason to deny a transfer,⁹⁹ and "adaptability" has been held legally questionable.¹⁰⁰

A plan calling for transfer upon the basis of tests to establish mental and moral health, intelligence, suitability of the existing curriculum, and adaptability to the required emotional and social adjustment has been approved by a Federal court,¹⁰¹ but no case has arisen in which actual denial of transfer under this plan has been tested. Another court-approved plan includes all of the above factors, plus psychological considerations, home environment and morals, conduct, health, and the pupil's personal standards.¹⁰² Again, its application has not come before a court. The opinion in the second *Little Rock* case¹⁰³ shows that several of these criteria were applied to Negro applicants by the Little Rock board but, having found the original assignments based on race unconstitutional, the court did not specifically pass upon any of the criteria relating to applications for reassignments.

ALL DELIBERATE SPEED

Immediate admission

In the previous chapter it was pointed out that the *School Segregation Cases* were predicated upon a finding that the Negro and white schools involved had been equalized, or were being equalized, in all tangible factors.¹⁰⁴ In the absence of such equality there would appear to be no authority for the application of the doctrine of protracted compliance with all deliberate speed; compliance must be forthwith.¹⁰⁵

The classic situation of inequality in tangible factors is the absence within the school system of any school for Negroes. In *Kilby v. Board of Education of Warren County*,¹⁰⁶ the first case of its kind since 1954, the district judge ordered *immediate* admission of all resident Negro students to the high school maintained for white pupils. Theretofore Negro students had been given tuition grants to attend school in another county. The court remarked that this method of providing education had not been acceptable under the outmoded separate-but-equal doctrine. It cited in this connection a pre-1954 decision in a Federal district court also in Virginia.¹⁰⁷ It might have cited the Supreme Court decision in *Missouri ex rel. Gaines v. Canada* which specifically so held.¹⁰⁸ Since the *Warren County* case, three other Virginia school districts which did not maintain a high school for Negroes have also been ordered to admit them immediately to the high school for white students.¹⁰⁹

Curriculum disparities as between white and Negro high schools, another classic measure of tangible inequality, has led to an order to admit a Negro to a white school, even though the pupil was not eligible for admission under a court-approved plan.¹¹⁰

These decisions seem sound in theory because the rationale of the *School Segregation Cases* seems to be that where tangible equality exists, the public interest in an orderly transition may outweigh the plaintiff's personal rights. But where there is tangible inequality, the plaintiff's rights may have greater weight. A difficult situation could arise, however, if a large number of Negro pupils demanded immediate admission to white schools on this ground. In spite of the inherent difficulties, voluntary action to admit large numbers of Negroes to white schools was taken in the first years after the *School Segregation Cases* in some States, notably Oklahoma and Kentucky, upon the closing of substandard Negro schools. Such voluntary recognition of the inequalities in the existing Negro schools seems, however, to be a thing of the past.

Immediate general admission may also be required even when schools are equal in tangible respects. In *Cooper v. Aaron*¹¹¹ when the court said that in many locations, obedience to the constitutional duty to desegregate "would require the immediate general admission of Negro children,"¹¹² it apparently went beyond mere tangible inequality, referring to all cases where administrative difficulties did not warrant delay.

Recently, complete and immediate desegregation has occurred mainly in schools serving dependents of military personnel where the number of Negro students was not large. Both by court order¹¹³ and by voluntary action¹¹⁴ on the part of school authorities, in some places all school-age children of Negro military personnel have been admitted to the off-base school serving dependents of white personnel.

The Court of Appeals for the Third Circuit in *Evans v. Ennis*¹¹⁵ recognized the need for immediate, general admission of all Negro pupils seeking admission to the white schools in the still segregated school districts in Delaware. It rejected a grade-a-year plan approved by the district court and insisted upon a plan that would provide for the immediate admission to white schools in *all* grades of *all* Negro children who desired it, in the fall of 1961 and thereafter. The court distinguished the situation in Delaware from that in Nashville where a 12-year plan had been approved by the courts:¹¹⁶

Many of the school districts and high school areas of Delaware with which we are concerned are in rural or semirural areas, and the number of presently segregated Negro schoolchildren involved in the whole of Delaware is much less than the number involved at Nashville. Integration problems are more difficult of solution in heavily populated urban areas.

The more restrictive standards of southern communities were inapplicable in Delaware, the court said, because it was further along "upon the road toward full integration."¹¹⁷ The court found the statement of the Chief Justice in the *School Segregation Cases* that "at stake is the personal interest of the plaintiffs [Negro schoolchildren] in admission to public schools *as soon as practicable* on a nondiscriminatory basis,"¹¹⁸ particularly pertinent.¹¹⁹

Closely allied to the question of when the immediate, general admission of all qualified Negro pupils is appropriate, is the question of the rights of the particular plaintiffs in an action. Grade-a-year plans beginning at grade 1 usually preclude the plaintiffs from ever enjoying their constitutional rights. Since the plaintiffs must have been eligible for school when their case was brought, it is hardly likely that they will be entering first grade when the court-approved plan goes into effect. As desegregation progresses through the grades year by year, so will they—thus keeping constantly ahead of it. Most courts have ignored this, but the Third Circuit in the *Delaware* case was keenly aware of the plaintiffs' rights. One of its grounds for reversal was that "the plan as approved by the court below will completely deprive the infant plaintiffs, and all those in like position, of any chance whatever of integrated education, their constitutional right."¹²⁰ The court cited *Lucy v. Adams*¹²¹ in support of the proposition "that individual plaintiffs in a class suit. . . have a personal right to immediate enforcement of their claims if such be feasible."¹²²

It seems clear that under the doctrine of all deliberate speed and the statement of the Chief Justice quoted above, the rights of the individual plaintiffs and others may be deferred; but whether they can be deferred forever by the terms of a court-approved plan will have to be faced by the courts. The difficulty inherent in a grade-a-year, 12-year plan beginning at grade one would, of course, be obviated by beginning at grade 12 and working down. But the educational advantages of starting at grade one are obvious. The gap in scholastic achievement between the average white student in the white school and the average Negro student in the Negro school becomes progressively greater year after year. It is smallest at grade one.

Another solution was inserted into a 7-year gradual plan by a Federal district court in Maryland in *Moore v. Board of Education of Harford County*.¹²³ In that case, after the desegregation of the elementary schools, the junior and senior high schools were to be desegregated a grade a year beginning with the seventh grade. All elementary pupils were given a choice of attending either the school traditionally attended or the nearest school. Thus, the plan would have precluded all Negro children in the sixth grade or above at the time, including some of the plaintiffs, from ever attending a desegregated high school. To prevent this result, a provision was made for individual application for transfer

to be approved or disapproved by a special committee created for that purpose. This is, in effect, grade a year on the nearest school basis, plus pupil placement for all the grades not yet reached. If it be decided that the plaintiffs, and all others similarly situated, cannot be completely denied the enjoyment of their constitutional rights, some such provision may be required to save all grade-a-year plans, except those beginning at grade 12.

Grade-a-year plans

One grade-a-year desegregation plans beginning either at the 1st or at the 12th grade have been approved by several courts.¹²⁴ In some cases the plans call for rezoning of the attendance areas, and initial assignment of pupils affected to the school of their residential zone. In others, pupils affected are permitted to apply for transfer from the racially segregated school to another school and, if they meet tests prescribed by law, the application is granted. The two plans have only one feature in common—the time scale of 12 years to reach complete compliance.

There seems to be more justification for the 12-year implementation of a plan based on rezoning than one based on pupil placement—at least where the latter is accomplished by transfers only. Rezoning involves a rather general reshuffling of pupils from one school to another. In a large school system the administrative problems in such an undertaking are significant. But, before approving a 12-year pupil placement plan, the courts can insist upon rules and procedures that will lead year by year to full compliance at the end of the period, and they can facilitate compliance within the period. Some appellate courts have been careful to specify that the 12-year transition is maximum, that the lower court having jurisdiction may accelerate the program. Such caution seems wise because circumstances change. The Supreme Court specifically instructed lower courts to retain jurisdiction during transition periods, which would permit orders to be modified to reflect altering circumstances. Thus, the Fifth Circuit said in the *Dallas* case: ¹²⁵

In so directing, we do not mean to approve the 12-year, stair-step plan "insofar as it postpones full integration." See *Evans v. Ennis*, 3d Cir., 1960, 281 F. 2d 385, 389. The district court has not expressly passed on whether that much delay is necessary, or whether the speed is too deliberate. It retains jurisdiction of the action during the transition. See *Kelley v. Board of Education of City of Nashville*, *supra*; *Aaron v. Cooper*. . . . After the approval of Plan No. 1 . . . the future order of the district court should be governed by the rule so well stated in *Brown v. Board of Education*, 1955, 349 U.S. 294, 300, 301 . . . :

"The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good-faith compliance at the earliest practicable date."

Unless a warning of possible acceleration at a later date is given, however, community acceptance of a speedup schedule might present the same problems as a first step.

In three cases—arising in Delaware, Kentucky, and Virginia—a 12-year period for compliance has been disapproved as not warranted by the problems of transition, and immediate desegregation has been ordered in all grades.¹²⁶

Other time factors

The Virginia State pupil placement law by requiring individual assignment of all new pupils, and automatically reassigning old pupils to the school previously attended, introduces a definite time factor, but one of less than 12 years. New pupils are defined by the law as those entering school for the first time (kindergarteners and first-graders), and those transferring to, and graduating within, the school district. Thus, if the schools of a particular district are on an 8-4 basis, those who entered second grade the year the law was put into operation would come up for individual assignment for the first time upon graduation from eighth grade. Under a 6-3-3 division of school, the maximum period would be only 5 years.

The Virginia law, in theory at least, avoids the objectionable practice of automatically making all initial assignments on a racial basis. The time feature of the law has not been tested in court, but it seems to be a reasonable method of implementing the placement law and of satisfying the requirements of all deliberate speed, particularly since all pupils automatically reassigned to the school previously attended have the right at all times to apply for reassignment.

In some cases, courts have approved gradual implementation plans without requiring that any time scale be set. This procedure does not seem to meet the requirement of the second *Brown* decision, which required proof of administrative cause for delay.¹²⁷ Without such proof a court has no basis for deciding the question of all deliberate speed, one of the three interrelated questions that must be decided to determine the constitutionality of any plan.

In the *Charlottesville* case,¹²⁸ the Fourth Circuit affirmed a denial of transfer, even though the administration of the previously approved plan was found clearly discriminatory. The court condoned the board's action because "they [the members of school board and school superintendent] intend in good faith to achieve as promptly as possible the desegregation of

their schools, as required by law.”¹²⁹ Token desegregation in the two preceding school years, rather than the failure to execute an already court-approved plan, impressed the court. The opinion gives no reason, if any was presented, for failure to carry out the previously approved plan. The court specified no time limit on the unlawful practices. It appears to have ignored the fact that the second *Brown* decision indicates that once a start has been made, the burden is on the school board to show what additional time, if any, is necessary to carry the plan out. If courts require no proof, and rely upon the good faith of a board which has a history of discrimination, it seems doubtful that desegregation will proceed promptly.

The same court read a gradual time schedule into a desegregation plan in the case of *Hill v. School Board of Norfolk*.¹³⁰ Affirming the district court's decision, which condoned racial assignments to the first grade, it said: ¹³¹

So far as appears, the school board did not announce in advance a plan for gradual, progressive desegregation of grades beginning with high schools and proceeding progressively to the lower grades. It appears, however, from what the board has done that it means to proceed upon the basis of a plan of progressively opening the grades beginning with the higher grades and proceeding toward the lower grades. Under this procedure, in due course, the plan will reach the first grade and the existing discrimination in the enrollment of first grade pupils will be eliminated. It is our understanding that such discriminatory practices have already been eliminated for those being promoted from one school to another, and the plan, in time, will remove the remainder of the proscribed practices. . . .

Again, no proof was required to establish the necessity for delay, and no deadline for ultimate, full compliance was set. Under such circumstances it does not seem to be established that the board is moving toward full compliance with all deliberate speed.

Consideration of race during transition

It is implicit in every plan for gradual desegregation that during a transition period racial assignments are not completely banned, if a reasonably limited transition period is first established. In *Dove v. Parham*, the Eighth Circuit Court of Appeals said: ¹³²

Where a board has adopted a definitive plan of effecting desegregation by reasonable transitional steps, the racial question necessarily is geared to the scope of those steps. But only in that sense and within that need, we think, is there basis to say that consideration in assigning students may be given to race. The board

may in such a situation find it necessary to make selection between Negro students, and it will be entitled to do so on proper judgment as to what will best serve to accomplish its program. . . .

The court's meaning is not entirely clear. It may be that racial considerations must be *excluded* from everything except the unexecuted portion of the plan or full compliance cannot be reached. This would mean that race is geared to the scope of the step taken. Thus, in the *Dallas* case the Fifth Circuit required deletion of the racial transfer provision that was tied to the desegregation of each successive grade. The fact that race is the basis of assignment in the grades not yet desegregated is accepted without question in all plans calling for gradual implementation.

It was pointed out earlier that the decision in the *Dallas* case seems sound because the transfer provision, which the court disapproved, would have precluded any possibility of full compliance at the end of 12 years. However, if the plan had called for the elimination of the transfer provision at the end of 12 years, it might have been sustained as an interim measure even though it would necessarily extend the transition period from 12 to 18 or 20 years, depending upon the number of grades in the elementary school. Only in the second period, after the transfer provision based on race had been eliminated, could full compliance be reached. The elimination of the transfer provision would be effective for 1st, 7th, and 10th (or 8th) grade pupils in the 13th year, and would gradually encompass all grades as they moved up through the elementary and secondary schools. At the end of the period, pupils in all grades would have been assigned by residence only. Thus, the first 12 years would have been merely preliminary. It is not suggested that any court would or should approve an 18- or 20-year plan. The hypothesis is presented for the purpose of illustrating the significance of completely eliminating racial factors in the final steps leading toward full compliance.



4. Desegregation in the South

By May 1959, 733 out of a total of 2,839 biracial school districts in the 17 Southern States (25.8 percent) were desegregated in some degree.¹ In the next 2 years 44 additional districts initiated desegregation for the first time and 2 desegregated districts in each of 2 States merged. Thus, at the close of the 1960-61 school year, 775 out of 2,837 biracial Southern school districts, or 27.3 percent, were desegregated at least in part—an increase of only 1.5 percent.

The 44 school districts that initiated desegregation in 1959-61 include 31 that voluntarily admitted Negroes to formerly all-white school and 13 that did so under Federal court order. Two States that had been completely segregated, Florida and Louisiana, were added during this period to those having some school desegregation. In the former, one district voluntarily desegregated; ² in the latter, one desegregated under Federal court order.³ Four Southern States remained completely segregated on the elementary and secondary level in 1959-61, and three of these have no public educational institutions at any level attended by members of both races. Appendix IV, table 1, shows the breakdown by States.⁴

This chapter will consider significant developments in the States that initiated, and those that expanded, their desegregation programs in 1959-61. Special mention will be made of the desegregation of schools attended predominantly, or exclusively, by dependents of United States military personnel. The remainder of the chapter will be devoted to a summary of the official attitudes of those States in which there is no school desegregation. Prospects for the future will be indicated.

INITIAL DESEGREGATION 1959-61

Florida

Dade County is located at the southern tip of Florida. It is a metropolitan community with a population of about 900,000 people, approx-

imately 16 percent of whom are Negro;⁵ its principal city is Miami. Dade County was the first and is still the only one of Florida's 67 districts to operate schools attended by Negroes and whites. It began desegregation voluntarily in September 1959 at schools located in Miami and Naranja. At that time, however, a suit seeking desegregation was pending in a Federal court.⁶

Orchard Villa Elementary School is located in a Miami neighborhood that changed from predominantly white to predominantly Negro in a 3-year period. In September 1958 the Dade County Board of Public Instruction received a number of applications from Negro pupils for assignment to Orchard Villa. Four of the applicants appeared for a hearing before the board late in September 1958. Their requests were denied.⁷

The school board, however, initiated a survey of the community around Orchard Villa in October 1958 and found that most white residents planned to move regardless of the possibility of school desegregation. Interviews indicated that a majority of the teachers and staff would not stay if more than four Negro pupils were admitted.⁸

On the basis of this study the board unanimously approved the assignment of the four Negro applicants to Orchard Villa on February 18, 1959. When the school opened in September, only 18 pupils enrolled (14 white and 4 Negro). It operated on that basis until October 12, 1959, when 150 Negro children who had applied for transfer during the summer were admitted. Some 300 additional Negroes from nearby overcrowded schools were also assigned to the school. At the end of the 1959-60 school year, only 5 whites still attended with about 450 Negroes.⁹

When Orchard Villa opened in September 1960, 1 white child remained with some 802 Negro children. Two weeks later the Negro enrollment had increased to more than 1,000 and the parents of the 1 remaining white pupil moved to another neighborhood and removed their child from the school.¹⁰ Thus, within a period of 1 year the segregated school for white students had desegregated and then become a "segregated" school for Negroes.

The second school in Dade County to desegregate during the 1959-60 school year was Air Base Elementary School, adjacent to Homestead Air Force Base in Naranja, Fla.¹¹ The school opened for the first time in September 1959, with 17 Negro and 764 white pupils—all children of airbase personnel. Federal funds for the construction of this school were obtained under Public Law 815¹² due to the influx of "unhoused" pupils occasioned by Federal activities. The school, however, is located on county-owned property and is under the exclusive control of the county board. It is open to all children living in the school attendance zone¹³ and has continued to operate without incidents attributable to its biracial

enrollment. In September 1960, Air Base School enrolled 25 Negro and 771 white students.¹⁴

Dr. Joe Hall, Superintendent of Schools of Dade County, Fla., testified at the Commission's Gatlinburg conference that there are four airbases in Florida with desegregated schools within their confines. Some of them at one time were operated by county school boards, but Dr. Hall reported that when they desegregated the counties turned them over to the Federal Government.¹⁵

Two additional schools were desegregated in Miami during the 1960-61 school year when one Negro was assigned to a formerly white elementary school and another to a junior high school. There were about 1,633 white pupils in attendance at the 2 schools.¹⁶

Louisiana

Before the school year 1960-61 there were no instances of public school desegregation in any of Louisiana's 67 parish school districts, although 3 suits were pending before the United States District Court for the Eastern District of Louisiana, seeking desegregation in the parishes of Orleans, St. Helena, and East Baton Rouge.¹⁷ When it appeared in the summer of 1960 that the Federal court order to desegregate the first grades of the New Orleans schools in the fall of 1960 would be enforced, the Governor and General Assembly of Louisiana resisted by every means at their command. The chronology of events leading up to the admission of four first-grade Negro girls to two formerly white New Orleans schools on November 14, 1960, is recounted in detail in a report of the Commission's Louisiana Advisory Committee.¹⁸

Mrs. N. H. Sand, president, S.O.S. (Save Our Schools, Inc.), New Orleans, testified at the Commission's Williamsburg conference that the Governor called the legislature into the first special session in 1960 on November 4, and that in 5 days of "hysteria," 21 emergency bills were passed to preserve segregation. (For details see chapter 5.) Mrs. Sand reported:¹⁹

Save Our Schools appeared at the hearings before the House committee and before the Senate committee. We opposed every bill that would lead to closing even one school in the State of Louisiana. We prepared a summary and legal analysis of the bills on the spot and had copies of these in the hands of the legislators before they voted on the bills, but the legislature voted in favor of all 21 bills. Even legal minds found it difficult to keep up with the spate of legislative activity that began with these bills and has flowed ever since or with the Federal injunctions that were used to counter some of them.

The General Assembly was called into such special sessions five times during 1960-61 (at a total cost to the taxpayers of \$934,000)²⁰ in a vain attempt to prevent the admission of Negro children to the white schools.

New Orleans has a total population of 627,525, of whom 233,514 are Negroes.²¹ The violence that occurred there in conjunction with school desegregation stands out in striking contrast to the city's reputation for gaiety. The court order provided merely that the first grade should be desegregated in the fall of 1960. To implement the order, the school board voted to use the recently enacted Louisiana pupil placement law²² to select the first-grade Negro pupils to be admitted to formerly white schools. This law establishes the same criteria as the Alabama law which the Supreme Court of the United States had ruled was not unconstitutional on its face 2 years before.²³

The registration of first-grade pupils in the city was 6,482 Negroes and 3,335 whites²⁴ (the majority of public school pupils in New Orleans are Negro). Only 137 Negro children had applied for admission to white schools.²⁵ After more than 2 weeks of testing, the school superintendent announced on October 27, 1960, that five Negro children had met all the criteria for admission, and that the two first-grade classes scheduled for racial desegregation would be segregated on the basis of sex.

When the school opened, the legislature dispatched State policemen (hastily converted into sergeants-at-arms) to the city's 148 elementary schools to implement a new statute giving control of the New Orleans public schools to the State general assembly. The school principals, however, refused to comply with the demands of policemen and proceeded to carry out instructions from the president of the Orleans Parish School Board to open school as usual. On November 14, four 6-year-old Negro girls, accompanied by U.S. marshals, enrolled in William Frantz and McDonough 19 elementary schools. The schools were promptly boycotted by most white pupils. Mrs. Sand reported to the Commission:²⁶

What happened after November 14 is widely familiar in this country and probably also abroad—the day of rioting by white high school students who, thwarted in their ambitions to “get the mayor” and march on Frantz, nevertheless succeeded in burning the American flag; the screaming mobs of women in front of the two schools; the heroism of Mrs. James Gabrielle and Rev. Lloyd A. Foreman in bringing their daughters to Frantz in defiance of these mobs.

A few white pupils finally returned to William Frantz, but the majority (about 675) transferred to public schools in the adjoining St. Bernard Parish.²⁷ The school board estimated that nearly 300 white children belonging in these schools received no schooling whatsoever throughout

the school year.²⁸ While the number of white students attending William Frantz with 1 Negro girl reached a high of 23 in December, McDonough 19 was completely boycotted by white pupils until January 27, 1961, when a 9-year-old white boy joined the three Negro girls.²⁹ A few days later the boy's 8-year-old brother also started attending McDonough 19. But a sudden surge of harassment and violence against the boys' family induced its departure from New Orleans on January 31, 1961.³⁰ Then overt disorder subsided until June 1, 1961, when about 75 white pickets, the first in several months, appeared at William Frantz protesting desegregation.³¹ At the end of the school year only 15 white pupils were enrolled at William Frantz with 1 Negro girl and only the 3 Negro girls attended McDonough 19.³² Obviously the problem remains unsolved.

The Commission has received a complaint from parents of a child attending a public school in another Louisiana parish serving white dependents of military personnel who live on base.^{32a} The parents object to the indoctrination the child is subjected to in school concerning the inferiority, dishonesty and unreliability of Negroes. The Complainant says:

I think that service children located in the South should be protected from the narrow, bitter, highly prejudiced and dangerous teachings prevalent in the South. I think a system of schools or Federal supervision of schools attended by service dependents must be established. . . . unless our children are brought up in the proper intellectual climate—this problem must get worse. Prejudice is heightening and the gulf widening at a time when this country can least afford it.

PREVIOUSLY DESEGREGATED STATES

Forty-two school districts experienced school desegregation for the first time during this period in eight States that previously had some desegregated schools. Twelve of them acted in response to Federal court orders (plus Orleans Parish, discussed above); the remaining 30 acted voluntarily. However, desegregation suits were pending in seven of the latter, including Dade County discussed above. Three such suits were pending in North Carolina against school boards in Durham,³³ Chapel Hill,³⁴ and Raleigh;³⁵ two in Virginia against Richmond³⁶ and Fairfax County;³⁷ and one in Arkansas against the Dollarway School District.³⁸ The desegregation move in Delaware was not clearly voluntary nor involuntary. In a sense, all of the Delaware school districts that desegregated in September 1959 were carrying out a district court order

in the case of *Evans v. Buchanan*,³⁹ which by its terms applied to all segregated districts in that State. However, only two of the seven desegregating in 1959 actually were defendants in the suit. In 1960 after a reversal of a lower court decision,⁴⁰ five districts admitted Negro pupils to previously all-white schools, but only one of them was a defendant in the action.

Although only 13 school districts desegregating for the first time in 1959-61 were actually under court order, another 15 were at least pressured by pending suits or orders that could be extended to them.⁴¹ Indeed, litigation dominated the desegregation in this period. Voluntary desegregation occurred in small districts with relatively small Negro populations in Kentucky, Oklahoma, and Texas.

Arkansas

In September 1959 the high schools of Little Rock, closed during the previous school year by order of Governor Faubus after desegregation in 1957-58, reopened on a desegregated basis. This was the result of a Federal court order⁴² (later affirmed *per curiam* by the Supreme Court)⁴³ invalidating the laws that authorized the Governor to close public schools upon desegregation⁴⁴ and to transfer State funds from them to other public or private schools.⁴⁵ The net effect of the order was to reopen the Little Rock high schools under the original desegregation plan. While the appeal was pending before the Supreme Court, the Little Rock School Board, fortified by the appointment of new members and supported by community leaders and citizens groups, decided to reopen the high schools in August 1959 on a desegregated basis. This was to be done by use of the pupil assignment law enacted that year, and the implementing resolution adopted by the board in July 1959.⁴⁶ Out of approximately 60 Negro applications, 3 were admitted to previously desegregated Central High and 3 to the then all-white Hall High School.⁴⁷

Mr. J. Gaston Williamson, then chairman of the Commission's Arkansas Advisory Committee, testified at the Gatlinburg conference:⁴⁸

Reported attempts were made in 1959, to again assemble a mob, as was done in 1957, to protest the opening of integrated high schools in Little Rock on August 12. A crowd of about 1,200, some two-thirds of whom, according to the Governor's own State police, were from out of town, gathered on the State capitol grounds and were addressed by Governor Faubus. About 200 of these people then marched on Central High, but were dispersed by the city police.

For resisting the mob's attack and maintaining law and order in Little Rock, the city police were bitterly denounced by Governor Faubus and by the capital citizens council, but on the other

hand, they were openly—this time openly—praised and supported by the majority of the responsible organizations of the city.

Little Rock's second year of uninterrupted school desegregation, 1960–61, began with seven additional Negroes assigned to the desegregated high schools. Later 1 of the 7 requested a retransfer to an all-Negro school, leaving a total of 11 Negro pupils in 2 formerly white high schools.⁴⁹ The desegregated schools opened in September 1960 for the first time without incident and without crowds.

One school in Arkansas' Pulaski County School District opened in September 1959 with white and Negro pupils in attendance for the first time. This was an elementary school situated on county-owned property, and under the management of the county board of education, although built with Federal funds for the use of children of military personnel stationed at Little Rock Air Force Base.⁵⁰ The Pulaski County School District is comprised of the rural areas surrounding the city of Little Rock. The school for airbase children was first opened in 1958. At that time only white children were admitted; the Negro children of airbase personnel were transported to a segregated school 11 miles away.⁵¹ It is reported that the Federal Government notified the county that if all children of military personnel were not admitted during the 1959–60 school year, the property would be condemned and annexed to the airbase, and the Air Force would operate the school. This would have meant a loss to the county of about a million dollars a year in Federal impact aid.⁵²

In the fall of 1959 an agreement was reached whereby the school was leased to the Air Force for a nominal sum and operated by the county under contract on a desegregated basis.⁵³ By this arrangement the county could continue to receive Federal aid and still not desegregate one of its own schools. The school opened quietly in September 1959 with 10 Negro, and 828 white pupils.⁵⁴

The 1960–61 school year opened peacefully in Arkansas for the first time since 1956. The long-litigated case of *Dove v. Parham*⁵⁵ made Dollarway School District the 11th community in Arkansas to experience desegregation.⁵⁶ Although assignment of a Negro pupil to a formerly white school was not imposed by court order, it was precipitated by the pending action. The school board "voluntarily" admitted 1 Negro pupil to the first grade of a school with some 90 white pupils.⁵⁷ To date that is the extent of desegregation in Dollarway School District which includes part of the city of Pine Bluff and suburban areas in Jefferson County. About 50 percent of the school population is Negro.⁵⁸

Delaware

Delaware opened the 1959–60 school year with 19 of its 51 biracial districts operating on a desegregated basis,⁵⁹ an increase of 7 over the

previous year. In September 1960 five more school districts opened the doors to their white schools to Negro pupils. Dr. Miller, State Superintendent of Schools for Delaware, testified at the Commission's Gatlinburg conference that the State had made noteworthy progress in desegregation in the year immediately following the 1954 Supreme Court decision; he pointed out, however, that before September 1959 the process was concentrated in that portion of the State north of Dover. He said that none of the schools south of the capital had attempted desegregation after the unfortunate Milford incident in 1954.⁶⁰

It is noteworthy, therefore, that desegregation in 1959 and 1960 was predominantly in the lower half of the State which is traditionally Southern in orientation. No incidents of any kind occurred.⁶¹

Kentucky

Although school desegregation has progressed in an orderly fashion without incidents in Kentucky, a trend toward a decrease in the actual number of Negro pupils attending schools with white pupils may be developing. The number of desegregated school *districts* in Kentucky has increased each year since 1955, but the actual number of Negro pupils in desegregated schools reached a peak during the school year 1959-60 and decreased in September 1960. The Department of Education of Louisville (where a large proportion of the State's Negro population is concentrated) reported to the Commission that in 1959, 76.4 percent of its Negro pupils were enrolled in biracial schools, whereas in 1960 the number decreased to 73.8 percent; meanwhile the percentage of white students in biracial schools declined from 88.4 to 83.4.⁶² This occurred in spite of the fact that there was a slight numerical increase in the total Negro school population in Louisville and a slight decrease in the white school population in 1960.⁶³ The report also stated that no records were kept as to the number of requests for transfer out of formerly Negro schools by white pupils, or the number of Negro pupils requesting transfer out of formerly white schools. However, when asked to explain the overall decrease in pupils attending biracial schools, an assistant State superintendent said that evidently more pupils were taking advantage of the transfer privileges to attend schools where their own race predominated.⁶⁴

Although no school district in Kentucky was newly desegregated by Federal court order in 1959-60, the Owen County Board of Education was ordered to desegregate its elementary schools at the opening of the 1959-60 school year.⁶⁵ The county high schools had been desegregated in the fall of 1958 by court order.

Maryland

All of the 23 school districts in Maryland having a biracial school enrollment have been desegregated as a matter of policy for several years, although only 15 actually operated biracial schools in 1959-61.⁶⁶ When schools opened in September 1960, 45,943⁶⁷ out of a total Negro public school population in the State of about 135,000, or 34 percent, were in school with white students.⁶⁸ However, 39,206 of the Negro pupils attending biracial schools, or almost 85 percent, were in the city of Baltimore.⁶⁹ Of the remaining 15 percent, more than half were in two suburban counties, Baltimore and Montgomery, and the balance scattered in 11 counties.⁷⁰ The eight counties having a Negro school population but no biracial schools are, in general, rural and have a high proportion of Negroes.

It is interesting that the city of Baltimore (desegregated completely in 1954) has had a marked increase in its Negro population, but only a slight increase in the percentage of Negroes attending schools with whites. In September 1960 it was 49 percent of all Negro pupils as compared with 46 percent 2 years earlier.⁷¹

Missouri

Since the public schools of Missouri have not kept records by race for several years and no official State agency has reported on the desegregation process, only partial information has been available. The 1960 report of the Missouri Commission on Human Rights, however, indicated that in 1959 most Negro children in Missouri still were in all-Negro schools, although in most counties with school-age Negroes some desegregation had occurred. While response to its inquiries were not complete, it concluded that the data received covered 97.56 percent of the Negroes in the State.⁷² Two counties reported that no attempt to desegregate schools had been made; another indicated that it transported its Negro schoolchildren to a neighboring county.

The Commission said: ⁷³

Thirty-seven units reported that elementary schools in their county had been integrated, and 11 that they had not; 38 that junior high schools had been integrated, 10 that they had not; 44 that senior high schools had been integrated, 1 that the senior high school had not.

* * *

Considering those public schools which were used in tabulation, 86.2 percent of the senior high schools, 74 percent of the junior high schools, and 70 percent of the elementary schools reported that

they were integrated. Thirty-six percent of the tabulated units indicated that they still had inadequate all-Negro schools.

Mr. James A. Hazlett, Superintendent of Schools of Kansas City, reported at this Commission's Gatlinburg conference that when Kansas City schools opened on a completely integrated basis at all grade levels in September 1955, 43 out of 81 elementary schools were all-white, 6 were totally Negro, and 32 had pupils of both races. Seven of the 10 senior high schools enrolled Negroes and whites as did all 4 junior high schools.⁷⁴

As of November 1960, the superintendent reported, 53 of the city's 97 schools enrolled both races. This figure includes 41 elementary schools, 4 junior and 6 senior high schools and the junior college.⁷⁵

North Carolina

In the school year 1958-59 only 4 of North Carolina's 172 school districts enrolling both white and Negro pupils operated biracial schools. In the year 1960-61 the total number of Negro and white school districts had increased to 173, of which 10 had 1 or more desegregated schools.

In September 1959, by the voluntary action of the school board, Negro pupils were assigned to the previously white schools of Durham for the first time. Mr. E. L. Phillips, assistant superintendent and director of secondary instruction for the public schools of Durham, in a written statement to the Commission for the Gatlinburg conference, stated that in accordance with the usual practice all white pupils were assigned to white schools and all Negroes to Negro schools.⁷⁶ However, the board received 225 requests for transfers from Negro pupils, 8 of which were approved. Two Negro students were assigned to the white high school and two each to three junior high schools formerly serving white students only. Before the school session began, the family of two of the pupils assigned to a white junior high school moved into the immediate vicinity of a Negro school and the two pupils were reassigned there. Then 2 weeks after school opened another Negro girl, one of the plaintiffs in a pending desegregation suit, was also reassigned to the white high school.⁷⁷ Thus Durham had a total of seven Negro pupils in four formerly white schools during the 1959-60 school year.

Two hundred and six Negro pupils filed transfer requests for the 1960-61 term—only seven were granted.⁷⁸ Twelve Negro pupils, including some transferred the year before, attended school with whites in the year 1960-61.⁷⁹

In 1959-60 the High Point Board of Education received 13 requests from Negro pupils to attend white schools, and granted 2 during the second session of the school year to mark the district's first desegrega-

tion.⁸⁰ One Negro pupil was assigned to a junior high school attended by 1,325 white students and 1 was assigned to a high school with 1,450 white students.⁸¹ Thirteen requests for reassignment were again received for the year 1960-61. One was granted, increasing the total Negro enrollment in formerly white schools to three.⁸²

Craven County desegregated its schools in September 1959 by voluntary action of its school board. By resolution adopted in July 1959, the board said it would cooperate with authorities of the Marine Corps Air Station at Cherry Point "to provide appropriate relief" for "hardship cases" resulting from the assignment of children of Negro military personnel to schools about 18 miles away. It commended the district school committee adjacent to the station for recognizing the desirability of having such children attend its previously white schools, provided they "meet the reasonable requirements to be specified" by the district principal and local school committee, and appropriate procedures for assignment.⁸³

In implementation of this resolution, 14 Negro pupils were assigned to two elementary schools that had a combined total enrollment of 1,500 white pupils.⁸⁴ Since desegregation was initiated in Craven County, all requests by Negro dependents of military personnel for transfer to predominantly white schools have been granted. In the year 1960-61, 25 were so enrolled.

The North Carolina Advisory Committee reported that both the Craven and Wayne County public schools (desegregated in the spring of 1959) were attended primarily by children of United States military personnel, although a few other white children also attended. Other reports, however, indicate that after the schools were desegregated, both school boards designated them for exclusive use of airbase children.⁸⁵

The administrative procedure of the North Carolina Pupil Placement and Assignment Act⁸⁶ has kept school desegregation to a minimum in that State. In only two of the many suits seeking desegregation in North Carolina has there been a decision on the merits, and in only one of these were Negro children ordered admitted to a white school.⁸⁷ In all other cases plaintiffs have been unsuccessful because they had failed to exhaust their administrative remedies before resorting to a Federal court as the United States Court of Appeals for the Fourth Circuit requires.⁸⁸

The successful desegregation suit was against the school board of Yancey County which maintained no public schools for Negroes during the 1959-60 school session. In September 1960 it assigned all Negro pupils to a newly constructed two-room school. The Federal court held that, since the county maintained two accredited high schools, it could not send its eight Negro high school pupils elsewhere. They were assigned to regular high schools at the opening of the 1960-61 term.⁸⁹

A desegregation suit against the Greensboro City Board of Education was dismissed as moot by a Federal district court in January 1960 because the plaintiffs had been assigned to the white school to which they sought admission.⁹⁰ However at the time of assignment the school was consolidated with the Negro school located on the same site and all of the white pupils were subsequently granted transfers to other schools. The school in effect had been converted into a segregated school for Negroes. The Court of Appeals for the Fourth Circuit reversed the decision with instruction to the lower court to retain jurisdiction to see that the plaintiffs were sent to appropriate schools.⁹¹ On May 12, 1961, the district court ordered the Greensboro School Board to reassign the plaintiffs, for the school year 1961-62, to "an appropriate school in accordance with their constitutional rights." The students have been directed to make their school choices known.⁹²

Raleigh (where a desegregation suit was pending)⁹³ experienced desegregation for the first time during the 1960-61 school year when a Negro boy was assigned to an elementary school with some 400 white pupils.⁹⁴ The boy's parents had requested assignment of three children to white schools, but the applications of two junior high school pupils were rejected.⁹⁵ Another second-grader has been assigned to the school desegregated in September 1960 for the year 1961-62.^{95a} A new suit was filed on June 10, 1961, on behalf of 66 Negro pupils seeking an immediate end of racial segregation in Raleigh's public schools and asking an injunction against the use of race as a criterion in pupil assignment.^{95b}

Chapel Hill (where desegregation suits were pending)⁹⁶ desegregated its public schools in August 1960, when the school board reassigned 3 Negro pupils (out of 12 requests)⁹⁷ to attend an elementary school enrolling 400 white pupils.⁹⁸ The school board had received a request from a Negro for transfer to a white school the year before but it had been denied. At the beginning of the 1960-61 term the board announced that upon request it would admit first-grade students to schools nearest their homes without regard to race.⁹⁹ This meant that Chapel Hill, like all other school districts in North Carolina, would make initial assignments on the basis of race. Any desegregation would be on a reassignment basis only. On July 3, 1961, however, the school board announced a change of policy effective for the school year 1961-62. All elementary schools will be rezoned without regard to race and all first grade pupils assigned to the school of their residential zone. Parents will have "right or privilege to request transfers" of their children.^{99a} Thus, Chapel Hill is the first school district in North Carolina to abandon initial assignments by race. However, after complaints from patrons of the Carrboro School, the school board "gerrymandered the new district lines in order to reduce the number of Negroes who would be assigned to Carrboro from about 30 to about 10."^{99b}

The North Carolina Advisory Committee reported to the Commission that the State Department of Public Instruction still maintains a division of Negro education, in spite of the fact that the North Carolina General Assembly in March 1955 and July 1956 revised the State's school laws to eliminate all mention of race. The department justified this on the ground that—¹⁰⁰

This division renders special assistance to Negro schools including evaluation and accreditation of schools, supervisory activities, preparation of curriculum materials, improvement in preparation of teachers, in cooperation with institutions of higher learning for the Negro race, and improvement in race relations.

It seems paradoxical that the State would eliminate the racial designation of schools and yet maintain a division only concerned with Negro schools.

Oklahoma

In Oklahoma, as in Kentucky, State financial policy has forced the closing of many small substandard Negro schools and admission of their pupils to formerly white institutions. Since 1955, 186 Negro schools have been abolished, leaving only 168 in the State.¹⁰¹ The steady closing of segregated schools would seem to lead to an increase in the number of Negro pupils attending desegregated schools; but this does not appear to have happened. In September 1960, although seven additional Negro schools had closed, there were fewer Negro pupils in biracial schools than in the previous year. The number decreased from 10,246 in September 1959 to 9,806 in September 1960.¹⁰² The largest decrease occurred at the junior high level. It appears that a substantial number of Oklahoma Negroes, forced out of segregated schools, either drop out entirely or enroll in other Negro schools—since the State's relatively small Negro population has in fact increased.¹⁰³

Tennessee

Only 3 of Tennessee's 141 school districts enrolling both white and Negro pupils had opened the doors of any white school to Negroes by May 1959. Two years later, 6 out of 143 biracial districts had desegregated. Only Virginia surpassed Tennessee in the number of districts desegregated by court order during 1959-61. The three school districts in Tennessee that admitted Negro pupils to formerly white schools did so by order of a Federal court, although three other districts voluntarily adopted a desegregation policy that has not yet resulted in biracial school enrollment.¹⁰⁴

The desegregation of one elementary school in Rutherford County in September 1959 resulted from a suit filed earlier that month by Negro dependents of U.S. Air Force personnel stationed at Sewart Air Force Base. They sought admission to county-operated John Coleman Elementary School adjacent to the Federal housing project where the plaintiffs lived. Previous requests for admission had been denied. Although white children of Air Force personnel had attended the school before 1959, Negro children had been transported 28 miles away to attend a segregated Negro school. The court ordered their admission to the school effective September 1959 and denied the defendants' request for a postponement.¹⁰⁵ It refused to order desegregation of all the county's schools in a separate order, since all the plaintiffs by reason of their residence would attend the John Coleman school in any event.¹⁰⁶ There were no incidents when 16 Negroes joined the 500 white pupils.¹⁰⁷

Desegregation in Knoxville was the result of a Federal court order and acceptance of a desegregation plan that duplicated Nashville's.¹⁰⁸ Mr. Thomas N. Johnston, Superintendent of Schools of Knoxville, testified at the Commission's Williamsburg conference that according to the plan, each elementary school was rezoned without regard to race, and that after the rezoning approximately 85 Negro children, or about one-fourth of the registered Negro first-graders, were eligible to enter 14 white schools in September 1960.

He also observed that when the schools opened, 28 Negro first-graders were enrolled in 8 white schools and that a few days later a Negro entered a class for the physically handicapped in a previously all-white school.¹⁰⁹ As a result of rezoning, 300 white students found themselves living in attendance zones of previously all-Negro schools. Under the plan they all applied for, and were granted, transfers. Requests for transfer on behalf of two white children in desegregated schools were denied on the ground that they were already enrolled in a school in which their own race predominated and therefore were not entitled to transfer.¹¹⁰ Two Negro first-grade pupils transferred from a desegregated to an all-Negro school during the first term.¹¹¹

The second semester of 1960-61 saw the third school district in Tennessee desegregated by Federal court order. In October 1960, pursuant to a suit filed 1 month earlier, a Federal court ordered the Davidson County School Board to submit a desegregation plan.¹¹² Davidson County is a predominantly suburban area surrounding Nashville. The plan submitted was similar to the Nashville plan: a grade-a-year desegregation beginning with the first grade. The board requested delay until September 1961 in putting it into effect.

In November the court approved the plan after modifying it to require desegregation of grades 1 through 4 effective in January 1961, and one grade a year thereafter, in order to synchronize the county's plan with that of Nashville.¹¹³ On January 23, 1961, 41 out of about 400

eligible Negro students quietly entered the first 4 grades in 11 formerly white Davidson County schools.¹¹⁴

Texas

Prior to the 1957 statute¹¹⁵ requiring voter approval before a school board could initiate desegregation, over 100 school districts in Texas had begun an orderly retreat from segregated education. Most of them were in the western and central parts of the State where the Negro population is relatively small. In 1959-61 three new districts voted to admit Negro pupils to their white schools, whereas four districts voted against desegregation.¹¹⁶

In February 1960, Andice, a rural part of Williamson County in Central Texas, voted overwhelmingly to place five Negro students in the white elementary school rather than transport them 52 miles away to an all-Negro school.¹¹⁷

In May 1960 voters of the Frenship rural school district (Lubbock County) approved desegregation of all schools to start in the fall. This was in response to a suit filed in January in behalf of 17 Negro children of military personnel stationed at Reese Air Base.¹¹⁸ They had been excluded because of their race from the school located on the base but operated by the district.¹¹⁹ Prior to this action the Negro children had been required to attend a segregated school about 15 miles away.

The third Texas school system to desegregate voluntarily during 1959-60 was Fredericksburg (which is located in the hill country west of Austin), where voters approved 5 to 1 the admission of the town's only two Negro school-age children to white schools.¹²⁰

The outstanding school desegregation event in Texas during this period, and perhaps in the entire South, was the court-ordered desegregation of the largest segregated school system in the United States: Houston Independent School District, which has 177,000 pupils, about 25 percent of whom are Negro.¹²¹ Desegregation came to Houston in spite of the fact that it had been rejected by the voters 2 to 1—prior voter approval had been made mandatory by a statute enacted in 1957. This measure entailed the loss of all State aid and school accreditation and imposed criminal sanctions against school trustees who desegregated without voter approval. A ruling of the State attorney general that the statute did not apply to involuntary desegregation averted these dire consequences.¹²²

The Houston story.—The original suit to desegregate Houston's public schools was filed in December 1956. In October 1957 the Federal district court ordered the city schools to be desegregated with all deliberate speed.¹²³ About 2½ years later (June 1, 1960) in response to a court order the school board filed its desegregation program, popularly called a "salt and pepper" plan since it proposed establishment of one desegre-

gated elementary, junior, and senior high school. The rest of the 170 schools in the system were to remain segregated. The court rejected this as a "palpable sham and subterfuge designed only to accomplish further evasion and delay."¹²⁴ The court ordered that starting in September 1960 every first-grade student was to be allowed to attend the school of his choice within the geographic zone of his residence, be it a former all-white, or all-Negro school. Desegregation was ordered to progress a grade-a-year thereafter so that by 1971 all grades would be desegregated. By 1972 "any grade or class not heretofore specifically referred to (if there be such) will be desegregated in similar fashion." Transfers at the request of the student, or pursuant to reasonable rules adopted by the board, were specifically permitted.

The effect of the order is to postpone the desegregation of the kindergarten until 1972. In fact the liberal terms of the court order granting a free choice of white or Negro schools to all students living in the attendance zone were not carried out by the board. The entire city appears to be covered by both white and Negro attendance zones so that if the plan were literally applied, each first-grade pupil should have had a choice of registering in a white or a Negro school. But the admission policies promulgated by the board to implement the court order while the case was on appeal substantially limited the number of Negro first-graders eligible to enter formerly white schools. It provided that a child who had already attended a public school could not enter first grade in another school without obtaining a transfer from the school he had attended; that all members of a single family were to attend the same school; and that no transfer would be allowed to any class that already had an enrollment of 35 children.¹²⁵ Transfers were to be processed by the criteria listed in the Texas Pupil Placement Law.¹²⁶ Thus the admission of a Negro first-grader to a white school would be automatically denied if he had older brothers or sisters attending a Negro school, and he would be subject to the transfer criteria if he had attended a kindergarten—all of which are to remain segregated until 1972. In August 1960 three Negro children who tried to register at white schools were rejected because they had older sisters or brothers attending a Negro school.¹²⁷

After the State attorney general ruled on September 6 that the fund cutoff provision of the 1957 statute was not applicable to districts ordered to desegregate by a Federal court, the board of education ordered a new registration for first-graders who wanted to apply for admission to a school of another race. According to a report of the school superintendent, some out of about 5,000 first-grade Negro students tried to register at white schools.¹²⁸ Of these, 11 were admitted to 3 white schools without incident.¹²⁹

At the close of the first semester in January 1961, the superintendent of schools reported that the 11 Negro students had kept pace with their

white counterparts. Their overall average was "C" which was also the average of the desegregated schools as a whole.¹³⁰

Virginia

Although the largest segregated school district to be desegregated by court order was in Texas, the largest number of school districts so desegregated was in Virginia where four of the seven that desegregated during this period did so under court order. Desegregation suits were pending in two of the remaining three.

"Massive resistance" to the *School Segregation Cases* is legally dead in Virginia,¹³¹ but its spirit lingers on. In 1959 the general assembly enacted a new program designed to limit desegregation and to permit white students to avoid attendance at schools enrolling Negroes. The spirit of the new approach was expressed by Governor J. Lindsay Almond, Jr., on January 28, 1959, in an address to the general assembly.¹³²

I pledged to the people of Virginia that I would resist with every source at my command that which I know to be wrong and would destroy every rational semblance of effective public education in Virginia. I have kept that pledge and you have kept it. Only those Virginians whose hearts are not in the fray give up in adversity. To be strong, a battle lost is but a challenge to redouble effort, energy, and devotion to scale the heights of worthy achievement.

One of the Virginia communities in which desegregation began in September 1959 was Charlottesville. Its school system had been under court order to desegregate since 1958,¹³³ but after the closing of the schools for the fall semester of 1958-59, a stay was granted until September 1959 to permit the tutoring of the Negro pupils to prepare them to enter in the fall. The white students had attended private schools organized for them when the schools were closed. In the fall of 1959, 12 Negro pupils were enrolled in 1 elementary, and 1 high school with about 1,200 white pupils. Early in the school year, however, one of the Negro elementary school pupils retransferred to a Negro school at the request of her parents.¹³⁴

Mr. Fendall R. Ellis, Superintendent of Schools for Charlottesville, reported to the Commission at its Gatlinburg conference that desegregation took place without "demonstration" or "incidents."¹³⁵ He reported further that social and athletic activities had continued at the high school, but that Negroes did not participate.¹³⁶ No mention was made as to whether their nonparticipation was administratively imposed or self-imposed. It has not been reported that the Charlottesville School Board banned Negro participation in such activities, as three other Virginia school boards did after their schools were desegregated.¹³⁷

Floyd County was the second Virginia community to experience school desegregation for the first time in 1959-60. It is in the southwestern part of the State and has a relatively small Negro population. On September 23, 1959, a Federal judge ordered admission of 13 Negro students to the county's 2 formerly white high schools effective January 25, 1960.¹³⁸ Before this there had been no high school serving Negroes within the county. On November 12, 1959, the school board assigned the pupils pursuant to the court's order, but the outcome was doubtful for a while because the county board of supervisors passed a fund cutoff ordinance under which it could close schools on short notice. Nevertheless, on January 25, 1960, the 12 Negro pupils entered the high schools without incident, no action having been taken by the county board of supervisors to close the schools.

The third district, Pulaski County, which, like Floyd, is in the southwestern section of the State where the Negro population is small, desegregated initially in September 1960 when a Federal court ordered the admission of 14 Negro pupils to one of the county's 2 high schools.¹³⁹ Before this there was no high school available to Negro pupils within the county. The 14 Negroes were enrolled in school with 1,231 white pupils.

The one high school of the city of Galax in Grayson County was desegregated in September 1960 under unusual circumstances in that the seven Negro students admitted to Galax High School were residents of Grayson County outside the city. They were ordered admitted to the school by a Federal court which declared that under the contract between Galax City and Grayson County, Negro students were entitled to the same treatment as white students similarly situated.¹⁴⁰ They were enrolled in the school with 613 white students.¹⁴¹

Desegregation suits were pending against two of the three school districts, the City of Richmond and Fairfax County—where Negro pupils were voluntarily assigned by the State Pupil Placement Board to formerly white schools for the first time effective for the fall term of 1960. Two public schools were also desegregated in Roanoke by action of the board although no suit is known to have been pending there.¹⁴² These were the first voluntary assignments of Negro pupils to formerly white schools by the board since its creation in 1956.

Suit was filed in September 1958¹⁴³ to desegregate the public schools of Richmond, but it was not until September 1960 that the State Pupil Placement Board assigned 2 Negroes to a school attended by 766 white pupils.¹⁴⁴ The desegregation reportedly took place without incident. Richmond is, at the writing of this report, the only one of Virginia's desegregated school districts in which the Negro public school population exceeds the white. As of November 1960 the public schools of Richmond enrolled 17,980 white, and 22,164 Negro pupils.¹⁴⁵

Fairfax County, which has a very small Negro population, was desegregated in August 1960 when the State Pupil Placement Board assigned five Negro pupils to formerly white elementary schools under the county's grade-a-year plan.¹⁴⁶ But in September 1960 a Federal judge rejected the plan on the ground that 6 years after the Supreme Court decision in the *School Segregation Cases*, the 12-year plan was too slow—in view of the small number of Negro pupils in the system. The Court ordered 19 additional Negro pupils, plaintiffs in the desegregation suit, admitted to the appropriate grade at white or predominantly white schools.¹⁴⁷ The 24 Negro pupils were scattered in 8 schools which have a total white enrollment of 6,835 pupils.¹⁴⁸ Immediately thereafter the Fairfax County School Board banned Negro participation in interscholastic sports.¹⁴⁹ Suit was filed in behalf of two Negro students challenging the constitutionality of the resolution¹⁵⁰ and on February 21, 1961, the school board rescinded the ban.¹⁵¹

In the fall of 1960, 9 Roanoke Negro elementary and junior high school pupils entered 3 formerly white schools having a total enrollment of 1,770 white pupils by assignment of the State Pupil Placement Board.¹⁵² Mr. E. W. Ruston, Superintendent of Schools for Roanoke, in a written statement to the Commission for the Williamsburg conference reported that desegregation began in an orderly fashion and the school year got underway satisfactorily. On October 17, 1960, three of the nine Negro pupils were barred from attending a Roanoke Symphony Orchestra concert with their classmates.¹⁵³

West Virginia

West Virginia, like Missouri, has no official reports on progress in desegregation. All its school districts having Negro pupils announced a non-discriminatory admission policy by the close of the school year 1958—59,¹⁵⁴ but in some areas of the State it is reported that Negro children do not seek transfer to white schools.¹⁵⁵ The West Virginia Human Rights Commission (created in 1961)¹⁵⁶ may provide official information on the desegregation process in the future.

Table 2, appendix IV, shows by States the number of Negro pupils enrolled in school with whites in 1960-61.¹⁵⁷

THE SEGREGATED STATES

Complete public school segregation has been maintained in Alabama, Mississippi, South Carolina, and Georgia.

Alabama

Governor John Patterson of Alabama said in a news conference on December 7, 1960, that the riots in Little Rock and New Orleans were nothing compared to what might happen in his State if efforts are made to desegregate its schools. He told the news conference that there would be no way to avoid trouble "if the Federal Government continues its present approach." He is further reported to have said that the people in Alabama "might as well make up their minds that they're going to have to go to private schools or shut down the schools," if the Federal Government attempts to desegregate them.¹⁵⁸ "I'll be one of the first ones stirring up trouble," the Governor declared, at the same time emphasizing that he would not tolerate mob violence if it could be prevented.¹⁵⁹

The decision in *Shuttleworth v. Birmingham Board of Education*¹⁶⁰ which upheld the constitutionality of the Alabama Pupil Placement Law (as distinct from its administration) on its face appears to have been interpreted by Alabama officials as a license to continue to operate schools on a segregated basis. All public schools in Alabama remain completely segregated. In June 1960 a suit was filed to enjoin the Birmingham Board of Education from operating segregated schools but no hearing has been set.^{160a}

Mississippi

Governor Ross R. Barnett of Mississippi in his inaugural message on January 19, 1960, said:¹⁶¹

Our people, both white and colored, throughout generations, have successfully operated a dual system of education because we know it is best for both races. I know that this is the best and only system and I believe that the thinking people of both races feel the same way about it. Regardless, our schools at all levels must be kept segregated at all costs.

Although the Supreme Court of the United States declared in 1954 that segregated education was "inherently unequal" and therefore inferior, it remains the only kind of education available to public school pupils in Mississippi. The public schools of the State are completely segregated; no public school desegregation suit is pending, or has ever been filed, in any court in that State.¹⁶²

South Carolina

The official attitude of South Carolina toward school desegregation is reflected in an observation of Olin D. Johnston, United States Senator from that State:¹⁶³

Our dual system of schools is the best in the Nation and the relationship we have between the races is the envy of those upon whom integration has been forced. . . . In the face of much unreality and great danger, there are those in our country who favor integration in our schools. . . . It is not good for the white children or the colored children. Both will lose if integration is forced upon us. . . .

There is no "racial mixing" in the public schools of South Carolina, though 7 years have passed since the Supreme Court decision in *Briggs v. Elliot*, involving a district in that State¹⁶⁴ (one of the four *School Segregation Cases*). This in spite of the order on remand that school desegregation proceed with "all deliberate speed."¹⁶⁵ A single desegregated *on base* school operated by the Federal Government represents the only racially mixed school in the State of South Carolina.¹⁶⁶

PROSPECTS

Georgia

Georgia^{166a} is the only presently segregated Deep South State where there is any prospect for desegregation in the immediate future. Atlanta is under Federal court order to initiate desegregation on the 11th- and 12th-grade levels in September 1961.¹⁶⁷ Mayor William B. Hartsfield of Atlanta predicated that desegregation would take place without major trouble:¹⁶⁸

There will be desultory efforts to cause trouble, mostly from outside of Atlanta by people who want to embarrass us. We have plans to deal with these promptly and decisively. We are not going to set any stages for demonstrations.

Governor Vandiver expressed similar views. He has said that he would use "whatever forces are necessary" to keep order when the Atlanta schools are desegregated. Although the Governor is vehemently in disagreement with the Supreme Court's decision in the *School Segregation Cases* and thinks that it "was wrong at the outset and is still wrong today," he added:¹⁶⁹

However, the city of Atlanta is under a court order, and no matter how much I might disagree with it, that court order in fact exists.

Unless the State of Georgia wants to secede from the United States and fire on Fort McPherson out here, we'll have to obey that

court order. [Fort McPherson, outside Atlanta, is the headquarters of the Third Army.]

The original desegregation order was to have become effective in the fall of 1960, but the court took notice of a Georgia law requiring the closing of nonsegregated schools. Postponing the effective date of the decree, the judge said that he was "making a sincere effort to enable the people of Georgia and its legislature to make a decision in this matter, if they so desire, that will prevent the closing of the schools. . . ." ¹⁷⁰

During the year of postponement two Negro pupils were admitted to the University of Georgia which was also subject to the State's school-closing law. After several unsuccessful legal maneuvers, Governor Vandiver spoke to a special joint session of the legislature where he conceded that Georgia's school-closing laws had "become an albatross." He recommended a new package of laws that has since been adopted. The massive resistance measures were repealed and new ones enacted to provide for pupil placement, local option, and tuition grants. Mrs. Mary R. Green of HOPE (Help Our Public Education), a citizens' group whose purpose is to preserve free public schools in Georgia, testified at the Commission's Williamsburg conference that the interest shown by her group and others throughout Georgia was instrumental in the passage of the new legislation. ¹⁷¹

One hundred and thirty-four 11th- and 12th-grade Negro pupils applied for transfer in September 1961 to formerly white schools in Atlanta before the deadline, May 15, 1961. ¹⁷² The approval of 10 applications has been announced. ¹⁷³ Thirty-eight of the Negro students denied transfer appealed to the Atlanta board, as did one white student who sought transfer from a school to be desegregated. All were unanimously denied. ^{173a} The State Board of Education reversed the local board's action as to the white student by a divided vote. ^{173b}

There is one desegregated school in Georgia that is operated by the Federal Government for schoolchildren of military personnel. The school is an *on base* school. ¹⁷⁴

Texas

Two large school districts in Texas are scheduled to begin desegregation in the fall of 1961. Dallas Independent School District, now the largest segregated school system in the country (enrollment 134,000 students, one-fifth of whom are Negro), ¹⁷⁵ is under Federal court order to desegregate on a grade-a-year basis beginning with the first grade. Galveston Independent School District is also under court order to desegregate in September 1961. ¹⁷⁶ School population of Galveston during the 1959-60 school year was 5,533 white, and 3,006 Negro pupils. ¹⁷⁷ Four small Texas school districts—Lockney, Judson, Andrews, and Yorktown—

having only a few Negro pupils have voted to admit them to the white schools in September 1961.¹⁷⁸

Tennessee

Initial desegregation is expected in the fall of 1961 in Knox and Washington Counties, Elizabethton, Kingsport, and Johnson City, all of which have announced grade-a-year plans.¹⁷⁹ At the behest of the Federal district court, Knoxville has announced that Negro high school pupils will be admitted to a white high school for vocational and technical courses not offered at the Negro schools.¹⁸⁰

Florida

The Volusia County School Board has granted the application for re-assignment of two Negro girls to a previously all-white school and denied a third. These were the first applications under the Florida pupil assignment law of 1956.

Another Orchard Villa situation¹⁸² is expected in Dade County. A change in school zoning has placed 200 Negro families in the area of a white school. White parents in the neighborhood have been notified that their children may apply for transfer.¹⁸³

Arkansas

In response to the order of the United States Court of Appeals, the Little Rock School Board has announced expansion of its desegregation program to four of its five junior high schools in September 1961. This is to be accomplished by assignment of 25 Negroes. As a result of new assignments, the number of Negro students in the city's 3 formerly white high schools will jump from 11 to 24. One of the three, Technical High School, will have Negro students for the first time.¹⁸⁴

Dollarway School District which, under prodding of Federal courts, is putting its grade-a-year desegregation plan into effect in the fall of 1961, will have one additional Negro pupil. On the day set for registration in May 1961, only one Negro appeared.¹⁸⁵

Delaware

The prospects in Delaware have completely changed as a result of the disapproval of the State's grade-a-year plan by the United States Court of Appeals for the Third Circuit. The Federal district court was instructed to require the State Board of Education to submit a new program to accommodate all Negro pupils seeking nondiscriminatory admission to any grade beginning in the fall of 1961 and to provide for increasing

numbers in subsequent years. The plan submitted by the board on March 31, 1961, was accepted by the court (with minor modifications) over the plaintiffs' objections.¹⁸⁶ The district court held that the plan fulfilled the requirements of the court of appeals¹⁸⁷ in that it: (a) allowed Negro students that so desired to transfer immediately to a white or desegregated school as a matter of right, subject to the "usual and nondiscriminatory processing of the school system"; and (b) looked to "ingredients of a wholly integrated system."¹⁸⁸ Thus, considerable expansion of desegregation in southern Delaware is anticipated in September 1961.

Virginia

Four school districts in northern Virginia have exercised the option granted by State law to take over from the State Pupil Placement Board the assignment of their own pupils. A considerable increase in the number of Negroes attending schools with whites is anticipated. Arlington has announced the assignment of 104 Negroes to white schools, compared with 44 in 1960-61;¹⁸⁹ Fairfax, 76 as compared with 27;¹⁹⁰ Falls Church has assigned 3 Negro pupils and Newport News 14 to white schools for the first time.¹⁹¹

The Virginia Pupil Placement Board, at the date of writing, has approved 137 applications of Negroes for assignment to formerly white schools in the fall of 1961 and rejected 266. Two Negro elementary school pupils were assigned to a white school in Stafford, one in King William and two in Montgomery Counties marking their first desegregation. All other assignments were to schools in previously desegregated districts.^{191a}

Kentucky

The Knox County School Board, at its March 1961 meeting adopted a resolution desegregating the Knox County school system in its entirety. Thereafter, a Federal court ordered the Knox County schools to be completely desegregated in the fall of 1961, and struck the cause from the court's docket.¹⁹²

North Carolina

Asheville will become the 11th school district in the State to admit Negroes to previously white schools in September 1961. The city school board has granted five applications for admission or transfer to the first and second grades. Six applications for grades four and above were denied.^{192a}

The Charlotte-Mecklenburg Board of Education has announced the transfer of 14 colored students to formerly white schools in September 1961; in 1960-61 only one was granted.^{192b}

Although on July 20, 1961, a Federal court ordered the Durham City Board of Education to reconsider the applications for transfer of 133 Negro plaintiffs and to render its decision on each application "on definite criteria and standards applicable to white and Negro children alike,"^{192c} less than 10 were granted by the board.^{192d} At the date of writing the board's report to the court on each application was not available. In addition to the 133 applications referred to it by the court, the board has acted on 135 new applications received and denied all of them. All but six were denied on the ground that they were submitted on "unauthorized" forms. The Commission is informed that the "unauthorized" forms were exact copies of the authorized forms prepared by Negro leaders for parents who had not been able to secure board forms. Six on official forms were denied because there was no geographical reason for reassignment.^{192e} Thus, it appears that there will be very little expansion of desegregation in Durham this year unless the Federal court overrules the local board as to applications reconsidered by its order.



5. Legislative Resistance

In the past 2 years there has been a marked shift in some parts of the South from statewide, massive resistance to local option and freedom of choice fortified by tuition grants. Some States still cling to the older strategy.

When this Commission reported to the President and Congress in 1959 various massive resistance laws of Virginia and Arkansas had been held unconstitutional.¹ But at that time the new pattern of legislative hostility to desegregation, although emerging, was not yet clear.

Massive resistance is characterized by a series of laws and resolutions adopted for the purpose of thwarting, or at least delaying, all efforts to implement the ruling in the *School Segregation Cases*. The key factors common to all such programs are:

The interposition of State authority in an attempt to nullify the effect of the Supreme Court ruling and orders of Federal district courts based thereon.

Statutes authorizing and directing State or local agencies to assign pupils to public school on the basis of standards requiring a subjective evaluation of the student as an individual, his scholastic abilities and achievement, as well as the usual considerations of curriculum, geography, transportation, and school capacity.

Centralized State control over public schools, traditionally vested in local school authorities.

In general the new approach returns control to local authorities, giving them and their respective communities a choice as to the future of their schools. The change in strategy is a response to a long series of court decisions on the constitutionality of massive resistance measures—most of which did not stand the test of litigation.

Thus, one Federal court declared the first Virginia Pupil Placement law unconstitutional because it required an "efficient operation of the schools," defined in another law as segregation.² Another voided the Tennessee School Preference Act that authorized boards of education

to maintain segregated schools for children whose parents chose segregation.³ Still another declared invalid an amendment to the Louisiana constitution that attempted to justify school segregation as an exercise of State police power. A companion statute withdrawing State accreditation from any school that did not maintain racial segregation, and another Louisiana constitutional amendment withdrawing the State's consent to suits against State educational agencies met the same fate.⁴

In answer to the claim of the Governor and Legislature of Arkansas that State officials had no duty to obey Federal court orders, the Supreme Court declared, in *Cooper v. Aaron*:⁵

It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other State activity, must be exercised consistently with Federal constitutional requirements as they apply to State action. The Constitution created a government dedicated to equal justice under the law. The 14th amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws.

This definition of State action within the meaning of the 14th amendment undermined State-supported resistance to public school desegregation—and formed the basis for massive legal blows against massive resistance.

It was no surprise, therefore, when in the first months of 1959 a Federal court in Virginia held that a State which maintained a public school system violated the principle of equal protection if, to avoid desegregation, it closed one school while keeping others open.⁶ A few months later a Federal court in Arkansas held a school closing law unconstitutional under the due process and equal protection clauses of the 14th amendment. At the same time it voided a companion act that provided for transfer of public funds from closed schools to other public, or private, schools attended by the students of the closed schools.⁷

By the second term of the 1958–59 school year, schools in three Virginia districts, closed by the Governor after Federal courts had ordered admission of Negro children, were reopened after the laws under which the Governor had acted were held invalid.⁸ Massive resistance had proved ineffective. New and more subtle tactics were needed if the State policy of resistance was to be continued. Legislation enacted in 1959–61 reflected this need.

Virginia

The Virginia General Assembly, called into extraordinary session in January 1959 as a result of the collapse of massive resistance, again took the lead by devising what has become the new defensive approach. At first the only alternatives to massive resistance appeared to be either desegregation or complete abandonment of the State's public school system. However, a third choice was presented late in March 1959 by the Perrow Commission that Governor Almond had appointed to study the problem.

The Commission reported that the most defensible position legally would be for the State itself to go completely out of the school business and leave each locality free to abandon public schools, or to operate them as it saw fit with local tax funds and funds received from the State for general purposes. The Commission took the position that if there were complete local autonomy, the abandonment of a local school system by local action would present no problem of State-imposed unequal treatment of localities.

The Commission, however, recommended neither the complete abandonment of public education nor complete local autonomy, but a middle course whereby the State system would be continued with the greatest possible freedom of choice for each locality and each individual.⁹ Adoption of this approach transformed massive resistance into a scheme of local option, tuition grants, and free choice. All mention of school segregation was deleted from the State school laws. Under the earlier law private-school tuition grants were authorized only if the student's public school had been desegregated. Under the new law desegregation was no longer the premise for the subsidized choice of a private school. Parents were entitled to a tuition grant to send a child to a private school within or without the State, or to a public school outside of the school system of their residence.¹⁰ The statewide compulsory school attendance law was replaced by a measure giving each local community the right to adopt or suspend compulsory attendance whenever it deemed proper.¹¹ Local boards of supervisors were authorized to make appropriations for public schools for 30-day periods,¹² thus facilitating the closing of schools for lack of funds.

Another bill, passed on April 28, 1959,¹³ gave cities and counties the choice of remaining under the authority of the State pupil placement board, or of giving the placement function to their own local school boards, subject to rules to be adopted by the State board of education. Other measures exempted buildings used for private schools from zoning codes,¹⁴ permitted referenda on the disposal of public school property,¹⁵

and authorized school boards to provide transportation at State expense or to allot funds to parents for transportation of children attending non-sectarian private schools, with the cost of the latter program to be borne in equal shares by the school division and the State.¹⁶

The Virginia General Assembly, however, defeated attempts to remove from the State constitution the requirement that the State should operate a uniform system of free public schools. In the course of the debates it was disclosed that the Perrow Commission believed the amendment unnecessary because any locality could abandon public schools simply by refusing to appropriate money to operate them.

Five other Southern States—Tennessee, Alabama, Florida, Arkansas, and Georgia—in their regular legislative sessions in 1959 considered legislation to resist, limit, or control desegregation. In all except Alabama active desegregation suits were pending.

Tennessee

The Legislature of Tennessee amended the State compulsory attendance law by making local school boards solely responsible for its enforcement. Without any reference to segregation or race, it authorized a child's parents upon approval of the local school board to withdraw him from a school "for any good and substantial reason," provided the child enrolled within 30 days in another public school designated by the board, or in a private school.¹⁷

Alabama

The Alabama Legislature in 1959 enacted the so-called Independent School District Plan. This allowed individual schools threatened with desegregation to withdraw from State and local control and set up their own independent districts. The sponsor of the plan, Senator Dumas, described it as "a second line of defense in the battle to preserve our public schools from forced Federal integration—the effect would be to give the Federal courts a lot of scattered targets to shoot at."¹⁸ The legislature also authorized¹⁹ school boards to use public funds to pay tuition grants for residents of their districts attending private nondenominational schools when instruction was not available in the local public schools.

Florida

On the basis of a report by the Governor's Advisory Commission on Race Relations,²⁰ the Florida Legislature passed five school bills and avoided the path of a closed school program. One measure authorized the incorporation and operation of private schools.²¹ Another granted county school boards²² discretionary power to segregate students by sex. The third measure added to the Florida pupil assignment law several factors

to be considered in pupil assignment.²³ The fourth created a board of private education,²⁴ and the fifth amended the compulsory attendance law. The latter exempted students assigned against their parents' written objection to a school attended by both races, if a transfer was denied or was unavailable.²⁵

Arkansas

The Arkansas statutes authorized school districts to provide tuition grants for children unable to attend public schools for reasons beyond their control,²⁶ and permitted public school teachers transferring to private nonprofit schools to continue in the State's Teacher Retirement System.²⁷ Others provided for the withholding of State funds from any school accepting for enrollment a child who normally would attend a different school and granting the funds withheld, to any public or nonprofit accredited private school in the State attended by such child;²⁸ exempted children assigned to a desegregated public school from compulsory school attendance; and authorized the State Board of Education to provide tuition grants for such children in case they wanted to attend another public school or a segregated nonsectarian private school within the State.²⁹ The legislature also enacted a new pupil assignment measure virtually identical to the Alabama pupil placement law which had been held not unconstitutional on its face.³⁰ The legislature also approved a constitutional amendment that would close schools to avoid desegregation. This proposed amendment, however, was defeated in the November 1960 election.³¹

Georgia

The statutes enacted by the Georgia General Assembly in 1959 were designed to resist any Federal court order desegregating public schools. One authorized the Governor to close public schools to preserve order and made it unlawful for any official to participate in the operation of such a closed school or expend funds therefor. This statute provided also for transfers from closed schools, and for educational grants to permit students to attend private schools.³²

Another statute authorized State income tax deductions for contributions to private schools;³³ another guaranteed payment of teachers' salaries if schools were closed;³⁴ and another created, as a replacement for the former Commission on Education, a Governor's Commission on Constitutional Government. The new Commission's assignment was to formulate plans to prevent encroachment by the Federal Government on the functions and powers of the State.³⁵

Georgia also passed a law to prohibit any city or county with an independent school system from levying ad valorem taxes for the support of

desegregated schools.³⁶ This legislation, according to the mayor of Atlanta, was aimed specifically at that city because the rurally dominated legislature considered its racial attitudes too liberal.³⁷

1960 LEGISLATIVE SESSIONS

A pattern of undisguised resistance to any form of school desegregation appeared in the 1960 legislative enactments of Mississippi and South Carolina. Other States tried somewhat different approaches.

Mississippi

In Mississippi local school district trustees were given power to close any or all schools within their jurisdiction to serve the "best interest of a majority of the . . . children . . . enrolled" or to "promote or preserve the public peace."³⁸ Admission to school was denied to any child not accompanied by a parent. It was further provided that a child could not attend any school except in the district of his residence unless legally transferred thereto under the Student Assignment law.³⁹ Parents and guardians were denied the right to file any suit, complaint, action, or administrative proceeding on behalf of a minor without advance approval of a chancery court.⁴⁰ The legislature specified that whenever any student enrolled in any public educational institution is convicted of a misdemeanor, the authorities are to report the fact to the institution in which he is enrolled.⁴¹

Mississippi's attitude was reflected in a constitutional amendment that repealed mandatory provisions for State maintenance of a public school system and substituted the following:⁴²

The legislature may, in its discretion, provide for the maintenance and establishment of a free public school or schools in each county in the State, with such term, or terms, as the legislature may prescribe.

This was ratified in the November 8, 1960, general election by a vote of over 3 to 1.⁴³

South Carolina

During the 1960 session of the South Carolina Legislature the subject of school segregation came up only at the end of the session in debate on the general appropriation bill. Upon the recommendation of a

special segregation committee the words "for racially segregated schools only" were deleted from the sections of the appropriation bill dealing with State school funds. A general provision was inserted vesting supervision of the expenditure of funds for educational purposes in the State Budget and Control Board and declaring that: "The appropriations made under the following sections shall be on a racially segregated basis only." An entirely separate special emergency bill repealing this provision was passed in the closing days of the 1960 session.⁴⁵ It never became effective. At the convening of the 1961 session the Governor notified the legislature that he had vetoed it.

The State Segregation Committee believed that the repeal device would keep school segregation suits out of the Federal courts. The theory was that racial restriction having been removed from the appropriation law, the only basis for court attack against segregation in the schools would be to contest the assignment of students under the 1956 Pupil Placement law.⁴⁶ This imposed a long sequence of administrative procedures that had to be exhausted before recourse to the courts. The 1961 session of the legislature having adjourned without overriding the Governor's veto, this reserve weapon can no longer be used.

Virginia

Among the Virginia school districts ordered in 1959 to desegregate, Prince Edward County alone chose to close its schools rather than comply. This brought about the establishment of several segregated private schools for white children.⁴⁷ In its regular 1960 session the Virginia General Assembly enacted three measures to support them. One authorized local governing bodies to appropriate funds for private educational purposes.⁴⁸ Another permitted local governments to provide that contributions to nonprofit, nonsectarian private schools within the locality (either in operation or chartered within a year), could be deducted from personal and real property taxes up to 25 percent of the taxes due.⁴⁹ The third was a new tuition grant law that provided scholarships for the education of children in nonsectarian, private schools wherever located and in public schools outside the school district. Local governing bodies were authorized to levy taxes and appropriate public funds for the establishment of such scholarships up to the amount of \$250 for elementary, and \$275 for high school students, part of the cost being borne by the State. The act declared that if local authorities failed to create scholarships they would be provided by the State, the local share to be withheld from other State funds due that locality.⁵⁰

Georgia

When the Legislatures of Georgia and Louisiana reconvened in January and May of 1960, respectively, one school district in each—Atlanta

and New Orleans—was under court order to present a desegregation plan.⁵¹ The major action of the Georgia General Assembly was to create the Sibley Committee to study and recommend possible revisions of Georgia law. Although the committee declared its firm opposition to the Supreme Court ruling in the *School Segregation Cases*, it recognized their binding force saying: ⁵²

Any system of public education must now recognize that the Supreme Court decision in the *Brown* case destroyed the power of the State to compel by law separation of the races in public, tax-supported schools. Any continuance of public education must be adjusted to that fact.

Embracing the Virginia scheme of freedom of choice for the individual student, the majority report declared: ⁵³

It is our conclusion that, although there are some localities where private schools could be maintained successfully, it will be impractical to develop a system of private schools that would provide adequately for the educational needs of the masses of the people of the State. The basic alternative appears to be a system giving authority to local boards to assign students to particular schools in accordance with the best interests of all students; and the giving of as much freedom of choice as possible to parents and local communities in the handling of their problems; *and the giving of assurance that no child will be required to go to school with a child of a different race except on a voluntary basis.*

To implement its conclusions, the Sibley Committee recommended that the General Assembly propose two amendments to the Georgia constitution. One was to provide that no child should be compelled against the will of his parents to attend a desegregated school, but that he should be entitled to reassignment to another public school or to a tuition grant. The other was to authorize the legislature to provide for a uniform system of local units for the administration of public schools, and give such local units power to close and reopen schools in accordance with the wishes of the majority of the voters within its jurisdiction. The committee also recommended enactment of legislation to provide tuition grants or scholarships for children withdrawing from desegregated or closed schools; to make teachers' retirement benefits available to teachers in private schools; and (if the legislature accepted the freedom-of-choice recommendation) to enable school boards to establish pupil placement plans and give the people of each community the right to vote on the closing of schools in the event of desegregation.

Louisiana

When a Federal district court in May 1960 issued its order requiring the desegregation of the first grades of New Orleans schools in the following September,⁵⁴ the Louisiana Legislature had just convened in regular session. Throughout that and five additional special sessions which terminated in February 1961, opposition to any form of compliance with the law of the land as to school desegregation was clear. Louisiana's resistance has been called by its attorney general the "legislate and litigate" technique.⁵⁵ As fast as the Federal court enjoined enforcement of acts and resolutions, the legislature passed new ones. During the six 1960-61 sessions, 56 statutes and a number of concurrent resolutions were enacted. Twenty-five of the statutes have been held invalid. Among the 31 still in effect, 4 were appropriation laws covering the cost of the special sessions, 7 repealed acts already held unconstitutional, and the others amended earlier statutes.

Of the five statutes enacted in the 1960 regular session, four failed to survive court test. The other, not challenged and still in effect, granted local school boards final responsibility for the assignment and transfer of students to public schools and directed that no child should be compelled to attend a desegregated school upon his parents' objections, and that he would be entitled to a transfer or to a tuition grant.⁵⁶

Other acts passed in the regular session withdrew State funds from any public or private desegregated school; authorized the Governor to close all public schools threatened by integration, vested in the legislature the exclusive right to establish a racial classification of public schools; and directed the Governor to close any public school in the State in case of disorder, riots, or violence. All were voided on August 27, 1960, by a three-judge Federal court.⁵⁷

On the eve of desegregation of first grades in New Orleans postponed by court order to November 14, 1960, the legislature was convened in its first extraordinary session, during which 29 laws were enacted in defense of school segregation. Seven of these repealed four measures of the previous session and three earlier measures found unconstitutional by the Federal court in August.⁵⁸ Six of the seven just repealed were re-enacted with very slight changes.⁵⁹ At this session the legislature also adopted the Interposition Act which declared the Supreme Court decision in the *School Segregation Cases*, and all lower court decisions pursuant thereto, null and void in Louisiana, and prohibited any State or Federal official from enforcing school desegregation in Louisiana under penalty of fine and imprisonment from 6 to 12 months.⁶⁰ In preparation for open resistance to school desegregation in New Orleans, the State police were given additional powers to keep order even in cities having their own police forces.⁶¹

It had become clear that New Orleans school officials were determined to keep the schools open and to comply with the Federal court order. The remaining legislation enacted at the first extraordinary session, therefore, was designed to prevent such compliance. The law providing for the election of the Orleans Parish School Board was repealed and the legislature was authorized to provide for the creation and election of a new board.⁶² Whenever any school in their jurisdiction was operated "in violation of the constitution and laws of the State," accreditation was to be withdrawn and school officials prohibited from functioning. School officials were directed to close such schools and to revoke the licenses of teachers instructing therein.⁶³ Students attending such schools were denied promotion and graduation credits. The transfer of students from the schools to which they had been assigned in September was prohibited and consent thereto by any school official was made a misdemeanor.⁶⁴ On November 30, 1960, a three-judge Federal court found 18 of these statutes unconstitutional, and voided 4 House concurrent resolutions that had been approved at the same session. These resolutions implemented some of the statutes by delegating to an eight-man legislative committee complete control of the Orleans Parish school system,⁶⁵ and repealing the Orleans Parish School Board resolution transferring four Negro first graders to previously white schools. They also discharged the New Orleans school superintendent and the school board counsel,⁶⁶ and declared November 14, 1960, the day scheduled for the desegregation of New Orleans schools, a school holiday.⁶⁷ Finally, the four members of the Orleans Parish School Board who had voted in favor of desegregation of the schools were addressed out of office.⁶⁸

Since the Orleans Parish school officials had found effective support in the Federal court, the second extraordinary session (November 16–December 15, 1960) adopted a combined strategy of recrimination against the Federal courts⁶⁹ and intimidation of the New Orleans School Board. Legislation was adopted to deprive the school board of the power to select its own counsel⁷⁰ and to cripple its operations by depriving it of funds and cutting off the pay of teachers who continued to teach in the desegregated schools. The pay of the teachers who had refused to teach in compliance with State law was not affected.⁷¹ The same session also reenacted tuition grant laws for children attending private nonsectarian schools,⁷² authorized the transfer of school property whenever a school had been closed indefinitely under the authority of State law,⁷³ and made it a misdemeanor to obstruct State court orders or judicial processes under penalty of fine and imprisonment.⁷⁴

The legislation enacted at the third and fifth extraordinary sessions which met between December 17, 1960, and February 26, 1961, represented a further attempt to intimidate not only the members of the New Orleans School Board and superintendent of schools (who had attempted

to carry out Federal court orders),⁷⁵ but also private citizens who had aided parents sending their children to the desegregated schools.⁷⁶

Since a Federal court had ordered the desegregation of two other public school systems in the State, those of East Baton Rouge and St. Helena Parishes, statutes were enacted requiring an election on the question of closing the schools⁷⁷ and, in the case of East Baton Rouge Parish, increasing the membership of the school board from 7 to 11 members, the additional 4 members to be appointed by the Governor.⁷⁸

At the fifth extraordinary session, tuition grant funds were also made available as of July 1, 1961, by transferring \$2.5 million from sales tax proceeds in the public welfare fund to the educational expense grant-in-aid fund⁷⁹ and by providing an additional monthly transfer to that fund of \$250,000 from sales tax revenues.⁸⁰

1961 LEGISLATIVE SESSIONS

The Legislatures of Alabama and Florida are still in session at this writing. Those of Arkansas, Louisiana, South Carolina, and Georgia have adjourned.

Arkansas

The Arkansas Legislature approved an administration-sponsored amendment to the State constitution providing that no child may be denied the right to a free public education because of his refusal to attend school with students of another race, if he proves to the satisfaction of the school board that such attendance would be inimical to his welfare.⁸¹ The amendment will be voted upon at the November 1962 election.

Louisiana

The Louisiana Legislature at the close of its regular session attached an amendment to the general appropriation bill aimed directly at closing the two New Orleans schools desegregated in 1960. As a result of the white boycott, attendance at these schools had dwindled to a mere trickle. The amendment provides that no funds be distributed to a school "in any parish in which the average daily attendance has been reduced to 25 percent or less of the attendance in that school during the 1959-60 or the 1960-61 school year. . . ." ⁸²

South Carolina

Statutes enacted during the 1961 session of the South Carolina Legislature extend to the local authorities in two counties the power to cut off funds from schools desegregated by court order.⁸³ A law requiring the cutoff of State funds from such schools had been enacted in 1955.⁸⁴

Georgia

The 1961 session of the Georgia Legislature began a few days after the admission of the first two Negro students to the University of Georgia in compliance with a Federal court order. Confronted with this challenging experience and supported by the report of the Sibley Committee and testimony of many civic groups, the legislature modified its position from massive resistance to limited compliance. In June 1960 the president of the Georgia Bar Association, argued against school segregation laws on the theory that they made it easier for Negro litigants to obtain blanket Federal court orders for desegregation of schools, saying: ⁸⁵

I have found (after an examination of desegregation rulings in Southern States) that those cases that were lost (by the defendants) were lost not only in spite of local segregation statutes, but in every instance were lost because of them.

I found in fact, that while a school board may or may not win a school suit if the State has no (segregation) laws, it is absolutely and utterly impossible to win if it does have such laws.

He pointed out that North Carolina has no State segregation laws and that Federal courts there have consistently dismissed class actions to desegregate schools and required individuals to pursue the administrative remedies of the pupil placement law before seeking relief in the Federal courts.⁸⁶

Another group working for repeal or amendment of the State school segregation laws to avoid a closing of public schools is called *HOPE, Inc.* (Help Our Public Education).⁸⁷ No doubt it was instrumental in causing the State administration to reverse its stand of massive resistance and to oppose the closing of schools, withholding of funds from desegregated institutions, and defiance of the orderly judicial processes. All massive resistance laws enacted in 1952 were repealed and the "open school" package introduced by the administration was passed with only token opposition.⁸⁸

The open school package in general follows the new Virginia pattern. It includes a tuition grant act giving all school children "free choice" between private or public schools;⁸⁹ and another giving local commu-

nities the right to vote on closing and reopening of schools upon the majority vote of the board of education, or a petition of at least 15 percent of the registered voters.⁹⁰ This statute also provides for the suspension of compulsory laws in districts in which the public schools were closed. Another measure revised the administrative remedies under the pupil placement law by providing for an appeal from the decision of the local school board to the State board of education.⁹¹ The legislature also approved a proposed amendment to the Georgia constitution declaring that freedom from compulsory association at all levels of public education would remain inviolate and authorizing the General Assembly to provide tax funds for "adequate education for the citizens of Georgia."⁹²

In the face of imminent school desegregation, another law approved at the 1961 session directed the attorney general to study and make recommendations to the several boards of education as to the extent of their discretion in imposing enrollment restrictions and qualifications in pupil placement.⁹³ The legislature also created a five-member Educational Rights Committee to investigate any attempted pressure and influence which might cause disharmony within State educational institutions on the matter of integration. The committee's attention was directed particularly to desegregated institutions where persons endorsing integration might be favored; to State officials who might infringe rights guaranteed under the Georgia constitution; and to activities that might occur which would lead to violence, or bring public ridicule upon the State or its institutions.⁹⁴

As a result of its 1961 legislative session Georgia may be said to have left the ranks of defiant States to which Alabama, Louisiana, Mississippi, and South Carolina still belong, and to have joined Florida, Arkansas, North Carolina, Tennessee, and Virginia in a policy of compliance—even though on a very limited basis—with the law of the land.



6. The Threat to Education

. . . no instrumentality less universal in its power and authority than Government can secure popular education. . . . without popular education, moreover, no government which rests on popular action can long endure. . . .

WOODROW WILSON

As a premise to its conclusion in the *School Segregation Cases* that separate educational facilities are inherently unequal, the Supreme Court stressed the importance of education as "perhaps the most important function of State and local governments,"¹ and observed that the opportunity for education ". . . where the State has undertaken to provide it, is a right which must be made available to all on equal terms."²

In 1955 a three-judge Federal district court in discussing the Supreme Court decision in *Briggs v. Elliott*, one of the original *School Segregation Cases*,³ elaborated on "what the Supreme Court has decided and what it has not decided in this case":⁴

[It] has not decided that the States *must* mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a State may not deny to any person on account of race the right to attend any school *that it maintains*. . . . Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. . . . The 14th amendment is a limitation upon the exercise of power by the State or State agencies, not a limitation upon the freedom of individuals.

This exegesis underlies a number of measures taken by States of the Deep South in response to the *School Segregation* cases. The 14th amendment prohibits racial segregation only by the States and their instrumentalities. Eliminate participation by the States in the field of education, and segregation can be preserved. Measures premised on this reasoning were enacted by all of the former Confederate States save Tennessee,⁵ ranging from laws compelling or allowing the closing of public schools, through the repeal of compulsory school attendance

laws, to tuition grants and other devices allowing substitution of private (and segregated) schools for public (and possibly desegregated) schools.

These measures appear to threaten a fundamental concept of American society—that of free, universal, and compulsory education. The purpose of this chapter is to examine the nature of these measures, and their constitutional and practical implications.

SCHOOL CLOSING LAWS

Six States have, at one time or another, adopted legislation which directs or permits the closing of schools to avoid desegregation. In three States such laws have been repealed or struck down as unconstitutional; but the threat of school closing remains.

An extreme example of such legislation was that adopted in Mississippi in 1954 and 1958. In December 1954 a constitutional amendment was adopted and approved by a 2 to 1 margin which authorized the legislature or the local school districts to close public schools in the State upon a majority vote of both houses of the legislature.⁶ In 1958 the Mississippi Legislature gave the Governor authority to close any State institution of higher education, and all schools of any school district if he deemed it to be "to the best interest of a majority of the educable children of any public school of that district."⁷

Immediately following the Supreme Court decision in *Cooper v. Aaron*⁸ in September 1958, Governor Faubus signed a bill adopted by the Arkansas General Assembly giving him the right to close a school or schools in any particular school district if he determined that there was "actual or impending domestic violence" endangering lives and property; if Federal troops were stationed in or about a public school; or if he determined that an "efficient educational system cannot be maintained in any school district because of the integration of the races in any school within that district."⁹ The Arkansas Supreme Court upheld this act as constitutional under both the State and the Federal Constitutions in *Garrett v. Faubus*,¹⁰ stating that it was a reasonable exercise of the State police power to meet an emergency. The State court added:¹¹

. . . If act 4 is viewed as giving the Governor the power to close all public schools permanently, it would, we conceive, be in violation not only of the decree in the *Brown* case but also of the State constitution, but we do not consider it that way.

However, in the wake of the State struggle against desegregation of the Little Rock high schools, a three-judge Federal district court found this

act, and a 1959 amendment withholding State funds from any school so closed, to be "clearly unconstitutional under the due process and equal protection clauses of the 14th amendment."¹²

Plans for the abandonment of public education in Virginia were carefully laid. In 1956 the Virginia General Assembly enacted a provision announcing the State's public policy to be one of racial segregation in the public schools, and declaring that desegregation of schools "could destroy the efficiency of the school . . . and tranquillity of the community." It directed, therefore, that whenever any school was desegregated, whether voluntarily or under compulsion of a court order, the Governor had to assume control in the name of the Commonwealth and close it.¹³ The Governor could reopen and return the school to the local authorities whenever it appeared that they could operate the schools in accordance with "State policy." The consent of the State to be sued for any action taken under this law was specifically withheld. Two years later the act was extended to include any public school policed by Federal military forces,¹⁴ and separate legislation was enacted to authorize the closing of other schools in the same district when the closing of any public school ". . . should in the opinion of the Governor, cause the peace and tranquillity of the school division in which such school is located to be disturbed. . . ." ¹⁵ In September 1958, the Governor utilized these powers to close the Warren County High School, an elementary, and a high school in Charlottesville, and six secondary schools in Norfolk, all of which were under court order to admit Negro students.

These Virginia school-closing laws were declared unconstitutional in January 1959 by a three-judge Federal district court and by the Supreme Court of Appeals of Virginia in separate suits.¹⁶ In a suit brought by the Attorney General of Virginia, the State supreme court of appeals held that the *School Segregation* cases invalidated the section of the State constitution which provided that white and colored children should not be taught in the same school, but did not affect the section which required the general assembly to "establish and maintain an efficient system of public free schools throughout the State." The State court found that these laws violated the latter provision, explaining:¹⁷

. . . That [section] means that the State must support such public free schools in the State as are necessary to an efficient system, including those in which the pupils of both races are compelled to be enrolled and taught together, however unfortunate that situation may be. . . . [The school closing laws] violate(s) section 129 of the constitution in that they remove from the public school system any schools in which pupils of the two races are mixed and make no provision for their support and maintenance as a part of the system.

The Federal district court, in *James v. Almond*,¹⁸ approached the problem from the standpoint of the equal-protection clause of the 14th

amendment. In a suit brought by white parents, this court found that the Virginia school-closing laws of 1956 were unconstitutional not only because they "effectively require a continuance of racial discrimination," but also because the closing of schools discriminated against both white and Negro children assigned to those schools.¹⁹

We are told that, because the schools are closed to *all alike*, both white and colored, there is no discrimination and hence there is no violation of the 14th amendment. This premise is totally unsound. . . . Where a State or local government undertakes to provide public schools, it has the obligation to furnish such education to all in the class eligible therefor on an equal basis. . . . While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the State permits other public schools or grades to remain open at the expense of the taxpayers.

The court's comments on school closing on a local option basis are of interest in view of later laws: ²⁰

In the event the State of Virginia withdraws from the business of educating its children, and the local governing bodies assume this responsibility, the same principles with respect to equal protection of laws would be controlling as to that particular county or city. While the county or city, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in the county or city may be closed to avoid the effect of the law of the land while other public schools or grades remain open at the expense of the taxpayers. Such schemes or devices looking to the cut off of funds for schools or grades affected by the mixing of races, or the closing or elimination of specific grades in such schools, are evasive tactics which have no standing under the law.

The court in the above case seemed to say that in a State system of public schools, the closing of any school and the operation of others anywhere in the State is a denial of equal protection to the children locked out of the closed school; in a local system, the closing of any and the operation of others within the system, is also unconstitutional as to those excluded.

The Louisiana Legislature in 1958 gave the Governor authority to close any school in the State that was ordered to desegregate, and fur-

ther to close other schools in any area where a school had been closed if their continued operation might cause disorder among the children or the citizens of that area.²¹ In 1960 the Governor was given the authority to close all schools in the State if one was desegregated²² and, in another provision which contained no reference to school desegregation, to close any school "when the operation thereof is threatened, interfered with, or disrupted by disorder, mobs or violence."²³

These three acts, together with other Louisiana statutes, were declared void by a three-judge Federal district court on August 27, 1960.²⁴ With regard to the three school-closing laws, the court said:²⁵

All these acts have as their sole purpose continued segregation in the public schools. They are but additional weapons in the arsenal of the State for use in the fight on integration. Although the right of the Governor to close schools under Act 542 of 1960 is not in terms predicated on their integration, the purpose of the act is so clear that its purpose speaks louder than its words. . . . This act may be more sophisticated than Act 495 of 1960 and Act 256 of 1958, but it is no less unconstitutional.

Shortly thereafter the Louisiana Legislature in effect reenacted the laws invalidated,²⁶ and on November 30, 1960, a three-judge Federal district court declared the new enactments unconstitutional, holding they were—²⁷

. . . all in effect school closure measures, . . . carbon copies of statutes held invalid by the decision rendered August 27. The only difference, common to all four acts, is the deletion of reference to "segregation," "integration," or "separate facilities" in the earlier statutes and the substitution of the words "consistent with the constitution and laws of this State or State board of education policies, rules, or regulations." But this euphemism cannot save the legislation.

To this date no further acts have been passed in Louisiana which provide *directly* for the closing of desegregated public schools.

Statutes which provide for the automatic closing of schools to which Federal military forces are sent have been enacted not only in Virginia, as mentioned above, but also in Florida²⁸ and Texas.²⁹

In 1956 the Georgia Legislature empowered the Governor to close public schools whenever he found that they could not be operated "in such manner as shall entitle such schools under the laws of this State to State funds for their maintenance and operation. . . ." ³⁰ Since other laws prohibited the expenditure of State or local funds for desegregated schools,³¹ an intention to authorize the closing of desegregated schools seems clear. Moreover, the next year the Georgia General

Assembly conferred upon the Governor additional powers to promulgate and enforce emergency regulations for the control of "public buildings, public utilities, or any other public facility in Georgia, and . . . regulate the manner of use, the time of use, and persons using the facility during an emergency, for the purpose of maintaining peace, tranquillity, and good order in the State."³² South Carolina adopted similar legislation.³³

That the underlying purpose was to effect the swift closing of public schools threatened with desegregation was clear to the Governor of Florida. He vetoed a similar act passed earlier by the Florida Legislature, saying:³⁴

Insofar as the public school system is concerned, I view the bill as wholly unnecessary. Under the present school code . . . the respective county boards of public instruction of the State have the express power to "adopt regulations for the closing of schools during an emergency. . . ."

Another 1959 law directed the Governor of Georgia to close any public school whenever he deemed it necessary to preserve the good order, peace, and dignity of the State, and whenever necessary because of conditions resulting from "the transfer or assignment of one or more pupils to such school." The latter provision included the closing of the school which the pupil would have attended as well as the one to which he was assigned.³⁵

Following the same general plan of action, the States of Alabama and Mississippi delegated school-closing authority to local school boards. The Alabama statute³⁶ directed each board of education after public hearings to close any school if its continued operation "will be accompanied by such tensions, friction, or potential disorder . . . as substantially to impair the effective standards of education or . . . peace, order, and good will in the community." The Mississippi act³⁷ was no more subtle, authorizing local school trustees to close any or all their public schools if "such would be to the best interest of the persons therein or to promote or preserve the public peace, order, or tranquillity of any school or school district."

Still another variant gave local option to the voters of the locality. North Carolina pioneered in this field in 1956 when the voters ratified an amendment to the State constitution authorizing the general assembly to provide for a "uniform system of local option" whereby any locality could vote to suspend the operation of its public schools.³⁸ The legislature declared: "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."³⁹ Local boards of education were

given authority to call an election on the question, and thereafter to suspend the operation of one or more, or all, of the public schools under their jurisdiction.

Georgia and Louisiana enacted similar statutes in 1961⁴⁰ establishing local option procedures for the closing and reopening of public schools in desegregation crises. The Louisiana statute was found unconstitutional by a three-judge court on August 30, 1961.⁴¹

By early 1959 compulsory school-closing laws had proven vulnerable to constitutional attack in the courts. Schools in both Virginia and Arkansas were reopened after the courts struck down the laws under which they were closed; and the emphasis of subsequent legislation, by and large, shifted to new strategies of resistance.⁴² School-closing laws of the local option variety retain sufficient importance to warrant an examination of their constitutionality.

Constitutionality

The Arkansas and Louisiana school-closing laws were termed "additional weapons" in the fight to preserve segregation and invalidated as schemes to circumvent court orders.⁴³ Most of the laws now on the books, however, are not so openly related to the avoidance of desegregation and to that extent are less vulnerable. Nonetheless, insofar as they permit the State or its instrumentalities to operate public schools in one part of the State and not in another, they appear to be within the language of the three-judge court in *James v. Almond*,⁴⁴ where the court said that such action was a denial of equal protection not because of its racial implications, but because it involved discrimination between children, whatever their race, in different parts of the State. The result should be the same whether responsibility for school closing is vested in the State or in local agencies, for as the Supreme Court stated in *Cooper v. Aaron*:⁴⁵

The situation here is in no different posture because the members of the school board and the superintendent of schools are local officials; from the point of view of the 14th amendment, they stand in this litigation as agents of the State.

The command of the 14th amendment is that "no State . . . shall deny to any person within its jurisdiction the equal protection of the laws." . . . Whoever, by virtue of public position under a State government . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.

This reasoning indicates that the Constitution does not permit the operation of some public schools in a State if public schools in other

localities have been abandoned. This question is presently before a Federal district court in the *Prince Edward County* case.⁴⁶

No court has yet ruled on the constitutionality of complete abandonment by a State of its public schools. Two States have laws permitting this; none has actually done so. On the basis of the Arkansas and Louisiana cases, it is possible that the closing of all the public schools in a State *because of a threat of desegregation* would constitute a denial of equal protection to those individuals willing to attend desegregated schools. They would be deprived of the opportunity to attend public schools *only because of the fact of desegregation*. However, the complete withdrawal of the State from public education (unrelated to a threat of desegregation) may well not fall within the scope of the equal-protection clause. All citizens would then be equally deprived of the advantages of a public function which the State has not been held to be bound to perform. The right to equality in public education, under present court decisions, arises only where the State is in fact providing some public education.

It may be, however, that public education has become so fundamentally a function of State and local government that the courts would hold the elimination of all public education by such a government to be a denial of due process of law. The Federal district court in the *St. Helena* case has posed the question in just these terms, and has invited the Attorney General of the United States as well as those of all the individual States to submit briefs on the issue.⁴⁷ That case, however, was not decided on this issue.^{47a}

THE CUTTING OFF OF PUBLIC FUNDS

Laws providing that State funds be withheld from schools or school districts which desegregate are similar to school-closing laws in purpose, effect, and constitutional import. As early as 1955 both Georgia⁴⁸ and South Carolina⁴⁹ adopted such laws. (South Carolina also inserted a provision to that effect in its 1956 and 1960 appropriation laws.⁵⁰ The Georgia law was repealed in the spring of 1961.⁵¹) Virginia passed a statute of this kind in 1956,⁵² repealed it 3 years later as a result of the Perrow Commission report.⁵³ The 1957 Texas statute⁵⁴ which provided for the withdrawal of State funds from any locality desegregating its schools without approval of the voters was given a very restrictive interpretation by the State attorney general, who ruled that the law did not apply to districts that desegregated under court order.⁵⁵ Similarly, in *James v. Duckworth*,⁵⁶ a city ordinance cutting off funds

from certain schools was voided by the court as a device for avoiding an order to desegregate those schools.

It seems clear that, as with school-closing laws, a State may not give financial support to some public schools while withholding it from others—especially if the reason is court-ordered desegregation. Application of such laws doubtless would result in the closing of the schools for, although local taxation is generally the major source of public school financing, State aid is often indispensable.

COMPULSORY ATTENDANCE LAWS

A wider form of response to the *School Segregation Cases*, and a far-reaching one, has been the repeal or suspension of compulsory school attendance laws. South Carolina in 1955,⁵⁷ North Carolina⁵⁸ and Mississippi in 1956,⁵⁹ and Arkansas⁶⁰ in 1957 amended school attendance laws to provide that no child would be required to attend a desegregated school. In 1957 Georgia empowered the Governor to suspend its compulsory attendance laws.⁶¹ In 1959, Virginia reenacted the compulsory attendance law it had repealed in 1956, but left enforcement to the local school boards and permitted parents to withdraw their children from school for a "good reason" under the "freedom of choice" program.⁶² Tennessee adopted a similar provision in 1959.⁶³

In Louisiana, acts repealing the compulsory attendance law were held to be part of a scheme for evading desegregation, and thus invalid.⁶⁴ None of the other laws have been ruled on by the courts, and all are in effect.

Compulsory school attendance laws were the Nation's answer to the movement of young children out of the schoolroom and into the factory during the rapid growth of industry in the 19th century. Massachusetts led the way in 1852.⁶⁵ By 1900, 32 of the then 45 States of the Union had enacted such laws,⁶⁶ including 2 of the Southern States.⁶⁷ After Mississippi adopted its school attendance law in 1918⁶⁸ and until 1955, every healthy, normal American child was required to attend school for certain years of his life. The constitutionality of these laws was challenged unsuccessfully.⁶⁹ The most common age span covered is 7 to 16,⁷⁰ but completion of high school (usually at age 17 or 18) is now considered minimal preparation for employment.

No comprehensive study as to the effect of the repeal of attendance laws on early school dropout appears to have been made, but isolated reports suggest it may be great. School superintendents in Virginia voiced concern at the close of the 1959–60 school year. Of the 130

school districts in Virginia, only 27 have adopted a local attendance law as permitted by State law. Prince William County, one of the 103 school districts which had not adopted a local school attendance ordinance, was reported to have had 130 students under 16 drop out of school and 225 others attending irregularly in 1959-60.⁷¹ Its total school-age population (7 to 16 years) is 8,454.⁷² The board of supervisors, however, on July 20, 1961 approved the adoption of a compulsory attendance law for the 1961-62 school year.^{72a} Page County reported 123 dropouts during the same period,⁷³ most of them 11- to 15-year-olds. Page County has 3,077 children in this age group.⁷⁴

TUITION GRANTS AND PRIVATE SCHOOLS

All States that have taken measures to withdraw from public education have provided financial support for the education of their residents in some other way. A common device is tuition grants, drawn from State or local funds or both, to allow residents to attend any school (including, of course, private schools) of their choice. Statutes establishing tuition grant plans were enacted first in Georgia (in conjunction with school-closing laws), then in North Carolina (1956), Louisiana (1958), and Arkansas (1959).⁷⁵ Alabama authorized a plan after repealing the constitutional obligation to provide free public education.⁷⁶ Virginia enacted its first tuition grants law in 1956,⁷⁷ amending it in 1959 and 1960 to conform to the new "freedom of choice" policy.⁷⁸ Georgia adopted the Virginia freedom of choice pattern in 1961.⁷⁹

Financing of educational grants is provided in some cases directly at the State level, in others only at the local level, and in still others by appropriation of both State and local funds. Some States have added further legislation to help private educational institutions indirectly, the aid taking such forms as tax deductions or credits for donations made to such institutions,⁸⁰ extension of State retirement benefits to teachers employed by private schools,⁸¹ and even reimbursement for transportation expenses of pupils attending the school.⁸² One State has gone so far as to permit teachers educated at State teachers colleges to satisfy their statutory obligation to teach in the State public school for a given length of time by performing the same service at a private institution.⁸³

The tuition grant laws of Alabama, North Carolina, Arkansas,⁸⁴ Georgia,⁸⁵ and Louisiana have not yet been put into operation. In Louisiana, the St. Bernard Parish school board was forced to finance a private school established for white children (who were boycotting the two desegregated elementary schools in New Orleans) because no State

funds were available. The school board later contended that the expenditure should be borne by the State, and the State earmarked \$300,000 in 1961 for that purpose.⁸⁶ Louisiana has made tuition grants available as of July 1, 1961, by transferring \$2.5 million from sales tax revenue in the State welfare fund to the education expense grant fund, and has provided for an additional monthly allocation to that fund of \$250,000 from sales tax revenue.⁸⁷

Only Virginia has put the tuition grant system into effect as a substitute for public education. It was first used after the closing of public schools in Norfolk, Charlottesville, and Front Royal in 1958, but its most extensive use has been in Prince Edward County beginning with the 1960-61 school year. Since this is the only available example of the system at work, it will be helpful to investigate more closely its operation there.

CLOSED SCHOOLS AND TUITION GRANTS

The Gray Commission, appointed by the Governor to study the effect the *School Segregation Cases* would have on public education in Virginia, felt that it might become necessary to close the public schools, and recommended certain laws in anticipation of that possibility. Among other things, it proposed an amendment of a section of the Virginia Constitution which expressly prohibited any disbursement of public funds to educational institutions not owned or exclusively controlled by the State.⁸⁸ A constitutional convention carried out its recommendation with an amendment permitting the general assembly to appropriate funds for the education of students at nonsectarian private schools. This was the foundation for a series of tuition grant laws adopted by the legislature at the 1956 extra session.⁸⁹

Under these statutes the pupils of public schools in Norfolk, Charlottesville, and Front Royal, closed by the Governor's order during the first term of the 1958-59 school year, received tuition grants.

In 1959, when Virginia's policy shifted from massive resistance to "freedom of choice," the existing tuition grant laws were repealed and replaced by new laws which make no reference to desegregation of schools. The new laws did not explicitly establish a system of local option for the abandonment of public schools, but a number of powers relating to schools were delegated to local authorities. These included power to compel or suspend compulsory school attendance requirements; to make appropriations for public school on a month-to-month basis (i.e., to permit the closing of schools at any time);⁹⁰ to spend funds for private education of children through tuition grants to the parents (not to the

schools attended); to permit taxpayers to deduct contributions to non-sectarian private schools from real and personal property taxes; and to provide transportation at State expense for children attending non-sectarian private schools.

Selection of the school was left entirely to parents, and grants were available to students attending public or private schools, segregated or desegregated, as long as they were accredited by the State board of education. The board was specifically directed to promulgate rules and regulations prescribing "minimum academic standards that shall be met by any nonsectarian private school attended by a child to entitle such child to a scholarship," but could not deal with school admission requirements.

The closing of public schools in Norfolk, Charlottesville, and Front Royal in the fall of 1958 was but a prologue to the complete closing of all the schools in Prince Edward County the following year, but there were implications of sufficient importance in each area to deserve examination.

Norfolk.—Six secondary schools in Norfolk were closed by the Governor's order in September 1958. Of the 10,000 children attending the high schools at the time, approximately 5,000 received some sort of makeshift tutoring in groups organized by public school teachers.⁹¹ A private school, the Tidewater Academy, was established for grades 7 through 12, but it failed to gain the community support such schools received elsewhere, probably because of the cosmopolitan nature of Norfolk and, more important, the refusal of public school teachers to take part in the venture. The academy continued in operation after the public high schools were reopened in February 1959 and is still in business (though with substantially diminished enrollment).⁹² A substantial number of tuition grants have been approved by the Norfolk school board, and it has been estimated that a new high of \$365,000 will be disbursed for this purpose in 1961-62.⁹³

Charlottesville.—Pupils from two public schools in Charlottesville closed by Governor's order in September 1958 received instruction in emergency quarters, mostly by teachers from the closed schools (who continued to be paid by the local school board). The public schools reopened with permission of the court on a segregated basis in February of 1959 and on a desegregated basis the following September.

Mr. Fendall R. Ellis, superintendent of schools, testified at the Commission's Gatlinburg conference that approximately 450 children withdrew from public school and enrolled at 2 new all-white private schools in the community. (The two schools, the Robert E. Lee Elementary School, and Rock Hill Academy, a high school, enrolled 200 to 300 pupils each in the school year 1959-60.) On the subject of finances, Mr. Ellis said: ⁹⁴

The financing of these private schools has been done by means of donations and by means of State pupil scholarships provided by the legislature. The buildings have been constructed with privately donated funds from people in the community who feel strongly on this school issue. The operation of the schools is paid for primarily by tuition grants, which amount to \$234 per pupil, \$155 of that being borne by the locality and the rest by the State.

In his written statement for the conference, Mr. Ellis reported that in the 1959-60 school year the school board had processed and paid 611 tuition grants up to March and expected to pay a total of approximately 650 grants by the end of the year. Of these, 463 grants were paid to parents of pupils attending the 2 new private schools and 148 to parents of children attending other private or public schools.⁹⁵

Warren County.—When the Warren County High School was closed in the fall of 1958, about 820 of the 1,050 former students enrolled in a private high school which was established for white children. Another estimated 100 attended public schools outside the county and about 125 attended no school at all.⁹⁶ Twenty-six teachers from the public high school are reported to have transferred to the private school with special permission from the Governor.⁹⁷ The public high school reopened in February 1959 with only 22 students (all Negroes) enrolled, but in September about 400 white students also began attending.⁹⁸ Also in September 1959, the John S. Mosby Academy (an all-white private high school) was organized to replace the temporary school established the year before.⁹⁹ Parents of the academy's students received a \$220 tuition grant, of which \$133 was paid by the county and \$87 by the State. In the fall of 1960 the grant was increased to \$275 per student, made up of \$150 from State funds, \$119 from county educational funds, and \$6 from county general funds.¹⁰⁰

Mr. Q. D. Gasque, Superintendent of Schools of Warren County, testified at the Commission's Williamsburg conference that the total cost of all scholarship grants for 1960-61 would be approximately \$75,000 from State funds and \$69,000 from county funds. The tuition grant in this case, also, does not completely cover school cost, each parent having to pay approximately \$15 a year from his own pocket.¹⁰¹

Prince Edward County.—This rural county of southern Virginia has been without public schools since the county board of supervisors failed to appropriate funds for operation of public schools in June 1959. Most of the 1,700 Negro pupils (who constituted 52 percent of the public school enrollment before closing) have received no formal education since that time.¹⁰²

In July 1959 about 1,220 white students (of the approximately 1,600 previously attending public schools) enrolled in the Prince Edward School Foundation (a private institution). Of the 70 white public

school teachers, 59 transferred to the private school retaining their retirement privileges under State law. During the 1959-60 school year the Prince Edward Foundation's expenses were met exclusively with voluntary contributions.¹⁰³ (Elimination of all educational expenditures by the county brought about a reduction in real estate tax rate from \$3.30 to \$1.50 which helped make contributions possible.) During the following school year the county made tuition grants available¹⁰⁴ and, under the authority of a new Virginia law, authorized a credit against real estate and personal property taxes for contributions made to the school.¹⁰⁵ The county also provides reimbursement up to \$35 per year for transportation of each child living over one-half mile from the school to the parents of children attending the school.¹⁰⁶ In order to provide funds for the county's share of tuition grants, the board of supervisors raised the tax rate for fiscal 1961 to \$3.90, an increase of 60 cents over fiscal 1959, the last year that public schools were open.¹⁰⁷

During the 1960-61 school year a total of 1,325 tuition grants was approved by the school board—all for children attending the foundation's schools.¹⁰⁸ These grants were \$225 for elementary and \$250 for high school pupils, compared with tuition charges of \$240 and \$265, hence parents paid only \$15 a child per year.¹⁰⁹ The excess of tuition charges over grants was \$32,265, or some \$24,600 less than the total contributions to the foundation of \$56,866.22. Altogether, 96 percent of the pupils enrolled in the foundation's schools received tuition grants the total amount of which represented 91 percent of the foundation's revenue.¹¹⁰ This governmental support, though indirect, is extensive.

There is no apparent State control of the foundation, but it must be noted that under State law a private school must be approved by the State board of education and conform academically to its rules and regulations if its students are to qualify for grants.¹¹¹ In addition, the participation by teachers in such schools in the State retirement system requires the adoption of a resolution by the school's governing body and the approval of that resolution by the board of trustees of the Virginia supplemental retirement system.¹¹²

CONSTITUTIONALITY OF TUITION GRANTS

As was pointed out above, the tuition grant system was one of the devices aimed at removing the State from the business of providing education sufficiently to avoid the requirements of the 14th amendment. Yet, as shown by its operation in Prince Edward County, State and local funds

and other forms of governmental participation play an important role in the system. This was recognized recently by the Federal district court in the *Prince Edward County* case.¹¹³

There have been rulings in earlier cases on the subject of what degree of management, financial assistance and/or control of a private institution by the State is required to make the institution a representative of the State for 14th-amendment purposes. Specifically in the field of school desegregation, the Supreme Court of the United States in *Cooper v. Aaron* declared that ¹¹⁴—

State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws.

The question whether public management of a privately financed institution constituted State action for 14th-amendment purposes was before the Supreme Court in 1957 in the *Girard College* case.¹¹⁵ The Court held that if a school financed exclusively by a private testamentary trust was administered by a public agency, the denial of admission to a Negro on the ground of race was State action subject to the equal protection clause of the 14th amendment. When private citizens were later substituted for the public agency, the Pennsylvania Supreme Court found that State participation had been eliminated.¹¹⁶

Whether payment of public funds to privately managed educational corporations would amount to "State action" was decided by the Federal courts as early as 1945. In *Kerr v. Enoch Pratt Free Library*,¹¹⁷ a private corporation that maintained a school for librarians and received large annual grants from the city of Baltimore, was enjoined from refusing admission to a Negro student. Its action was deemed to be State action principally because of the substantial municipal support it received. The U.S. Court of Appeals for the Fourth Circuit stated: ¹¹⁸

Even if we should lay aside the approval and authority given by the State to the library at its very beginning, we should find in the present relationship between them so great a degree of control over the activities and existence of the library on the part of the State that it would be unrealistic to speak of it as a corporation entirely devoid of governmental character. . . . How then can the well known policy of the library . . . be justified as solely the act of a private organization when the State, through the municipality, continues to supply it with the means of existence.

In *Norris v. Mayor and City Council of Baltimore*,¹¹⁹ a district court in the same circuit 3 years later rejected the contention that a private

art school [the Maryland Institute] which received State and city funds in the form of tuition scholarships was an agent of the State and subject to the restrictions of the 14th amendment. In distinguishing that case from the *Enoch Pratt* decision, the court stressed the fact that the library in that case received 99 percent of its annual budget from the city, while in the case before it the total public funds for scholarships was only 23 percent of the school's revenue.¹²⁰

Appendix table 4 compares the public support and control present in the *Prince Edward* case with three earlier cases.¹²¹

IMPLICATIONS

In his written statement submitted for the Commission's Williamsburg conference, Mr. Gasque, Superintendent of Schools of Warren County, Va., described the effect of closed schools in that county: ¹²²

It is difficult to evaluate, even in general terms, what effect the closing of Warren County High School had on the academic achievement of its students. . . . For those students of above-average ability the effects of a disorganized academic year were quickly dispelled once the public school was reopened; for those students of lesser ability the loss may never be regained. Some students dropped out of school in despair because they could not comprehend the emotional conflict that permeated the entire community in which they lived. Others withdrew from the community entirely and enrolled in schools in surrounding areas. Discipline reached a low ebb when the close supervision of an organized program within the confines of a single building was suddenly nonexistent. The traditions that are so much the part of a community high school could not be transplanted into a makeshift situation; a heritage covering many decades was lost to posterity.

Another immediate result of closed public schools has been the establishment of hastily organized private schools which could not compare in quality, for a number of years at least, with the public school system they purported to replace. As Mr. Gasque told the Commission: ¹²³

I would like to point out here something that is well known to everyone who has had any connection with public schools—that it takes a long time to really get a school organized and a still longer time to buy proper equipment. I think that that is a fact which

should be kept in mind when we speak frankly of the poorer facilities that a number of private schools will be able to offer for some time.

Dr. Donald R. Green of Emory University, Georgia, in a prepared statement for the Commission's Williamsburg conference, stressed the difficulties inherent in a plan to substitute private schools for the public school system: ¹²⁴

. . . The residents of most Southern States face a tremendous task if they wish to build a set of private nonsectarian schools parallel to the public school system. Good private schools are not only expensive but take time to develop. In short it is doubtful that any move to expand the number of private schools will be able to eliminate the distress of more than a handful of those opposed to desegregation. . . .

Private schools have an important role to play in the educational system of the country, and for the most part they have played it well. . . . But this role in no way can be said to include . . . any real possibility that the replacement of public schools with private schools would adequately meet the needs of the county, State, or locality. . . .

Private schools typically offer a single program suited to the needs of some children. As long as they enroll *only* such children, they can make a valuable contribution. If private schools are to serve *all* children, they must broaden their program substantially, an expensive undertaking.

In Dr. Green's opinion, a system of private schools cannot compete with a public system of schools either in cost or quality of instruction. He noted the high tuition rates in established private schools of good quality as well as hidden costs in the form of special assessments, donation requests, and other charges. Even more important, perhaps, would be the loss of Federal aid for vocational education, school construction, and libraries.¹²⁵

Even if the financial problem could be overcome (and he feels this is doubtful), he believes it is "unlikely that the education offered by an all-private set of schools would meet [even] the somewhat less than ideal standards our public schools now maintain."¹²⁶ Dr. Green conceded that private schools are superior to public schools in many instances. He suggested, however, that the continued presence and competition of the public schools might have been a substantial factor in forcing private schools to maintain their higher standards; that if this were the case there is a dangerous possibility of deterioration of these standards once

the public schools are gone.¹²⁷ He noted other possible problems. Public school teachers must be certified by the State; private school teachers need not. Public schools offer special services to children with handicaps or special talents and abilities; private schools with a smaller geographic spread cannot do so.¹²⁸ Further, the variety of programs offered in private schools must of necessity be more restrictive.

One of the less obvious dangers of a private school system, Dr. Green explained, was the opportunity for individuals and small groups to impose their personal ideas and prejudices upon the school. The protection now offered by State supervision against such action is far from complete, but even this would be lost. He said: ¹²⁹

It is not pleasant to contemplate the manner in which various groups will try to get these private schools to indoctrinate children with their own particular brands of religious, political, social, and economic beliefs. In contrast to the present situation, parents will have no recourse if school policies are objectionable or harmful. Schools will be crowded, hard to find, harder to get into, and the good ones will be very expensive. In most cases parents will have to take what they can get, and like it.

People from all sections of the South are showing increasing concern about the future of public education. When the public high schools in Little Rock, Ark., were closed, a group of citizens who preferred desegregated schools to none at all organized a committee to support public schools.¹³⁰ A Little Rock newspaper which had formerly supported Governor Faubus' policies endorsed the committee.¹³¹ When public schools were threatened in New Orleans, La., similar groups were formed,¹³² and in Georgia citizens' groups played a vital role in passing laws that allow school districts to decide for themselves whether or not to maintain public education.¹³³ It is noteworthy that groups such as these are not concerned with the merits of the *School Segregation Cases*; their only concern is the survival of public education.

Tuition grants threaten the quality of public education, even its existence. Without such laws, private schools, insofar as they are a substitute for public schools, could not long exist. In Virginia the new private schools for whites are almost wholly supported by tuition grants,¹³⁴ and in Little Rock without such aid they soon disappeared.¹³⁵ Tuition grant laws in operation have produced such situations as private schools for one race and public schools for both (as in Charlottesville, Norfolk, and Warren County), or private schools for one race, none for the other (as in Prince Edward County).

Public schools lose the revenue siphoned off to private schools. Mr. Gasque of Warren County, Va., reported that the loss of State funds to

public schools because of tuition grants and diminished enrollment is substantial,¹³⁶ and the Arlington County Board of Education complained bitterly of the tuition grant law in 1961.¹³⁷

The director of administration and finance for the State Department of Education of Virginia reported that during the 1960-61 school year, 8,127 pupils in Virginia received tuition grants, an increase of 3,359 over the previous school year. (About 40 percent of the increase was for attendance at the Prince Edward County Foundation schools.) The cost of the grants to the taxpayers was \$1,755,543, or about \$700,000 over the previous year. Of this total, \$1,014,582 came from State funds and \$740,961 from local funds, the increase from the preceding year being about \$550,000 in State funds and \$160,000 in local funds.¹³⁸

CONCLUSION

The threat to popular education posed by the closing of public schools, State support of private schools, and reduced State aid to public schools under "freedom of choice," has been discussed. Both practical and constitutional questions arise out of the State laws creating this threat. The practical questions can be resolved into one: Can private schools to serve all children—the nonacademic child as well as the academically talented, the poor as well as the rich—be substituted for a system of public schools without sacrificing educational standards or the educational welfare of at least some children? The constitutional questions are three: (1) May a political subdivision of a State withdraw from public education while others continue to operate public schools?^{138a} (2) What amount of State management, control, or support is required before a private school becomes an instrumentality of the State for the purpose of invoking the 14th amendment? (3) When do actions taken to avoid desegregation of schools become evasion of the law of the land?^{138b}

Some of these constitutional questions were decided in the litigation pending in the Federal courts as to the closed schools of Prince Edward County, Va., and the threatened closing of schools in St. Helena Parish, La.

These questions involve the exercise of State power in an area long recognized as entirely within the domain of the States. In November 1960, the Supreme Court had occasion to speak on the exercise of a similar State power with relation to rights protected by the Constitution:¹³⁹

When a State exercises power wholly within the domain of State interest, it is insulated from Federal judicial review. But such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right. This principle has had many applications. It has long been recognized in cases which have prohibited a State from exploiting a power acknowledged to be absolute in an isolated context to justify the imposition of an "unconstitutional condition."

7. Segregation North and West

At least until 1954 State and local law required separate public schools for Negroes in the South.¹ With rare exceptions² such segregation as there has been in the North and West has been a matter of practice³ *without explicit legal sanction*. In some instances, nonetheless, official action has contributed to or caused segregation. Where this is true, a denial of equal protection may exist.

Where segregation is explicitly imposed by law, as in the South, the State action necessary to invoke the 14th amendment is clear. The problem there, as discussed above,⁴ is simply to find the best ways to accomplish desegregation. In the Northern and Western States the question is whether segregation results from such State action as will invoke the 14th amendment.

In its 1959 *Report*, the Commission said: ⁵

Concentration of colored Americans in restricted areas of most major cities produces a high degree of school segregation even in communities accepting the Supreme Court's decision. With the migration of Negroes and Puerto Ricans to the North and the West, and an influx of Mexicans into the West and Southwest, the whole country is now sharing the problem and the responsibilities.

This migration has continued. The 1960 census lists five cities in the North and West, each with more Negro residents than any southern city where separate public schools for white and Negro children were required by law in 1954.⁶ Indeed, only 9 of the 25 largest cities in the United States⁷ in 1960 lie in the South and 3⁸ of them have completely desegregated their school systems since 1954.

Public schools enrolling Negroes almost exclusively in some cases, and whites almost exclusively in others, are found in many cities throughout the North and West. Although official reports are few due to a policy of not recording the race, religion, or national origin of pupils, the facts are clear. Three cities, where attempts are being made to change the existing pattern, have frankly reported their findings as to segregation. A 1960 report of the board of education of New York City⁹ reported

that about one-fifth of the New York City elementary and junior high schools enrolled 85 percent or more Negro and Puerto Rican pupils, while 48 percent of the elementary and 44 percent of the junior high schools enrolled 85 percent or more white pupils. Philadelphia reported that 14 percent of its schools had an enrollment of 99+ percent Negro.¹⁰ In Pittsburgh in 1959, half of the Negro children in public schools attended schools which had 80 percent or more Negro enrollment. Sixty percent of all white children in public elementary schools and 35 percent of those in public secondary schools attended schools which had less than 5 percent Negro enrollment.¹¹

At its California hearings, the Commission heard of minority-group concentration exceeding 85 percent in the public schools of Los Angeles, Pasadena, Compton, Monrovia, Enterprize, and Willowbrook.¹² Similarly, "overwhelming Mexican-American student enrollment" was said to exist in 34 elementary schools in East Los Angeles.¹³ In describing the San Francisco program of districting elementary schools so that children may attend schools within reasonable walking distance of their homes, the superintendent said: "Naturally, a number of schools are predominantly of one race or another, reflecting the racial characteristics of that immediate neighborhood . . ." ¹⁴ An official report on the Berkeley, Calif., system shows that two of its elementary schools have a Negro enrollment in excess of 90 percent.¹⁵

Testimony at the Commission's Detroit hearings revealed that the 28 elementary schools in that city's Center District have an almost entirely Negro enrollment.¹⁶ Other nonsouthern cities with high racial concentrations in public schools include Boston, Chicago, Indianapolis, and Cleveland and Youngstown, Ohio.¹⁷ There are, no doubt, many others.

Segregation in the public schools of the urban North and West results to a large extent from the familiar system of neighborhood schools in combination with residential concentrations of minority groups. These "ghettos" were not explicitly created by law. They arose largely because of the inability of minority-group members to find housing elsewhere.¹⁸ That is why the resulting segregation in schools is generally called *de facto*, to distinguish it from *de jure*, segregation.¹⁹

Of course only the latter is unconstitutional. For, as already indicated,²⁰ the 14th amendment prohibits only such racial segregation as is imposed by governmental action (or inaction in the face of a legal duty to act). Thus, the *de facto* segregation that results from free private choice, or from residential patterns based on purely private discrimination is apparently not forbidden.

School authorities, usually the board of education or the superintendent of schools, designate the particular public school each child shall attend. This power is generally exercised by establishing attendance zones. Transfers to schools, other than those so assigned, are officially controlled. The sites of new schools ordinarily are selected

by school authorities. All these powers obviously may be used to create or preserve a pattern of racial segregation.

GERRYMANDERING

A few cases have arisen recently in which it was contended that school authorities had deliberately established or maintained school attendance zones to promote segregation. In *Clemons v. Board of Education of Hillsboro, Ohio*,²¹ a Federal district court found that an elementary school zone had been established to insure the continuance of the Lincoln School exclusively for Negro children. The facts showed that the Lincoln zone, established by resolution of the board of education, was made up of two completely separated areas, one in the northeast, and one in the southeast section of the city. Nevertheless the court refused to interfere lest it disrupt the orderly administration of the schools.

The United States Court of Appeals for the Sixth Circuit reversed the decision and instructed the district court to order immediate relief for the plaintiffs and to provide for the end of all school segregation at or before the beginning of the next school term. In his concurring opinion judge (now Mr. Justice Stewart) declared:²²

. . . The Hillsboro Board of Education created the gerrymandered school districts after the Supreme Court had announced its first opinion in the segregation cases. The Board's action was, therefore, not only entirely unsupported by any color of State law, but in knowing violation of the Constitution of the United States. The Board's subjective purpose was no doubt, and understandably, to reflect the "spirit of the community" and avoid "racial problems," as testified by the Superintendent of Schools. But the law of Ohio and the Constitution of the United States simply left no room for the Board's action, whatever motives the Board may have had.

In *Henry v. Godsell*,²³ another Federal district court found no basis for the plaintiff's allegations that school attendance zones in Pontiac, Mich., had been changed to compel, or achieve racial segregation.²⁴

. . . The board of education has altered and modified attendance areas from time to time to accommodate changes in population and as a result of the erection of new schools and additions to existing schools.

. . . *In the absence of a showing that attendance areas have been arbitrarily fixed or contoured for the purpose of including or ex-*

cluding families of a particular race, the board of education is free to establish such areas for the best utilization of its educational facilities.

In *Taylor v. Board of Education of New Rochelle, N.Y.*,²⁵ in 1961 the court found that the school board had denied the plaintiffs equal protection of the laws by deliberate gerrymander of the Lincoln School attendance zone to create and maintain an all-Negro school. The crucial facts appear in the following summary.

In 1930 the school board established highly *irregular* school zone boundaries so that the Lincoln zone would include little but Negro areas, while the adjoining Webster zone was mainly white. In ensuing years, as the Negro area expanded to the west of Lincoln, its attendance zone was extended to contain them. Similar action was taken to keep the nearby Mayflower School white in enrollment. White children remaining in the Lincoln zone were allowed to transfer to other schools. The result was that children living in adjoining houses attended different schools solely because of race. White children living south of Lincoln were assigned to Mayflower, half a mile north of Lincoln. Then early in 1949 the board, adopting a resolution to study zone lines, banned all transfers as of the following September 1. From January 1949 to the date of the *Taylor* suit no redistricting was adopted, although the Board discussed the problem, hired experts, made surveys, and reiterated its belief in racial equality. Various recommendations made to the Board during this period are outlined in the court's opinion. Both the Johnson and Dodson reports emphasized the racial concentrations in the schools due to their attendance zones. The Dodson report warned that "to do nothing about it is to encourage racial imbalance. To do nothing about it is a decision just as powerful and as important as a decision to try to do something about the imbalance."²⁶

In reply to the Board's contention that the *School Segregation Cases* did not apply, since the Lincoln School was not a component of a *de jure* system of separate white and Negro schools, the court said:²⁷

. . . I see no basis to draw a distinction, legal or moral, between segregation established by the formality of a dual system of education, as in *Brown*, and that created by gerrymandering of school district lines and transferring of white children as in the instant case.

. . . The result is the same in each case: the conduct of responsible school officials has operated to deny to Negro children the opportunities for a full and meaningful educational experience guaranteed to them by the Fourteenth Amendment. . . .

The Board also claimed that the established attendance zones merely reflected its policy of neighborhood schools which it said was both

reasonable, and educationally sound. The court rejected this defense too, for it: ²⁸

. . . ignores the essential nature of the plaintiffs' position. They are not attacking the concept of the neighborhood school as an abstract proposition. They are, rather, attacking its application so as to deny opportunities guaranteed to them by the Constitution. It is a legal truism that 'acts generally lawful may become unlawful when done to accomplish an unlawful end.' *Western Union Telegraph Co. v. Foster*, 247 U.S. 105, (1918) (Holmes, J.). Moreover, as Justice Frankfurter succinctly noted in his concurring opinion in *Cooper v. Aaron*, 358 U.S. 1, 25 (1958): "Local customs, however hardened by time, are not decreed in heaven."

The neighborhood school policy certainly is not sacrosanct. It is valid only insofar as it is operated within the confines established by the Constitution. It cannot be used as an instrument to confine Negroes within an area artificially delineated in the first instance by official acts. . . .

To the extent that lower court decisions can do so, these cases make it clear that the principle of the *School Segregation Cases* applies to racial segregation in the North and West resulting from official action, in violation of State law, as well as to segregation in the South.

There is some evidence of segregation by gerrymander in the North and the West. Witnesses testifying at the Commission's California hearings did not convey the impression that it was prevalent in that State. One said that: ²⁹

No overt evidence has been presented in recent years which would prove that neighborhood school zones are set along racial or ethnic lines. While there may be instances of such juggling here and there, public school zoning in Los Angeles City and in surrounding cities is reasonable and fairly static, unless traffic or safety hazards, or the opening of a new school nearby, forces a readjustment of zoning.

The same witness suggested that it was easy to zone in such a way that boundary lines "do not necessarily fall on housing lines" ³⁰ particularly, at the secondary level where one school often serves several communities. ³¹

At the Commission's Detroit hearing, however, testimony strongly suggested that Detroit was rezoned in 1959 to conform to changing residential patterns and thus to confine Negro residents to predominantly Negro schools. ³² More specifically, it was charged attendance zones of

two elementary schools were changed to coincide with racial residential patterns and the schools were also shifted from the predominantly white West Administrative District to the predominantly Negro Center District. The latter shift meant that the children attending those schools would be required to attend overwhelmingly Negro junior and senior high schools. Negro parents protested that their children were being forced back into inferior, unracial schools. They also argued that the change would hasten the exodus of whites who were also well aware of the limitations of predominantly Negro schools. The charge of zoning for the purpose of confining the Negro population to the Center District was confirmed by a member of the Detroit Board of Education.⁸³ A compromise was reached whereby the children from the three elementary schools could attend junior high school in the old district and some would have the option of attending high school there.⁸⁴

TRANSFER POLICY

Administrative policy on transfer of pupils from schools in their own zones of residence to schools of their choice may reinforce or alleviate segregation. In the *New Rochelle* case discussed above transfers at first were granted freely to permit white students living in the Lincoln zone to attend predominantly white schools in other zones. After 1949 the school board maintained segregation at Lincoln by restricting transfers. The Los Angeles program which permits any student to move upon request to any school in which space is available tends, in theory at least, to minimize the combined effect of zoning and racial residential patterns. In answer to a question whether a student could transfer for no stated reason, the Superintendent of Schools, Dr. Javis, testified: ⁸⁵

That is right; if there is room. It always happens due to mobility that some of our schools aren't full. All of our schools are surveyed twice a year to find out where the room is. There is then published a survey showing which schools are open, and which schools can accept a limited number, and which schools are closed. This changes from year to year. We wouldn't inquire into his reasons if we had room. We just handle them on the basis of priority of application.

Philadelphia's Board of Public Education reports that: ⁸⁶

. . . it is [our] policy to have each child, unless his physical, mental, or other educational needs require assignment to specially organized

classes and school, attend the school serving his community. However, as has always been the practice, a parent may request the assignment of his child, regardless of what his race or creed may be, to any public school having appropriate grades of courses, provided that that school after enrolling the children of its community has adequate accommodations for pupils from outside. In Philadelphia only 5,000 pupils, approximately, out of 245,000 are attending schools outside their home boundaries and the majority of these are Negro children.

It has been stated that the maintenance of open boundaries for some schools and long-standing rule of optional enrollment at such schools interfere with the integration process. In a limited number of cases this may be true. In all probability, the converse is true in most cases and to a much greater degree.

Suit was filed against the Philadelphia School Board on June 7, 1961, by parents of Negro children charging, among other things, discrimination resulting from the transfer policy.³⁷

New York City took the lead in using the transfer technique to achieve a better racial distribution of pupils and a better utilization of facilities. This was done effective in September 1960 by authorizing transfers from 21 junior or senior high schools with a heavy concentration of Negro and Puerto Rican students to 28 other schools with a predominantly white enrollment filled to less than 90 percent of capacity. Although about 3,000 students were eligible to change, only 393 did so³⁸ at the opening of the school year. Late announcement of the program and transportation difficulties may account for the small number taking advantage of the opportunity.³⁹

The policy was extended effective in September 1961 to the second, third, and fourth grades of 93 predominantly Negro and Puerto Rican schools from which students may apply for some 15,000 empty places in 124 schools with predominantly white enrollments. The city will provide transportation for all children selecting a school more than a mile from home. It is reported that some 3,000 elementary school children have been granted transfers.⁴⁰ An additional 2,500 pupils who will enter junior high in the fall have also had transfers approved.⁴¹

The New York City pattern of overcrowded schools in areas inhabited by minority groups—and unfilled classrooms in outlying, predominantly white communities—is not unique. Indeed housing and related studies indicate that this is quite common in our cities. Where it exists the transfer of pupils from crowded to under-utilized schools *at a distance* is more effective than rezoning as a method of equalizing school loads. But when the transfer device is used to desegregate, as well as to relieve overcrowding, it raises constitutional problems. The announced purpose of the New York City plan, for example, was to give “parents of pupils

in schools with a heavy concentration of minority groups the opportunity to transfer their children to schools with unused space and to an education situation where reasonably varied ethnic distribution exists.”⁴² Can government validly encourage transfers on racial grounds to achieve desegregation, even though presumably it may not do so to achieve segregation? The courts have not yet had to face this question.

In 1960-61 school officials in Westburg, Long Island, New York, transported white pupils by bus to a newly constructed school located in a predominantly Negro area in order to prevent the school from becoming an all Negro one. As a result the racial distribution at the school was about half Negro and half white.^{42a}

Other cities have transported children from overcrowded schools to schools having space for them—but for a less felicitous purpose. At its Detroit hearings the Commission was told that prior to November 1960, students from the predominantly Negro schools in that city's Central District were transported to predominantly Negro schools in an outlying area. Nearer schools, enrolling primarily middle-class white children, were by-passed.⁴³ Since November 1960 children from the Center District have been transported by grades to empty classrooms in three predominantly white schools. Whether or not they were segregated in a receiving school depended upon its principal.⁴⁴

Baltimore is another city that has resorted to busing children from one school to another to relieve overcrowding. The Commission had been told it was the policy of the school authorities, when bus transfer of a group of children was required, to select a receiving school with a racial composition similar to that of the sending school. At the Commission's Williamsburg conference the superintendent of the Baltimore Schools said, “. . . to a large degree that would be true, but not completely so in every situation.”⁴⁵ When pressed to say whether it would be true even if there were a nearer school, he replied: ⁴⁶ “. . . the nearest school in all the situations that we have at the present time would be overcrowded to the point that it couldn't house the additional children that would be transported.”⁴⁷

A policy of maintaining the racial composition of schools through transfer policy (as in Detroit before November 1960) may in fact be a positive policy of maintaining the *status quo*. If the *status quo* is racial segregation, even though merely *de facto*, a program to preserve it would seem to result in unconstitutional *de jure* segregation.

Berkeley, Calif., has an unusual zoning device that tends to avoid racial imbalance resulting from boundaries and minority concentrations. It intersperses optional attendance areas among fixed zones. This “permissive zoning” allows the residents of an optional area to select any one of two or more schools. In one situation, for example, the choice is between two schools having a less than 1 percent, and one having approximately 25 percent, Negro enrollment.⁴⁸ In another, the

choice is between two schools having a preponderantly, and one having a slightly less than 15 percent,⁴⁹ Negro enrollment. Under this plan school authorities are relatively immune from charges of segregation by zoning.

SITE SELECTION

School boards usually are authorized to select sites for new schools. This, like the power to fix attendance zones, if misused to promote racial segregation, would seem to constitute State action that is forbidden by the equal protection clause. Apparently the *New Rochelle* case (discussed above with regard to the gerrymander) is the only one in which a charge of abuse of authority was sustained on this ground.

In *Sealy v. Department of Public Instruction of Pennsylvania*⁵⁰ in 1957 an effort to prove discrimination by site selection failed. The facts showed that the school district in question was composed of two noncontiguous areas. The upper section had a Negro public school population of less than 5 percent, the lower of more than 95 percent. Even after allowing for the large number of children (particularly whites living in the upper section) who attended a Catholic parochial school, there were about 17 percent more public school students living in the upper, than in the lower section. A new school was to be built to replace an old one located in the lower section. It was to serve all children living in the district. The trial court found no evidence that the school board had been motivated by any racial consideration in its decision to locate the school in the upper section. Since all junior high students in the district, both Negro and white, would be free to attend the new school, no real question of creating a segregated school by site selection was involved in the case.

In affirming the lower court decision, the United States Court of Appeals for the Third Circuit said:⁵¹

The location of schools assuredly is one for State school authorities and local school boards; for State, not national courts, unless there be a deprivation of rights guaranteed by the 14th amendment. The plaintiffs have failed to prove their case.

In the *Pontiac* case, referred to above, discrimination by site selection was also charged. The facts showed that two sites had been considered. One was located in a densely populated Negro neighborhood, the other in a rather remote, but apparently less racially congested area. The

latter was rejected because it presented safety hazards for little children. The court found no abuse of discretion, saying: ⁵²

[A school board] may consider such factors in selecting sites that it considers relevant and reasonable and, in the absence of a showing that the standards for selection are not relevant and reasonable and that in reality they were adopted as a sham or subterfuge to foster segregation, or for any other illegal purpose, their use is within the administrative discretion of the school board. The fact that in a given area a school is populated almost exclusively by the children of a given race is not of itself evidence of discrimination. The choice of a school site based on density of population and geographical consideration, such as distance, accessibility, ease of transportation, and other safety considerations, is a permissible exercise of administrative discretion.

The *New Rochelle* case ⁵³ discussed above, started with a school board decision to build a new school on the site of the Lincoln School, which the court found had been deliberately created and maintained as a Negro school. Instead of issuing an injunction, the court ordered the board to present a desegregation plan. The plan presented by a majority of the board was based upon existing school zones, but included strictly circumscribed, permissive-transfer privileges.⁵⁴ No transfer would be allowed unless approved by the pupil's classroom teacher, his school principal, and the superintendent of schools; nor would one be valid for more than a year. (Transferees could be displaced after 1 year by children living in the zone of the receiving school.) The right to transfer was further limited by a board ruling as to maximum class size. The minority members of the board submitted a plan which the court refused to bar from consideration.⁵⁵ It called for immediate transfer of upper-grade pupils and the abandonment of Lincoln School in 1964.⁵⁶

Upon the invitation of the court,⁵⁷ the United States submitted an *amicus curiae* brief in which it criticized the majority plan, referred to the minority plan only indirectly, and ignored the question of segregation by site selection. Although acknowledging that, under the second *Brown* decision the suitability of a plan is to be determined by local school conditions, the United States suggested that the free transfer programs of the border cities of Washington, D.C., Baltimore, Oklahoma City, and Louisville should be the criterion for New Rochelle.⁵⁸ Then this crucial observation: ⁵⁹

. . . It may well be that, upon experience, it will appear that placing the burden of applying for transfers upon the Negro children is not the most effective way of eliminating the deplorable conditions which presently exist. It seems quite possible that

thorough elimination of segregation will require revision of school district boundaries or plans for completely free transfers. This, in turn, may necessitate the construction of additional schools or the enlargement of facilities at present schools, as is proposed by the plan submitted by the dissenting minority of the Board of Education. But a desegregation plan formulated along the lines suggested above would at the very least, be an acceptable, interim solution and would constitute a sound, constructive step toward the realization of the goal of constitutional equality of treatment. Since the Court would retain jurisdiction, it may ultimately fashion a broader remedy.

The court adopted the *amicus* recommendation. It ordered the board to distribute promptly applications for transfer to parents of all children expected to enroll in the Lincoln School the following fall. The application forms were to: (1) show the expected vacancies in each grade of all other elementary schools; (2) provide space to list at least four schools, in preferential order, to which transfer was requested; (3) give notice that transportation would be at parents' expense; and (4) indicate the final date for filing applications. The order permits the board when acting upon a transfer application to consider class size of the receiving school (but it expressly prohibits departures from existing maximum limitations), and also prohibits consideration of academic achievement or emotional adjustment. The court also ordered the board to assign transferees to the same grades they would have been eligible to attend at Lincoln, and to permit them to stay in the receiving school until completion of the elementary grades, unless they moved to another school zone.

Thus, it appears that the school board is now free to proceed with its announced plan to build a new school on the site of Lincoln. This, the Dodson Report found, "would further reinforce segregation of Negroes. It would leave two schools in the same neighborhood . . . only partially used, and it would reinforce community fragmentation."⁶⁰

The court's opinion makes it clear that in its view, the decision to build a new school on the old site was part of a series of deliberate actions by the board to make and keep Lincoln (old and new) segregated. The board had urged that the decision to rebuild Lincoln was a start in the right direction since this was the first step in its consultant's (Dobson) proposals for overcoming racial imbalance in the New Rochelle schools. One Dodson plan called for building a much larger school on the old site and closing a nearby school. The board instead had decided to build a smaller school on the site. The court disposed of the Board's contention that it was merely taking the first step in the Dodson proposals, saying:⁶¹

. . . But, the Board had indicated that it has no intention of implementing the remainder of these proposals, which Dr. Dodson stated must be considered as an integrated whole. Dr. Dodson testified at the trial that the Board's decision did violence to the spirit of his report. Thus, it is most difficult to conceive of the rebuilding of the Lincoln School as good faith compliance with an obligation to desegregate. *In fact, this seems the one sure way to render certain continued segregation at Lincoln.*

The Board's contention that it alone had legal authority to select locations for schools was summarily answered: ⁶²

The existence of this authority, however, is not questioned by the plaintiffs. But this power, like any other, must be exercised in accordance with the demands of the Constitution.

In view of these statements the court's failure to enjoin the building of a small school on the Lincoln site is puzzling. The court-approved, free transfer plan appears to be at most a temporary stopgap that may prove to be entirely ineffectual when the new school is built.

The above decisions suggest the following general rules as to site selection vis-a-vis equal protection:

1. The discretion granted school boards to select school locations must be exercised in good faith in the light of such factors as are relevant and reasonable.

2. In the absence of a showing that the factors used by the board are not relevant and reasonable, or are a sham or subterfuge to foster segregation, the action of the board will not be disturbed.

3. The fact that the school by reason of its location may be attended solely by white pupils, or solely by Negro pupils, is not of itself proof of an abuse of discretion in site selection.

Because of the inherent possibilities of abuse, site selection may well become an important issue in the future.⁶³

The foregoing discussion suggests that gerrymandering, transfer manipulation, and site selection when used by public officials to promote school segregation violate the equal protection clause of the 14th amendment. They do so, of course, regardless of the relative quality of the facilities provided for the separated races. Attention will now be directed to other situations that may constitute denials of equal protection—situations in which inequality arises from the inferiority of the school to which a pupil is assigned.

INFERIORITY OF THE SCHOOL

From 1896 until 1954 the requirements of the 14th amendment were met, if the separate schools for Negroes were equal to the separate schools for whites.⁶⁴ The *School Segregation Cases* did not change this basic rule; they merely dispensed with the necessity of proving inequality in cases where racial segregation is imposed by State action—for the Supreme Court held that as a matter of law “separate educational facilities are inherently unequal.” Proof of inequality of segregated schools therefore has not been a crucial element in the post-1954 cases arising in the South.

In short, substantially equal governmental treatment of all persons regardless of their race, religion, or national origin was, and still is, the heart of the law. But suppose there is no State-promoted racial discrimination—no improper gerrymandering, manipulation of transfers, or site selection. Does mere inferiority of a particular school in contrast to other schools in the same system constitute a denial of equal protection? Is a pupil denied equal protection when the particular school to which he is assigned is more crowded, has more pupils per teacher, less qualified teachers, or a more limited curriculum than other schools in the system?

Overcrowding of some schools and empty or partially filled classrooms in others raises the question of *when*, if ever, is there a constitutional duty to rezone, or take other action, to secure a more even distribution of pupils. When does inaction on the part of a school board become culpable nonfeasance? Such questions, difficult enough in themselves, are often complicated by incompleting building programs and the undesirability of frequent transfers.

In the *Skipwith* case,⁶⁵ decided by a domestic relations court of New York City in 1958, parents of Negro children were prosecuted under the compulsory school attendance law of New York for failure to send their children to school. Their defense was that the segregated public school to which their children were assigned was inferior to the predominantly white schools in the city; that they were refused the right to attend any other school; and that, therefore, they were denied equal protection. The court upheld the defense, and made it clear that the decision was not based upon a finding that racial segregation in the schools was created by any misconduct of the school authorities.⁶⁶

. . . the conclusion must be drawn that *de facto* racial segregation exists in the Junior High Schools of New York City. . . . What the record in this case does not show is to what extent, if any, such segregation is the consequence of circumstances other than residential segregation not attributable to any governmental action. There is no evidence before the court that the racial composition of

the Junior High Schools in New York is the product of gerrymandering of school districts, or of any policy or lack of policy of the Board of Education in establishing school districts, or in choosing school sites, or in assigning pupils to schools on the basis of race. . . . no showing has been made that *de facto* segregation in New York City is the consequence of any misfeasance or non-feasance of the Board of Education.

Having found no officially established segregation, the court considered the question of inferiority in the *de facto* segregated schools as compared with the predominantly white schools in the city. The evidence submitted related to teacher preparation and experience. With regard thereto the court said: ⁶⁷

Analysis of the data submitted on teacher assignment shows a city-wide pattern of discrimination against X Junior High Schools (which have 85% or more Negro and Puerto Rican students) as compared to Y schools (which have 85% or more white students): A far greater percentage of positions in the X schools were not filled by regularly licensed teachers.

The average percentage of teacher vacancies in X schools was shown to be 49.5 percent citywide, while in Y schools it was 29.6 percent. In the two schools to which the defendants' children were assigned it was 50 and 51 percent. The court observed that: ⁶⁸

. . . No evidence was submitted to show that the Board had adopted any procedure under which correction of the discriminatory imbalance between regularly licensed and substitute teachers could be reasonably anticipated.

The Supreme Court's decision in *Sweatt v. Painter* in 1950 ⁶⁹ left no excuse for thinking the 14th amendment required anything less than true equality. The elements found to make X schools inferior were their relatively high percentage of handicapped and retarded children, and inexperienced substitute teachers.

The court concluded that: ⁷⁰

So long as nonwhite or X schools have a substantially smaller proportion of regularly licensed teachers than white or Y schools, discrimination and inferior education, apart from that inherent in residential patterns, will continue. The Constitution requires equality, not mere palliatives.

An argument that teachers' choice of schools, rather than board assignment, caused the disparity, led the court to say: ⁷¹

Having put the power of assignment in hands of teachers by default, as far as their choosing or not choosing to teach in an X's school—the Board is bound by the acts of its servants. . . .^{71a}

The Board of Education of the City of New York, can no more disclaim responsibility for what has occurred in this matter than the State of South Carolina could avoid responsibility for a Jim Crow State Democratic Party which the State did everything possible to render “private” in character and operation. See *Rice v. Elmore*, 4th Cir. 165 F. 2d 387, cert. denied, 333 U.S. 875, . . .

The *Skipwith* case clearly holds that inferiority of the school to which a pupil is assigned as compared with other schools in the system constitutes a denial of equal protection of the laws—*notwithstanding the absence of any official action or inaction calculated to segregate or discriminate on grounds of race*. *Skipwith* appears to apply where there is a substantial disparity in the quality of schools—whether the plaintiff be Negro or white.

It is interesting that the Supreme Court of Appeals of Virginia in 1957 reached the same conclusion in similar circumstances. In *Dobbins v. Commonwealth of Virginia*,⁷² an action was brought under a compulsory school attendance law. The defense of the Negro parent was that his son had been assigned to an inferior, distant, Negro school although he had sought and been denied admission to the local white high school. Evidence was offered to prove the inferiority of the assigned school. It was rejected by the trial court. The highest court of Virginia found that the evidence should have been admitted and that under the circumstances the defendant did not violate the compulsory school attendance law because it “cannot be applied as a coercive means to require a citizen to forego or relinquish his constitutional rights.” In both of these cases the defendants asserted their constitutional rights defensively. Surely the same rights could be asserted to provide affirmative relief—by way of transfer, rezoning, or other means—against inferior school facilities.

The relative overcrowding of schools that serve the Negro population in the urban North and West is notorious. All educators point to the related unfortunate teacher-pupil ratio as critical. There is reason to believe that these deficiencies, rather than the ability of the teacher, explain the inferiority of the predominantly Negro schools as compared with the predominantly white schools of the North and West.

An earlier part of this chapter discussed the New York post-*Skipwith* program to relieve both overcrowding and the disparities of teacher training and experience. The Commission's first hand information on such conditions is fragmentary and should be considered as illustrative and not as an indictment of the single school system to be mentioned. Secondary sources suggest there are many school systems in the North

and the West with similar, or worse, inequalities where less effort is being made to alleviate them.

Data presented at the Commission's Detroit hearings seemed to show extreme overcrowding of the elementary schools in the predominantly Negro Center District, as compared with other districts in that city.⁷³ Detroit school authorities present at the hearings did not protest. Twenty-three percent of the total elementary school population of Detroit attends school in the Center District. It was reported that: ⁷⁴

Fifteen percent of these children sit in classes of 40-44 students per class. This is in comparison to the following percentages of children in classes of that size in other districts—

	<i>Percent</i>
East District.....	0. 13
North District.....	. 05
Northeast District.....	. 04
Northwest District.....	. 08
South District.....	. 01
Southeast District.....	. 01
West District.....	. 05

Sixty-two and one-half percent of all the children in the city's elementary schools who sit in classes of from 45 to 49 are children in the Center District.

Does such overcrowding in the predominantly Negro schools of the Center District constitute unconstitutional inequality?

In the *Skipwith* case, discussed above, the inferiority of the *de facto* Negro and Puerto Rican schools was established in terms of the inferior quality of their teaching staffs. The New York City practice of permitting teachers on tenure to transfer to the schools of their choice appears to be a rather general practice. Without official controls this too may contribute to unequal schools.

The Commission heard testimony on free teacher-transfer practice at both its California ⁷⁵ and Detroit Hearings.⁷⁶ Reports from Philadelphia suggest a more sophisticated, but perhaps not novel, variation. For some time that city's board of education has been urged to assign new teachers in accordance with its own views as to where they can serve best. But at present teachers may refuse an assignment and still stay on the eligible list. In practice, it is charged, white teachers refuse assignments to Negro or predominantly Negro schools and, after the list of eligibles has been exhausted, accept appointments to white or predominantly white schools. The school authorities defend their position in permitting this on the ground of the serious teacher shortage. They say they cannot afford to drop an applicant from the eligible list ⁷⁷ even though the teacher's rejection of the Negro school may re-

sult in serious disparities in staffing. Philadelphia's open transfer system⁷⁸ seems to provide a mitigating feature, yet discrimination in teacher assignments is one of the charges in a suit filed on June 7, 1961.⁷⁹

Reports on the situation in the Chicago schools suggest that it may be an example of culpable official inaction which maintains out-dated zoning and permits no transfers.^{79a} The result is that severe overcrowding and inferior teaching staffs are reported to have created inferior all-Negro and predominantly Negro schools.

A report says that in the spring of 1957, 70 percent of Chicago elementary schools were at least 90 percent white in enrollment while 21 percent had an equally high proportion of Negroes.⁸⁰ Eighty-seven percent of all Negro elementary school children were found to be in predominantly Negro schools.⁸¹ Only 2 percent of the white, and 19 percent of the mixed schools were on double shift.⁸² But 81 percent of all children affected by double shift were Negro.⁸³

Inexperienced teachers were reported to be the rule, not the exception, in the Negro and predominantly Negro schools of Chicago: ⁸⁴

Negro and mixed schools also get a disproportionate number of inexperienced teachers, a condition which was called to the attention of the Chicago Board of Education in a study presented to them at the School Budget hearing of December 1956. This situation was implicitly acknowledged by the General Superintendent of Schools in Report No. 64264 presented to the Board of Education on April 10, 1957: "The General Superintendent of Schools reports that it is desirable to have beginning teachers with limited experience assigned to schools throughout the city rather than concentrated in a few."

Detailed charges of double shifts in strictly districted Negro schools and unfilled classrooms in nearly all white schools are reported.⁸⁵ If established this, presumably, would constitute a denial of equal protection of the laws. This situation seems factually similar to that in the *Skipwith* case.



8. Problems and Programs

... we have to do a lot more for some children just to give them the same chance to learn.'

CALVIN F. GROSS, *Superintendent of Schools, Pittsburgh, Pa.*

Desegregation focuses attention on the gap between the scholastic achievement of the average white and the average Negro student. Educators and lay citizens alike have expressed fear that educational standards in the schools may suffer in the process.

At the Commission's Nashville conference in March 1959, superintendents of large school systems in the border States that had desegregated completely in 1954 and 1955 testified that these fears were not justified.¹ Standards, they said, need not be lowered as a result of desegregation, but it may be necessary to find some way of coping with the wider spread between individual achievement when white and Negro children are brought together. Experience has shown not only a gap in scholastic achievement between the average white and the average Negro pupil, but that the gap widens as pupils progress in school. Educators have observed that it may represent as much as 1½ to 2 school years by the time children reach the high school grades.²

Believing that our most urgent domestic issue is how to improve public schools while adjusting them to constitutional demands, the Commission has devoted special attention to needs of all children, but particularly of those from families that have suffered educational handicaps because of their minority-group status. Whether these handicaps are the result of segregation in the schools, economic and cultural deprivation, or some other cause, is immaterial. They exist.

The Commission's mandate from Congress is not only to study and collect information with regard to denials of equal protection but to make recommendations to the President and Congress.³ No other agency of the Federal Government has concerned itself with the educational problems inherent in the transition from a segregated to a nondiscriminatory school system; it therefore seemed desirable for the Commission to do so. Programs and ideas from different parts of the Nation have been assembled and are presented here without any attempt at evaluation. Some are elaborate and costly; others are not. Some are officially

sponsored; others are private, volunteer efforts. They may be classified into two groups. The first is concerned with differences in individual pupil achievement present in schools that include both educationally handicapped and high achieving children. The second, with programs aimed at improving the training of all children in a school.

CLOSING THE GAP

Ability grouping

As indicated above, when white and Negro children are first brought together in school, an unusually wide spread in scholastic performance is to be expected. Many educators believe that the performance of all is better when children are grouped so that slow achievers do not hold others back and high achievers do not discourage those who cannot keep up—while the average child proceeds at his own pace unhampered by either. Basically there are four types of ability groupings within a school system: (1) by schools; (2) by special programs within individual schools; (3) by classes within individual schools; and (4) by groups within classes. Each will be discussed briefly.

By schools.—Special schools for academically talented students are not new, particularly at the high school level. Good examples are Baltimore's Polytechnic Institute, a special school for boys preparing for engineering colleges; and Western High School, for girls preparing for college—admission to both is based on high scholarship. They were established long ago for whites only, but qualified Negroes are now admitted to both.⁴

The criteria set forth in the pupil placement laws of many Southern States⁵ would certainly permit separate schools for pupils of different scholastic aptitude and achievement. In the absence of racial discrimination, this would seem to be constitutionally unobjectionable. Apparently no southern school system has used a pupil placement law in this manner. Many educators have testified that Negro pupils fall within all ability groups, although they are found in preponderant numbers among the low achievers.⁶

By programs.—Track systems, particularly at the high school level, are a familiar method of ability grouping by scholastic program. Introduced into the Washington, D.C., schools after complete desegregation by rezoning,⁷ this approach was said to offer reassurance to school patrons that mixing white and Negro pupils would not impair the educational opportunity of anyone.⁸ Other cities that have tried it, before or after

desegregation, have found it an excellent instrument to provide for the slow, low-achieving students without hurting others.

By classes.—Some educators strongly condemn the track system because it virtually freezes each student in a track in accordance with admittedly fallible testing methods. Intrascchool ability grouping by classes for able, average, and slow learners meets this objection. Proven performance in each subject is the basis of classification. A child in an advanced class in science or mathematics may be in a slow class in English. Thus, an overall classification of bright, average, or dull is avoided. This kind of grouping has been useful in connection with desegregation.⁹ Of course, it can be used only in schools having two or more classes in the same subject.

Special classes in English,¹⁰ nongraded classes for overage students,¹¹ and other remedial classes¹² seem to fall in this category, although only the lower level of the achievement range is singled out for attention. Sometimes such classes in desegregated schools in fact serve Negro students almost exclusively.¹³

Ability groups within a class can be used in schools having only one class of a particular grade, or subject. None of the educators attending the Commission's three education conferences discussed this method. However split classes are a variant of the ability-group-within-the-class technique. The superintendent of schools of Montgomery County, Md., testified at the Commission's Gatlinburg conference that he had used this method in an elementary school where most students were average or below, while a few were highly talented. Under this plan ¹⁴—

. . . the bulk of the students are in regular class by grade and the top of each class has been put into a split class, so that we have a group of first and second graders with one teacher, third and fourth with one, fifth and sixth with one. These are the academically talented students, both Negro and whites, who are in that school, and they move along on this level and the others at the different rate move along in the regular classes.

Supervised home study

Tutoring of the handicapped Negro pupil newly enrolled in a formerly all-white school has been provided both officially and privately. The superintendent of schools of San Angelo, Texas, told the Commission that Negro students in his city performed so poorly when transferred to a white high school that they requested segregation.¹⁵

We believe this was brought on by their first report cards. At the end of the first 6 weeks, all grades given to Negro students represented 8 A's, 13 B's, 37 C's, 13 D's, 20 F's, and 9 incomplete. This average was approximately 15 points lower than the grades the

same students had made the previous year in the all-Negro high school. Actually, about 44 percent was below what we considered standard grades for their ability.

When this report was made to the board of education, the board felt that we should provide tutors for the Negro students. To do this would have been giving special privileges to one group. It was recommended by the administration that we offer free tutoring at nights on a permissive basis for all high school students. As a result, more white students reported for extra help than did Negro students, on a percentage basis; however, we do feel that this step aided the transition because the grades started pulling up immediately.

At the Commission's California hearings, the executive director of the Community Relations Conference of Southern California reported that ¹⁶—

The conference is presently offering a tutoring service through the schools and with the approval of the Los Angeles School Board to students who are having difficulty adjusting to the standards of the local system (because of the inadequacy of the instruction in their former residence). The board of education has designated four schools as pilot projects. The tutors are retired teachers who are giving their time without charge.

A later witness for the same organization said, however, that the tutoring "is on a very limited scale because we find it very difficult to get teachers who are willing to volunteer their time. . . ." ¹⁷

The superintendent of schools of Arlington, Va., testifying at Gatlinburg on the scholastic difficulties of Negro students admitted to formerly white junior and senior high schools, said: ¹⁸

It is my understanding that the first Negro children who were admitted to Stratford Junior High School had received some tutoring help from persons not connected with the school system. It has also been reported that Negro students in our senior high school have received the same type of tutoring assistance. In spite of all this, however, I am not able to report these students are doing well within their classes. All senior high school students are working considerably below the average of other students in that school.

Perhaps the most extensive and well-organized private effort to raise the achievement levels of Negro pupils enrolled in a formerly white school was discussed at the Williamsburg conference. This project, sponsored by the nonprofit Home Study Program, Inc., serves about 100

children of working-class Negroes living in a pocket community called Ken Gar which lies between the towns of Kensington and Garrett Park, Maryland, which are inhabited largely by upper middle-class, professional whites.

The program has a dual approach in that it tries to: (1) focus parental attention upon the school problems of their children; and (2) provide tutoring on a regular schedule, three times a week. Starting in January 1960 with 15 college-educated, volunteer tutors, the number had grown to 63 in January 1961. The two facets of the program were described by its executive secretary: ¹⁹

Our tutoring regime touches two sides of the academic problem—poor academic performance and poor incentive. Since all the tutors are volunteers, we know them to be highly motivated. The exposure to such people with their diverse professions and backgrounds suggests values to the Ken Gar children which are new to them. It has been suggested that this enriching personal contact may be even more important than the substantive schoolwork which is done at the study sessions.

Nevertheless, we try to be as effective as possible in helping the children to face and to conquer their academic problems. We seek advice and guidance from the school system, and in periodic meetings with teachers we ask for specific suggestions in terms of specific children. We have also broadened our initial academic focus [by] . . . taking the children on simple trips to local points of interest—zoo, museum, art gallery, White House, etc., for we have learned that their lack of stimulation and experience underscores their difficulties with words and concepts.

The executive secretary reported that at the end of the first year of operation, they found, as to parents: an increase in participation in the program, and in attendance at adult meetings; evidence of increased willingness to take responsibility; and new leadership by the local church.²⁰ In relation to the children, there was a marked increase in attendance at study sessions, even by junior and senior high school pupils who had not attended the first year; some improvement in schoolwork or attitude, or both; and a marked decrease in delinquency.²¹ As to the applicability of the program to other areas, the executive secretary warned: ²²

A possible danger . . . is that the program will be misconstrued as a simple tutoring regime. It is necessary to recognize the central importance of the interaction with the home environment, which sets the context for the volunteer tutoring effort. The administrator of a home study program should possess or acquire those profes-

sional techniques involved in purposeful interaction with the adults of a subcultural group. The handful of professions which have such techniques would include Point 4 type program fieldworkers, rural demonstrators, field sociologists, action anthropologists, group social workers, and labor educators. Through the efforts of such a professional, it is possible to change the relationship of the home environment to school problems, so that, where previously there was a vacuum, there is developed a positive support for school-children and a push toward more serious academic application.

At the close of the school year 1960-61 the Ken Gar Committee and the volunteer tutors arranged an honors program. The pupils (selected by their public schools) who had the highest scholastic achievement and those who had made the greatest progress during the year received prizes. The volunteer tutors gave citations of merit to children who had made the greatest effort. Each child received a book, appropriate to his age and interest, from the League of Women Voters. The 200 assembled Ken Gar citizens and guests were addressed by Frank Reeves, then President Kennedy's Special Assistant for Civil Rights and Minority Groups. The program was the climax of the year's effort to help a small community achieve higher educational goals for its children.

Transitional control

As part of a gradual desegregation plan, Montgomery County, Md., limited the number of Negroes in each school to one-third of the total enrollment and reduced the teacher-pupil ratio from the standard 1 to 30, to a sliding scale of from 1 to 23 to 28, depending upon local conditions.²³

Such a plan would be difficult to carry out except in a system where new schools could be or were being built—otherwise there would not be enough flexibility to achieve the desired result. The superintendent of schools of Montgomery County, testified that he believed smaller classes taught by well-trained teachers was the key to educational progress.²⁴ He also observed that research by his staff indicated that “when the number of Negro students exceeded one-third . . . there is a greater increase in proportion problems”; and that “the acceptance [of desegregation] on the part of the white population . . . was less enthusiastic when there was a higher ratio.”²⁵

Career clubs

A private, nonprofit corporation in Phoenix, Arizona, called Careers Unlimited, has a program for economically and culturally deprived students—particularly Mexican-Americans and Negroes along with some

white farm children.²⁶ The parent organization is privately financed. It provides a full-time director for the program.

The Careers Unlimited approach is to establish "Career Clubs" in public schools serving children in grades 7 through 12 as an extra-curricular activity. Teachers and principals are requested to select as club members students having sufficient potential ability to permit them to pursue a business or technical career. Membership is kept sufficiently broad to avoid unpleasant "minority" connotations, yet selective enough to make it an honor.

Club meetings are held on the school grounds every 2 weeks during or immediately after school. The organization supplies speakers to discuss various business and professional careers and their educational requirements. Meetings are informal and youngsters have an opportunity to ask questions. Monthly field trips introduce the students to the climate of a particular career. They visit plants, factories, hospitals, laboratories, colleges, etc., to see who does what and under what conditions and to make on-the-spot inquiries.

At present there are 10 Career Clubs in eight elementary schools for seventh- and eighth-grade students, and in two high schools for ninth-grade students. Eventually, it is hoped, the program will handle 400-500 students in grades 7 through 12.

To reduce a high dropout rate, Careers Unlimited gives \$75 per-year scholarships to selected students to keep them in school. Future plans include summer career camps, vocational guidance publications, films, and radio programs—and finally, perhaps, in-school, basic-skills training.

The secretary of the organization wrote the Commission that its sponsors feel the program fulfills a threefold need: ²⁷

. . . We are helping the children to reveal their up to now untapped talents; we are raising their goals and aspirations; we are preparing the community (by participation in this program) to be more ready to accept these children into the job market once their educational goals have been met.

The tie-in of this program with local business and professional leaders gives promise of nondiscriminatory employment opportunities. In this respect it is, so far as the Commission knows, unique.

SPECIFIC PROGRAMS

Most of the programs discussed above are particularly applicable to the Negro pupil who has arrived at a desegregated school for the first time.

Another approach is to improve his scholastic achievement in the segregated school before he moves to a desegregated school with higher standards.

It is not the Commission's position that raising the scholastic achievement of minority-group children should precede desegregation. The Supreme Court held compulsory racial segregation in public schools unconstitutional 7 years ago, and charged all school boards operating segregated schools with the duty of ending segregation and discrimination with all deliberate speed.

During a transitional period, however, efforts to raise the academic standards of inferior, segregated schools is not inappropriate. Moreover, while the programs here discussed were found in schools predominantly enrolling minority-group children, they would have no less value in biracial schools.

Two of these programs were in segregated southern schools; one was found in a formerly segregated school system in a border city; the rest in large cities of the North. All are imaginative efforts to provide equal educational opportunity for children whose background has not led them to aspire to scholastic achievement. Some are too new to have proven their worth; others show heartening results.

The Phelps-Stokes project

This project, directed by the Phelps-Stokes Fund, was conducted for 5 years (1955-60) under a grant from the Rockefeller Foundation, General Education Board, in four public high schools in each of four Southern States.²⁸ The general purpose was to improve instruction in the areas of language, mathematics, and physical and social science through the cooperative efforts in each instance of a high school, a nearby college, and the local school officials.²⁹ The project sprang from a survey indicating that less than 3 percent of the graduates of Negro high schools in the South are likely candidates for the best interracial colleges.³⁰

Six specific objectives were set: (1) to raise the level of scholastic achievement of the pupils in the participating schools, (2) to encourage better selection and use of instructional materials, (3) to stimulate professional growth of teachers, (4) to establish effective college-high school cooperation, (5) to improve preservice and inservice teacher education, and (6) to develop an attitude on the part of the participating schools and colleges to continue the program after the 5-year period.³¹

Various services were offered to each of the participating high schools: (1) the help of a college consultant in each of the four areas of instruction to be improved; (2) the services of 20 nationally recognized experts as consultants on particular problems; (3) 8-week summer workshops for teachers for three consecutive summers; (4) State and regional con-

ferences and conferences of national consultants; (5) kits, study guides, and special posters; (6) standardized tests to assist in evaluating some parts of the project and its results; and (7) instructional materials beyond those ordinarily supplied.³² Over the 5-year period 700 high school and college teachers, numerous school administrators, and about 10,000 pupils were involved. The total 5-year cost of the program was \$45 per pupil, or less than \$10 a year.³³

The results are positive but not spectacular. Test scores of over 2,000 9th- and 12th-grade pupils at the beginning and end of the project showed improvement in English, science, and social studies, but not in mathematics.³⁴ The average pupil was still below the national norm for his grade at the end of the project, but the well-known increase in the gap relative to the national norm was not only arrested, but reversed, in three basic subjects.³⁵

In the area of better selection and use of instructional materials, reports indicate an improvement in four ways: (1) better use of library facilities; (2) use of audiovisual materials and equipment for instruction instead of entertainment; (3) increased use of community facilities such as museums, manufacturing plants, and parks; and (4) more materials and equipment for instruction via matching funds.³⁶

The evidence suggests that the project provided considerable stimulation to the professional growth of teachers both at the high school and college level. Overall, it has been summarized as a successful combination of three ingredients: (1) imaginative leadership, (2) extensive cooperations, and (3) a small expenditure of additional funds per pupil.³⁷

The Banneker group program

The St. Louis Banneker group is an administrative cluster of 23 elementary schools, enrolling 16,000 children, 95 percent of whom are Negro children living in the most underprivileged section of the city.³⁸ Dr. Samuel Shepard, Jr., the assistant superintendent in charge of the district, became concerned when, upon the initiation of a three-track system of ability grouping in the city's high schools, almost half of the 500 graduates of his schools going on to high school were classified as track III students.³⁹ Among the five school districts in the city, the Banneker group students ranked lowest in citywide tests.⁴⁰

Dr. Shepard's success in raising the scholastic achievement and high school classification of the Banneker group graduates in 3 school years, without additional funds except for a summer remedial project mentioned later, is spectacular. The table below compares high school tracks to which Banneker school graduates were assigned at the start of the program and 3 years later: ⁴¹

	<i>January 1958 (percent)</i>	<i>January 1961 (percent)</i>
Track I ¹	7. 0	20. 7
Track II	45. 9	52. 4
Track III	47. 1	21. 3
Terminal education ²		5. 6

¹ St. Louis secondary schools operate 3 basic curriculum tracks: track I for above-average achievers, track II for average achievers, and track III for below-average achievers.

² This classification includes graduating students, who because of intellectual limitations and age do not appear to be able to benefit from the regular track III program.

The key to the entire program seems to have been inspired leadership. Dr. Shepard encouraged principals to initiate programs for raising pupil performance and changing teachers' attitudes toward the possibility of higher pupil achievement.⁴² Teachers were admonished to stop "teaching by supposed IQ"; parents were told of the poor performance of their children, urged to cooperate with the school on homework assignments, and instructed how to do so.⁴³ Children were spurred by assembly programs, field trips, peptalks, honor assemblies, and posters.⁴⁴

Dr. Shepard explained to the Commission his concept of the differentiated treatment of pupils he calls teaching by IQ, with the following story:⁴⁵

. . . here was a teacher who had copied the IQ numbers down the line from a list in the principal's office . . . throughout the semester if the teacher called on Mary, let us say, with an IQ of 119, she followed somewhat this pattern: If Mary didn't respond quickly, "Well, now, come on, Mary. You know you can do this. You know how we did this yesterday," or bring up an analogous situation. She encouraged, she stimulated, until Mary came up with the proper answer, or what the teacher at least considered an adequate one. However, when she called on poor John with his 74 IQ, if he mumbled something fairly audible, why, this was wonderful; pat him on the back and, "Be sure and be here tomorrow. You can wash the windows and help move the piano and water the flowers, and the erasers must be washed," and so forth. This is the kind of encouragement that he got with a 74. This is teaching by IQ. She was a little horrified at the end of the semester when she turned in her grades. She looked under the glass and saw that the columns she had copied for IQ's were locker numbers. Now, this is about what goes on.

The table below, showing the improved performance of the children in the Banneker schools (which by January 1961 had equaled national norms), suggests that elaborate and costly remedial programs may not

be required where there is dynamic leadership and a capable teaching staff.⁴⁶

	June 1958 (percent)	June 1960 (percent)
Primary reading achievement ¹	46.6	74.2
	<i>Group medians</i>	
	<i>January 1958</i>	<i>January 1961</i>
8th-grade graduates test results: ²		
Reading	7.7	8.3
Language	7.6	8.6
Arithmetic	7.9	8.4

¹ Percent of children reading at the district or group standard. (Not more than 1 book below the textbook standard. Sampling: approximately 6,000 primary children.)

² Iowa test of basic skills, multilevel sampling, approximately 500 students.

New York demonstration guidance

With financial help from the College Entrance Examination Board and the National Scholarship Service and Fund for Negro Students, the board of education of the city of New York in 1956 started an experiment in guiding and motivating culturally deprived children to complete high school and continue into college.⁴⁷ The enrollment of Junior High School No. 43 from which the project groups were selected was 45 percent Negro, 40 percent Puerto Rican, and 15 percent Oriental or white “immigrant.” Six months were devoted to identifying by tests the top 50 percent in ability of each class, grades 7, 8, and 9, enrolled in the year 1956–57. They became the project students. The first project students, who were ninth-graders in 1956–57, graduated from high school in the spring of 1960. A comparison of their record with that of graduates from the same school in previous years provides finished high school than before; 2½ times as many completed the a meaningful measure of the success of the project: 39 percent more academic course; and 3½ as many went on to some type of post-secondary-school education.⁴⁸

The first group consisted of 148 boys and girls. Its ethnic composition was 87 Negroes, 36 Puerto Ricans, 1 Oriental, and 24 others.⁴⁹ The same percentage of Negroes, Puerto Ricans, and whites was represented in the graduating class. Thus, there was no attrition related to race.⁵⁰

In terms of individual achievement, the record is no less impressive. Dr. Daniel Schreiber, principal of the junior high school at the time the project was launched, told the Commission: ⁵¹

Eleven students received honors in one or more subjects. Four of them won regents’ State scholarships. Seven won medals or certificates for outstanding work. Three of them ranked Nos. 1, 4, and 6 in a class of 900. Four exceptional students who entered with

IQ scores of 108, 128, 99, and 125 finished, after 3 years, with IQ scores of 134 and 139-plus, which was the ceiling of the test. Four students at the other end who entered with IQ scores of 72, 74, 83, and 85 finished with IQ scores of 96, 98, 106, 118, and all received academic diplomas. In terms of IQ change for the group, whereas the median score was 93 in 1956, it was 102 in 1959.

The overall plan of this demonstration project made provision for: (1) identifying students able to pursue college studies; (2) stimulating college aspirations in the minds of these students; (3) educating their parents and the community as to desirability of a college education; (4) planning a teacher-training program and securing faculty support for the project; (5) extensive and intensive group and individual guidance of pupils and parents; (6) remedial work to bring student achievement up to grade level and beyond; and (7) raising the cultural level of the pupils and the community.⁵²

To carry out the program the school received three additional guidance counselors and three additional teachers.⁵³ The ratio of 1 guidance counselor to 250 pupils was probably crucial, for it permitted not only group and individual guidance of the pupil but also parent counseling.

Each year about 600 interviews were held with parents.⁵⁴ In the first year the ratio of counselor-initiated interviews to parent-initiated interviews was 10 to 1; in the third year it was 1 to 10. Parents had found the school was truly interested, and responded by raising their educational and vocational goals for their children. Counseling and other parts of the student program stressed careers. Field trips acquainted the youngsters with the world of work. Representatives of minority groups, who had themselves come from deprived backgrounds, but had graduated from college and achieved success, were brought to the school to talk to students and parents.⁵⁵

The remedial program centered on reading, a basic skill for the college bound. Here the average student in the group was found to be 1½ to 2 years retarded in 1956. Three years later the group median was 3 months above grade level in paragraph comprehension.⁵⁶ Since normally the culturally handicapped child is expected to become relatively more retarded each year, progress was greater than the figures alone suggest.

The cultural enrichment aspect of the program included operas, symphony concerts, and Broadway plays. According to the coordinator, it provided experiences ordinarily provided by middle-class parents, but usually not by the parent who is himself deprived. This was felt to be in keeping with the goals set for the children.⁵⁷

Although the project was not designed for antidelinquency purposes, its incidental success in that respect is notable. Since 1956, court appearances of Junior High School No. 43 students has dropped to one-

third of six comparable schools and one-half that of the entire city.⁵⁸ The principal of the high school which its graduates attend reported: ⁵⁹

In the past, the students from "43" were our worst behaved. . . . Since we had the project group, this has changed. Only a few students have presented disciplinary problems. All are attentive in class, . . . the change has been tremendous.

School attendance has improved each year of the project until in the spring of 1960 it was 2 percentage points better than the city average. As the coordinator put it to the Commission: ⁶⁰

Translated into annual average pupil attendance, this difference meant that approximately 30 pupils more were in school every day. Thirty pupils were learning instead of playing truant and possibly committing delinquent acts.

The per pupil cost of \$200 a year ⁶¹ places this program beyond the reach of most school systems. Nevertheless, it has been a crucial step in demonstrating that the culturally deprived, minority-group child has a higher academic potential than he has realized in the past. It has also shown the value of guidance counseling in helping to develop this potential.

Higher Horizons Program

The success of the demonstration guidance project led the New York City school officials to recommend its extension to other junior high schools, and to the elementary schools feeding them. It was further recommended that the program include all children, whether bright, average, or slow, and not merely potential college students.⁶²

These recommendations materialized in the Higher Horizons Program, launched in September 1959, which by the next year included the seventh grade of 13 junior high schools and the third grade of 31 elementary schools feeding them.⁶³ The coordinator of the program explained to the Commission at Williamsburg: "We felt that even grade 7 was much too late to overcome some or many of the cultural handicaps that so many of our children face." ⁶⁴

The new program is essentially the same as the demonstration project. A guidance counselor and an extra teacher were assigned to each third and seventh grade in the 44 schools.⁶⁵ The program will continue with the children from grade to grade and a new third and seventh-grade class will be added each year. Thus, in the school year 1962-63 all classes above grade 2 in the 31 elementary and 13 junior high schools will be included in the program.

The first annual progress report on the program summarizes the tentative conclusions as to the benefit to the 5,500 third-grade pupils: ⁶⁶

1. The gains in reading comprehension made by third-grade pupils in Higher Horizons schools in 6 months exceeded the normal growth for this period by 2.3 months.

2. The reading grade score of pupils in six Higher Horizons schools was 3.0 months above that of third-grade pupils in six comparable non-Higher Horizons schools based on a citywide reading survey of April 1960.

3. The mean reading grade score of all third-grade pupils in Higher Horizons schools was 4 months higher in April 1960, the first year of the program, compared to reading scores of similar groups in the same schools in April 1958 and 1959, the 2 years before the introduction of the program.

After reviewing the progress of the first third-grade class in the Higher Horizons Program as compared with that of classes in the matched non-Higher Horizons school, the coordinator reported to the Commission: ⁶⁷

If this type of growth continues, I feel free to predict that by the time our children reach grade 6, the median Negro child will have the same score as the citywide child and the distribution of scores will be a normal distribution. This is the best we can hope for and the best we can expect.

An equally definitive report on the seventh-grade students is not possible since the standardized tests in reading and arithmetic given when the program started were not scheduled to be given again until the spring of 1961. Preliminary reports are encouraging. Increased interest in reading and in general scholastic achievement was reported by the principals of all schools at the end of the first year.⁶⁸ Specific evidence cited by individual principals in support of this opinion included: more self-imposed reading and pride in informing counselors and teachers of it; increased library membership; more requests for homework; eagerness in special projects; an easier flow of expression; more requests to join preschool coaching classes; more honor roll students; fewer failures in major subject areas; thriving extra and cocurricular activities; more poetry and essay awards.⁶⁹

Eight of the 13 schools reported an improvement in attendance. Improvement in student behavior was also a happy byproduct of the program's first year. As to this, the coordinator said: ⁷⁰

This is one of the things we did not press, but it came through: In New York City a principal has the right to suspend a child for extreme misbehavior. In one of our schools where this misbehavior was rather high—and I'll quote:

In 1958-59 we had 30 suspensions. In 1959-60 we had 11. For the first term of this year we have had only one. Our attitude

toward the problem boy has not changed and we still have tough ones. However, we can get to them quicker now and help them before they erupt.

Another school reported that "there has not been a single gang incident in or around the school during the current school year."

The per pupil cost of the Higher Horizon Program is only one-fourth of the cost of the Demonstration Guidance Project—\$50 per pupil, instead of \$200. It should be noted, however, that one-half of the salary of the guidance counselors is reimbursable by the Federal Government under the terms of the National Defense Education Act.⁷¹ Surely New York City is "doing a lot more for some children just to give them the same chance to learn" so that they may lead good and fruitful lives.

Greater Cities-Gray Area Programs

The Greater Cities-Gray Area Program, cosponsored by the Education and the Public Affairs Divisions of the Ford Foundation, includes various approaches to the problem of providing equal educational opportunities for the slum child. The dual sponsorship reflects a "recognition that the problems of the schools in the slum and gray area are directly related to immigration, housing and employment discrimination, family and community disorganization, lack of motivation, juvenile delinquency, etc."⁷²

There are 10 Great Cities projects now in operation.⁷³ Inquiry of each project director brought a reply from all but one⁷⁴ that children in the schools involved were in fact almost always members of some minority group.⁷⁵ All of the projects differ, yet all seem to recognize that the traditional public school program is oriented to middle-class, white culture, and fails to appreciate that the child who does not bring that cultural background to school with him is handicapped from the start.

Two cities⁷⁶ that continue to have large numbers of Negro immigrants from Southern States direct their programs to reception centers. These provide testing, remedial work, cultural enrichment, school and community orientation, with followup services during the regular school year. The recognition of a need for such a program emphasizes the fact that the mobility of Americans makes what happens in public schools anywhere a matter of consequence everywhere. A bad start in an inferior school for Negroes in a Southern State may require a remedial program in a northern or western urban center.

Three cities⁷⁷ use a coordinated school-community team approach similar to one aspect of New York's Higher Horizons Program. Another,⁷⁸ that singles out gifted pupils of deprived backgrounds in grades 3 to 6 for a special enrichment program, is reminiscent of the Demonstration Guidance Project.⁷⁹

Inservice programs to upgrade teacher competency in the language arts is a part of three programs.⁸⁰ Several witnesses at the Commission's California hearings recommended that teachers of minority-group pupils be given special help in understanding the problems of the minority-group child.⁸¹ This is not a formal part of the inservice programs but may well be included.

Reorganization of the school program, including team teaching and other experimental methods and new materials, is the basis of two projects.⁸² Two are directed to adolescent children for whom the regular school program has not been helpful. One of these provides non-graded classes for overaged children at the junior high level;⁸³ the other a work-related program for the potential school dropout.⁸⁴

The importance of guidance is mentioned in three programs.⁸⁵ None of them, however, emphasize the unique problems of guidance for the minority-group child that were brought to the Commission's attention at its California and Detroit hearings.⁸⁶ Lack of counselors trained in minority-group problems is a frequent complaint; another is the tendency of counselors—perhaps because of inadequate training—to guide minority-group students with reference to job opportunities rather than their individual abilities and interests. One witness, who had made a survey of guidance training in the public colleges of California and found it inadequate vis-à-vis racial minority problems, said that: "Training of personnel in anthropology, sociology, and psychology would improve the counseling functions."⁸⁷ A Berkeley, Calif., committee on interracial problems and their effect on education also recommended that counselors be given specialized training in interracial matters.⁸⁸

Whatever the limitations of these experimental programs, each provides a substantial number of minority-group children with better educational opportunities. In the aggregate they should provide a wealth of knowledge on new techniques that may help to shape future programs.

Oak Park, Michigan

Until November 1960 the Oak Park School District served only "highly motivated, highly ambitious, highly capable, and highly achieving"⁸⁹ children in a middle-class white community; then the State forced it to annex an adjacent all-Negro district.⁹⁰ Its program to deal with "the introduction of a culturally different, disadvantaged Negro population"⁹¹ must be considered as a program for a segregated situation because it is still in that phase.

In the fall of 1961 all present 8th- and 9th-grade pupils (about 125) at the Carver Negro district, will be admitted as 9th- and 10th-grade pupils at the Oak Park Junior High School for the first time.⁹² The total enrollment in these grades is expected to be between 300 and 400 each.⁹³ Pupils above grade 10 in September 1961 will continue their

education in Detroit, where they have been in attendance on a tuition basis.⁹⁴ Seventh- and eighth-grade Carver students will be transferred to Oak Park in September 1962.⁹⁵ All students admitted to Oak Park from Carver will continue there until graduation. Thus, the program calls for the integration of the 9th and 10th grades in September 1961; the 7th, 8th, and 11th in September 1962; and the 12th in September 1963.

Immediately after the merger of Carver and Oak Park, the board of education announced that "all facilities will be used to achieve an orderly transition."⁹⁶ Implementation of this policy took three forms: (1) immediate action, such as the transfer of property and records; (2) short-term investigations into Carver conditions, including pupil health, adequacy of supplies and equipment, safety hazard and sanitary facilities, staff-parent relations, and the school-lunch program; and (3) long-term evaluation of curriculum, testing program, and teacher performance at Carver.⁹⁷

The president of the board of education of Oak Park School District explained to the Commission at Williamsburg that the items in the second category were deliberately selected as noncontroversial. He said:⁹⁸ ". . . No one can dispute the fact that poor health influences pupil achievement, that all children must have adequate materials with which to perform their daily tasks, and that parents in a community are entitled to know what is going on in their local schools."

Moving quickly in the area of the health of the Carver children, Oak Park found that ⁹⁹—

. . . although State law requires immunization for diphtheria, pertussis, tetanus, and polio for children entering school, only 49 out of 109 [entering pupils in September 1960] were immunized for the "triple" (D.P.T.) and 41 out of the 109 for polio. Of the entering 109 kindergartners, only 39 had received physical examinations. Above kindergarten, physical examinations were almost unknown and this was reflected in the condition of the children. Ninety-nine percent of the children needed dental care.

Having found that adequate health services from the usual community sources would not be available for 2 or 3 years, Oak Park sought funds from private sources for a temporary clinic.¹⁰⁰

Prompt action was also taken to provide an adequate school-lunch program for all Carver children after it was found that the existing school cafeteria served only 100 children. Increased food allotments through county and State agencies were sought and plans made to expand the capacity of the cafeteria fivefold.¹⁰¹

The long-range plans call for retention of Carver as a neighborhood elementary school serving the same Negro residential community it now

serves. Thus, Oak Park and Carver pupils would be segregated until junior high school. But plans include development of Carver's educational program to the level of the other Oak Park elementary schools to be financed by a 25 percent weighting of budget allowances in favor of Carver until that goal is reached.¹⁰²

Dillard University program

In 1959 Dillard University used a foundation grant to start a 3-year experimental summer program designed to help students prepare for college by stimulating their study skills and broadening their perspectives and involvement in significant movements and ideas.¹⁰³

Dr. A. W. Dent, president of Dillard University, explained the need for this program to the Commission at Williamsburg: ¹⁰⁴

. . . From what I hear, nearly all colleges are faced with the problem of bridging the gap by one means or another between a student's achievement at the time of high school graduation and what is expected of a college freshman. For colleges with predominantly Negro students, the problem is particularly acute and additionally complicated by the many deprivations inherent in racial segregation.

The particular aim of the Dillard program, Dr. Dent said—¹⁰⁵

. . . is to provide motivation, which they have not had up to this point, and to . . . [show them] that they do not necessarily need to be deprived from this point on. If I may tell you just a story which I told to these youngsters who came in last year, I was told the story of a little boy 6 years old who went to public school for the first time . . . and when everybody else was sitting, the little boy wanted to stand, and he just stood up, and the teacher said to him: "Sit down, Johnny." But Johnny didn't sit. And she said to him a second time: "Sit down, Johnny." And he didn't sit. The third time she walked over to his seat and put her two hands on his shoulders and just pushed him down in his seat, and he looked up at her and said: "You can push me down, if you want to, but in my mind I'm still standing up."

The Dillard program is one to teach the Negro youth of the South to stand up in their minds.

Dillard's approach, Dr. Dent explained, is based upon the following assumptions ¹⁰⁶—

(1) that most graduates of Negro high schools in the South are inadequately prepared for standard college work;

(2) that this problem stems mostly from limited opportunities and experiences, and partly from inept or inappropriate teaching rather than from lack of native ability;

(3) that the basis [of] improvement is increased skill in the four areas of language, reading and writing, listening and speaking, and in mathematics;

(4) that success in college also depends upon an enthusiasm for learning; and

(5) that delaying the remedial and enrichment experience until college years, whether through remedial courses or through supplementary instruction, is inadequate and educationally expensive.

The program extends for an 8-week period during which the students work from 8 to 12 hours daily without college credit. Each week they spend at least 33 hours in intensive classroom instruction in writing, reading, mathematics, speech, music and fine arts, public events and world affairs, social and religious values, use of the library, and health activity. Once a week they visit a place of special historical or cultural interest in New Orleans.¹⁰⁷

To provide the desired variety of professional competence, the ratio of teachers and counselors to students has been fixed at one or two.¹⁰⁸ This low ratio is, of course, reflected in the cost of the program: \$400 per pupil for the 8 weeks. This cost, however, includes a considerable amount of testing, study, and research, and the matching of the 40 summer students with 40 comparable students in the freshmen class and 1 or 2 staff people who give year-round attention to the program.¹⁰⁹ The cost also includes a scholarship given to each participating student, representing about 75 percent of the tuition for the freshman year, on the assumption that they might otherwise have worked during the summer. After the freshman year, scholarships are available only on the basis of academic performance and need.¹¹⁰

Only two groups have now finished both the summer program and their freshman work. Since they were selected to represent a fair geographic and scholastic sample of Dillard's incoming classes, surely it is significant that the proportion of them on the freshman dean's list was 10 times greater than that of others.¹¹¹

SUMMARY

Most of the programs discussed in the first part of this chapter for helping Negro pupils adjust to higher academic standards, are privately

sponsored. An exception is the tutoring system at San Angelo, Texas, which although initiated for Negroes was later opened to white students to avoid any implication of favoritism. The Montgomery County, Maryland, plan to keep the ratio of white to Negro pupils at 2 to 1 or less, and reduce the pupil-teacher ratio, appears to have been intended primarily to benefit white children and to secure acceptance of integration by white parents, although Negro children, too, would benefit from the smaller classes.

The second half of the chapter describes 16 programs, to improve the educational opportunity of the minority-group child. Some of these stress guidance counseling and remedial instruction. The need of outside stimulus to provide motivation is a common theme in several; e.g., the Banneker Group program, Demonstration Guidance Project, Higher Horizons, as well as the two private projects—Ken Gar and Careers Unlimited, described earlier in the chapter. All recognize the need to interest parents in their children's educational welfare and to make it clear that higher goals are possible for those who will prepare for them, whatever their social, economic, or ethnic background.

The apparently greater success of the 3-year Banneker program vis-à-vis the 5-year Phelps-Stokes project invites comparisons. The locale of one is in the border city of St. Louis, the other in the Deep South; one began at grade 1, the other at grade 9. (On the basis of the Demonstration Guidance Project which began with seventh-grade pupils, New York City decided it must dip down to the third grade in Higher Horizons.) The younger age of the Banneker children may have helped. Another obvious difference is that the Banneker program stressed motivation both of children and parents. Phelps-Stokes stressed the quality of instruction. Undoubtedly, the latter is important; the former may be crucial.

The Commission is not prepared to compare the teachers of the Banneker schools with those of the 16 high schools in the more Southern States included in the Phelps-Stokes project. It seems, however, that when challenged to stop "teaching by IQ," the teachers in the Banneker schools did wonders. Dr. Dent's remarks at the Williamsburg conference with regard to the plight of the large majority of Negro teachers in the Deep South should be recalled: ¹¹²

. . . We are talking about how to motivate and inspire students, mostly in a segregated school system, where the teachers, themselves, lack motivation and inspiration, because they are the products of this type of situation, so that our problem is not only to deal with these students who are now in school, to conduct experiments, such as the Higher Horizons Program in New York and what Dr. Shepard is doing in St. Louis and the like; our problem also is to find some way to remove the inept teaching which these students get, the lack of

motivation, the lack of inspiration on the part of teachers who are working with them, so that our problem, I think, and the problem for this Commission to consider, is how we might possibly find ways of interesting the teachers in our public school system and how to overcome these problems which are brought upon us and which are inherent in the segregated school system.

Oak Park's careful plans to equalize the educational opportunities of the Carver area children awaits completion. Its first phase—concentration on the neglected health problems of the Negro children—seems a sound beginning. Many pupil placement laws contain criteria relating to health, suggesting an intention to place children in various schools by reference to their health. This can hardly be proper unless all the schools are classified in terms of health, and the same health standards applied to all children attending them. Oak Park recognized that a single standard should be applied and is trying to solve the health problems instead of using them as a basis of discrimination.

New York City's Demonstration Guidance Project seems to have proven two things beyond dispute: (1) that IQ tests are far from trustworthy, and (2) that the minority-group child can rise to high academic achievement if shown how to do so.

The marked decline in juvenile delinquency both in Maryland's Ken Gar community and in New York's Junior High School No. 43 is a happy byproduct of those projects. The preliminary reports on the Higher Horizons Program suggest this may be a benefit from that program as well. Since it is estimated that the cost of curing one juvenile delinquent is \$30,000, the added per pupil cost of \$50 a year per grade for the Higher Horizons Program may be a wise expenditure.

The number of constructive projects in the North and the West, financed at least in part by local taxes, indicates that many Americans now recognize that "we have to do a lot more for some children just to give them the same chance to learn." They also are testimony to the abiding faith of America that "all men are created equal" and should have equal opportunities.



9. Southern Libraries

Sixteen years ago the United States Court of Appeals for the 4th Circuit had occasion to consider the function of a public library in modern society.¹

It is generally recognized that the maintenance of a public library is a proper function of the State; and nowhere has the thought been better expressed than in *Johnson v. Baltimore*, 158 Md. 93, 103, 104, 148A., 209, 213 . . . where the court said: . . . At the present time it is generally recognized and conceded by all thoughtful people that such institutions form an integral part of a system of free public education and are among its most efficient and valuable adjuncts. An enlightened and educated public has come to be regarded as the surest safeguard for the maintenance and advancement of the progress of civilized nations. More particularly is this true in republican forms of government, wherein all citizens have a voice. It is also true that education of the people ought not to and does not stop upon their leaving school, but must be kept abreast of the time by almost constant reading and studying. It would therefore seem that no more important duty or higher purpose is incumbent upon a State or municipality than to provide free public libraries for the benefit of its inhabitants.

In this chapter the Commission will report the information it has obtained on denial of equal protection of the laws by libraries receiving financial aid from the Federal Government under the Library Services Act of 1956.²

For years public library services in the 17 Southern States have followed the traditional pattern of racial segregation, but practices often went beyond the "separate but equal". According to a 1955 estimate "two-thirds of the Negro population of . . . 13 Southern States were entirely without library services in 1953."³ Recently Rice Estes, a southerner (now librarian at the Pratt Institute Library, Brooklyn, New York), observed that in most southern towns not only were Negroes denied admission to the white branches of libraries, but also to the main

central library where the majority of the books are kept. He concluded: ⁴

Most librarians are unaware of the fact that most public libraries below the Mason and Dixon Line are segregated [and] . . . nearly 10 million Negro citizens of our land are totally or partially denied access to publicly owned books.

It was through Mr. Estes' efforts that the members of the American Library Association, meeting in Chicago early in 1961, adopted (by a 200 to 1 vote) a resolution declaring that "the rights of an individual to the use of a library should not be denied or abridged because of his race, religion, national origins, or political views." ⁵ A subsequent report observes that public libraries in the South are still segregated to a great extent. ⁶

CITY LIBRARIES

In 1959 it was reported that some 70 southern cities admitted Negroes to full use of main public libraries. ⁷ On August 15, 1958 a suit was filed for the desegregation of the public libraries in Memphis, Tennessee, ⁸ and another was filed on May 23, 1960 for the desegregation of those in Savannah, Georgia. ⁹ In the case of Memphis, the efforts of sit-in demonstrators as well as the pending litigation brought about the voluntary desegregation of the local libraries on October 13, 1960. ^{9a}

On March 21, 1960, in fact 36 Negroes were fined \$25 each in the Memphis City Court for staging a sit-down at the white public library, and a Negro newspaper editor was fined \$50 for inciting them. ¹⁰ A few weeks later four additional Memphis Negro students were jailed for refusing to comply with the request of a librarian and of the police to leave a "white only" section of the downtown public library. ¹¹ The efforts of sit-in demonstrators in Jackson, Mississippi, however, have been of no avail. In early April 1961, nine Negro college students held Mississippi's first sit-in demonstration at the Jackson public library and were arrested. ¹²

Danville, Virginia's, public library was desegregated as the result of both sit-in demonstrations and court action. Negroes previously had been issued cards valid only at the Negro branch, but on occasion they had been allowed to use the main library. On April 2, 1960, however, after a dozen Negro high school students staged a brief sitdown at the main municipal public library, it was closed. Two days later the city

council adopted an ordinance restricting its use to "present holders of library cards," and temporarily barring further issuance of library cards.¹³

Negro plaintiffs filed a suit in a Federal district court, and on May 6, 1960, the City of Danville was enjoined from refusing use of the main library to Negro card holders. However, the court suspended the execution of the injunction for 10 days to give the city time to appeal to a higher court.¹⁴ Before the effective date of the injunction, the City Council again closed the library.

Even staunch segregationists who had fought desegregation of public schools opposed this action. An editorial in the *Richmond News Leader* on May 31, 1960, entitled "Segregated Libraries Are Absurd" commented:¹⁵

In Danville and elsewhere, the fairly incredible view is being expounded that it would be better to close the libraries than to admit Negroes to them. Such a position is simply absurd . . . a library is something special. The treasures a good library can make available do not belong to a community except in a narrow and legalistic sense; the accumulated inheritance of the mind belongs to mankind. To deny Negro citizens free and equal access to books is an indefensible act of discrimination. The City of Richmond recognized this more than 15 years ago, and never has had reason to regret the policy that now admits both races to our Library freely. We hope Danville will consider this course.

But when the Danville City Council referred the matter to the people through an advisory referendum, the majority in favor of closing was almost 2 to 1.¹⁶

The City Council then decided to allow time for a newly chartered "Danville Library Foundation"¹⁷ to pursue its plans before making any final decision concerning the public library's services.¹⁸ Citizens filed petitions asking that the library be reopened. On September 12 the Council reopened the library on a 90-day trial basis, but all chairs and tables had been removed from the reading room and new rules fixed the cost of a library card at \$2.50. Each application for a library card then required, among other things, two character and two credit references.¹⁹

The City Council's solution—the "vertical library"—was sustained by a Federal district court,²⁰ and received support from the local Danville press, which compared the library service to a supermarket wherein "southerners have traditionally shopped with Negroes."²¹ It was severely criticized by the *Library Journal*, under the title "The Danville Story, Open Again But Not An 'Open' Library."²²

Recently, Danville lost a new plant important to its growing economy; the closed library is considered a factor in why the industry chose to locate elsewhere. City councilman Charles A. Womack cited the loss of the plant when he and four other Council members voted to reopen the libraries on a 90-day trial basis.

The *Library Journal* also had something to say about the extraordinary library card fee and the references required for application. The article concluded with the following comment: ²⁸

. . . [T]hose who voted for the reopening did so for what is, in our opinion, a wrong reason. Expediency rather than a belief in human rights and equality of opportunity appeared to govern their actions. And although the libraries are now open the battle is far from over. . . .

The 90-day compromise is due to end on December 11. We shall look forward with keen anticipation to the outcome, and hope that a further step into the dark ages will not be taken.

At the conclusion of the trial period the Danville public libraries were finally reopened on a more liberal basis—with single tables and chairs “well spread out” in the reading room to permit sit-down, instead of vertical, browsing.²⁴

Six months later the Danville library service was “gradually returning to normalcy” but with only about two-thirds of its former patronage. Membership at the white and Negro branches in early June 1961 was about 6,000 as compared with the earlier combined enrollment of 10,000. Only a small number of Negroes have applied for cards at the formerly all-white main library.²⁵

After the desegregation of Danville’s library, Petersburg, located in Virginia’s Black Belt, was the only Virginia city of any size maintaining segregated public library facilities.²⁶ Petersburg’s city library experienced its first sit-down demonstration on February 27, 1960. A few days later the City Council enacted an ordinance forbidding trespass on property owned or operated by the city under penalty of a year in jail and \$1,000 fine.²⁷ On March 7, 11 students tested the law by entering the white section of the library, were arrested and subsequently convicted. Appeal was filed and simultaneously a suit was brought in a Federal court seeking an end to the Petersburg library’s segregation.²⁸

City officials claimed that the library was segregated because the woman who gave the property to the city in 1923 so stipulated in the deed. The city argued that if the conditions of the deed were not fulfilled, title to the property would revert to the estate. (The donor’s heir and only surviving daughter contended that her mother did not intend for the city to operate a segregated library.²⁹) Then on July 6,

three Negro students from Virginia State College requested service in a section reserved for whites; whereupon the city manager closed the library until court determination of the validity of the restrictive provisions of the deed.⁸⁰

The cases of the 11 sit-down students who, after conviction, had appealed to the Petersburg Hustings Court, were dismissed. And while the suit to desegregate the library was pending in the Federal court, the Council, in a surprise move, voted unanimously to reopen the public library on a desegregated basis.⁸¹

In Lenoir, North Carolina, six Negro pupils who sought to use the all-white Caldwell County Library met no opposition.⁸²

RURAL LIBRARIES

As indicated in Part III of this report, a 1960 field survey conducted by Commission investigators in 21 selected Black Belt counties⁸³ located in 9 Southern States showed that 5 of them, each with a Negro population ranging from 50 to 71 percent, maintain no libraries at all. One of these, in cooperation with 2 adjoining counties, has separate bookmobile service for each race.⁸⁴ Twelve of the remaining 17 Black Belt counties surveyed (located in Mississippi, Georgia, Alabama, South Carolina and Tennessee) have libraries only for whites—in some cases 2 per county. In the other 5 counties separate libraries are maintained for whites and Negroes but the Negro branches have only about half as many books as the white branch and are open fewer hours—from 9 to 18 per week, as compared with 27 to 40.⁸⁵

The Commission's survey of public libraries in Southern rural communities participating in the Federal Library Services (LSA) program, discussed below,⁸⁶ revealed that among these 21 Black Belt counties, 6 were serviced by regional libraries which participate in the program. Three are in Georgia, 1 in North Carolina and 2 in Mississippi.

Among the Georgia counties 1 had no library at all but was serviced by 2 segregated bookmobiles, another had a white only library and no service for Negroes; the third had a white only library and 2 segregated bookmobiles.

The 2 Black Belt counties in Mississippi that are serviced by an LSA regional library had 1 and 2 libraries respectively for whites, and none for Negroes. The North Carolina Black Belt county serviced by a regional library, has segregated branches for whites and Negroes. The Commission's questionnaire completed by regional library officials indicates that reference books at each white branch are approximately 550, at each Negro branch approximately 200; that circulating books

at the white branches are about 20,000, at the Negro about 1,500. Weekly hours of service were reported to be about 22 at the white and 13 at the Negro branches.

One Mississippi Black Belt county library directly participating in the LSA program declined, as did all other Mississippi public libraries, to answer the Commission questionnaire.⁸⁷ The field survey in that county, however, indicated that it maintains only one library, and that for the exclusive use of white patrons.

LIBRARY SERVICES ACT

On June 19, 1956 Congress enacted the Library Services Act,⁸⁸ which provided for grants-in-aid to the States to promote the development of *free public library* services in rural areas. This was an important chapter in the history of public education. Rural areas were defined in the law as communities having a population of 10,000 or less. Each year for 5 years \$40,000 were to be allotted to each State plus "such part of the remainder as the rural population of the State bears to the rural population of the United States" as of the last census. These Federal funds were to be matched by State funds on a per capita income ratio basis.

Thus the program was to be a joint venture of the State and Federal Governments. Payments were to be made to States which would submit to the United States Commissioner of Education "State plans for the further extension of public library services to rural areas without such services or with inadequate services."⁸⁹ The statutory conditions for approval of a plan were that it be administered by the State library administrative agency; that proper guarantees be given by the State treasurer that public funds would be expended only for the purposes for which they were paid; that the State library administrative agency certify that in its judgment the policies and methods of administration would assure the use of funds to maximum advantage for the program's purposes; and ⁴⁰

. . . that any library services furnished under the plan shall be made available free of charge under regulations prescribed by the State library administrative agency.

Administrative freedom was explicitly left to the States: ⁴¹

. . . The provisions of this chapter shall not be so construed as to interfere with State and local initiative and responsibility in the

conduct of public library services. The administration of public libraries, the selection of personnel and library books and materials, and, insofar as consistent with the purposes of this Chapter, the determination of the best uses of the funds provided under this Chapter shall be reserved to the States and their local subdivisions. . . .

. . . The determination of whether library services are inadequate in any area within any State shall be made by the State library administrative agency of such State.

A provision of the act, however, empowered the Commissioner of Education to withhold any payment of funds: ⁴²

. . . if the Commissioner finds after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this Chapter, that the State plan has been so changed that it no longer complies with the requirements of this Chapter or that in the administration of the plan there is a failure to comply substantially with the provisions required to be included in the plan. . . .

Judicial review by a Federal district court was provided in event of withholding of the funds.⁴³

The term "public library" is clearly defined by the act: ⁴⁴

The term 'public library' means a library that serves *free all residents* of a community, district, or region, and receives its financial support in whole or in part from public funds; . . .

Under the regulations issued by the Department of Health, Education, and Welfare for the implementation of the Act the term "public library services" is defined as ⁴⁵—

. . . library services which are *provided free to all residents* of a community, district, county or region, and are financially supported in whole or in part from public funds. Generally such term would not include services provided by libraries which are organized to serve a special clientele or purpose such as law, medical, and school libraries.

Under the term "services" the regulations provide: ⁴⁶

The State plan shall provide that any services furnished under the plan shall be made available free of charge under regulations prescribed by the State library administrative agency.

The expenditures for which a Federal share of the total sum will be paid under the act are described as: ⁴⁷

Any expenditure . . . for which the State expects the Federal Government to pay its share must be included in the plan and must meet the requirements of the act. Such expenditure may include salaries and wages, the purchase of books, other library materials, and equipment, and operational costs applied to the further extension of public library services to rural areas.

State expenditures must be made out of public funds which are defined as: ⁴⁸

Public funds may include contributions by private organizations or individuals which are deposited in accordance with State law to the account of a unit or agency of State or local government without such conditions or restrictions as would negate their public character.

The patterns of the State plans vary. They include county and regional library demonstrations, and establishment of State library service centers. These centers give permanent service to individuals lacking local libraries, operate bookmobile service and exhibits, or provide scholarship and in-service training projects to improve rural library service.

The Department of Health, Education, and Welfare reported that as of March 1958, 45 States, Alaska, Guam, Hawaii, and the Virgin Islands were participating under the Act. Under the program over 300 rural counties throughout the Nation with an aggregate population of over 7,500,000 people were receiving new or improved library services. Approximately 90 bookmobiles had been purchased. More than 120 county and regional library projects had been established by June 30, 1958. State funds for rural library services had increased 38 percent between 1956 and 1958.⁴⁹

Recent reports indicate that, during its first 4 years of existence the program brought library services to 30 million Americans in rural communities, 4 new regional libraries to Alabama, a statewide conference on book selection to Mississippi, the first trained administrator to the State library of Idaho, bookmobile grants to 5 Ohio counties, and centralized book ordering services to West Virginia.⁵⁰

The statutory formula for distribution of funds heavily favored the 17 Southern States because of their predominantly rural economies. According to the 1960 census, one-third of those States had between 64 and 74 percent rural population, another third had between 46 and 56 percent, and the remaining 5 States had from 31 to 42 percent.⁵¹ Thus in 1957-58, the first full year of operation of the Library Services

Act program, the Southern States received \$2,035,904, or approximately 41 percent of the total \$5 million appropriation.⁵² In fiscal 1961, out of a total appropriation of \$7,500,000, they received \$3,188,883 or approximately 43 percent.⁵³

AVAILABILITY OF SERVICES

In the fall of 1960 the Commission, through its State advisory committees, addressed questionnaires to 256 LSA participating public libraries in the 17 Southern States in an effort to ascertain the type and availability of their services to both the white and Negro residents of the community served.

The questionnaire inquired as to the availability to both races of fixed location reading facilities; as to whether or not facilities were segregated; as to hours of service and size of reference and circulating collections; and as to bookmobile service.⁵⁴ In most cases the questionnaires returned were completed by the librarian.

Replies were received from only 109 libraries located in 11 States.⁵⁵ This small return was due in part to the inability of some advisory committees to undertake the task, and in part to the lack of cooperation or even open hostility of State and local officials.⁵⁶ Replies were received from 62 libraries in 6 of the former Confederate States.⁵⁷ While the results of the survey are insufficient for a conclusive statistical presentation, nevertheless the data collected disclosed practices in some of these federally-supported libraries clearly in violation of the statute authorizing Federal aid, and also of the constitutional equal protection clause.

All 109 replying libraries reported having one or more fixed locations offering library service. Of these, 61 gave unqualified service to all races; 9 reported that the main reference library was for whites only but that Negroes and whites were served at branches. Of the 9 reporting qualified service, 4 had separate racial facilities available at the same location; 2 reported "cooperation" between branches and main libraries in availability of special equipment; 2 maintained racially separate rest rooms; and 1 reported that while the State allows "service to racial groups" where books and facilities are provided with public funds, the county library boards set their own racial policies. The remaining 39 libraries reported having reading facilities only for whites, or at segregated branches (some of which were merely service stations for bookmobile pickup and delivery in homes, banks, stores, etc.). In one heavily populated county with 12 library branches none were located in Negro communities, allegedly because of insufficient Negro population.

In another county with a heavy ratio of Negro population there were 12 stations, only 1 of which was for Negroes.

Among the libraries maintaining racially separate branches, the 30 reporting hours of service showed an average of 33.3 hours weekly service at the white branches and 15.2 at the Negro branches. Two libraries reported being open to Negroes only during the summer.

Twenty-eight of the 39 segregated libraries reported on the size of their book collections. Nineteen reported an average of over 28,000 circulating and 959 reference books at white branches and an average of 4,379 circulating and 161 reference books at the Negro branch. As to reference books in these 19 libraries, 2 reported no reference books for Negroes while in the remaining 17 there were between 1.2 and 15.2 times as many reference books for whites as for Negroes.

Seven libraries reported only on the combined reference and circulating collections. The average in white libraries was 30,555 as against 8,323 at the branches for Negroes—the range of difference being between 3 and 6.8 times as many books in the white, as in the Negro libraries.

The Commission's survey included only about one-third of the public libraries in the 17 Southern States receiving Federal aid under the Library Services Act. The information received shows clearly that in some cases services are not available to Negro residents at all though they are available to whites. In others, some provision is made for Negroes in separate inferior branches. Surely these discriminations violate the Federal law authorizing financial aid, and requiring that services shall be free to *all* residents of the community served. Surely they also violate the equal protection clause, which does not permit racial distinctions in public educational facilities.

On April 13, 1961 the Commission addressed a letter to the Secretary of Health, Education, and Welfare, requesting information as to the following:

- (1) amount of funds allotted to the Southern States under the Library Services Act of 1956 for fiscal 1961;
- (2) the existence of any policy established by agency regulations on the equal availability to all residents of the community of library facilities receiving Federal aid; and
- (3) any requirement by the Commissioner of Education, in approving State plans, that the regulations prescribed by the State library agency contain such a provision.

In his reply of May 10, 1961 the Assistant Secretary supplied the fiscal data requested, but failed to disclose the department's policy, if any, with regard to enforcement of compliance with the provisions of the statute requiring the libraries to "serve free all residents of a community, district, or region."

10. Role of the Executive Branch

Each branch of the Federal Government has a role in the maintenance, improvement and constitutional operation of public schools throughout the Nation. Congress has authorized grants-in-aid to improve the quality of State and local educational institutions. As a result of violence in connection with court-ordered desegregation, it passed the Civil Rights Act of 1960 which imposes criminal penalties upon those guilty of willfully obstructing Federal court orders. The Federal courts have had direct responsibility for carrying out the United States Supreme Court decisions on school desegregation.

The Chief Executive is charged by the Constitution to "take care that the laws be faithfully executed."¹ This duty is not limited to the enforcement of Acts of Congress but includes obligations growing out of the Constitution itself.² One President dispatched troops to Little Rock in 1957 and sent Federal marshals to New Orleans in 1960 to prevent mob interference with Federal court desegregation orders. Presidential statements have stressed the importance of carrying out the constitutional principles announced in the *School Segregation Cases*. On the occasion of the opening of the Commission's third education conference at Williamsburg in February 1961 the President telegraphed the conference:³

Let me here pay tribute to these educators—principals, officers of school boards, and public school teachers. The constitutional requirement of desegregation has presented them with many new responsibilities and hard challenges. In New Orleans today, as in many other places represented in your three conferences, these loyal citizens and educators are meeting these responsibilities and challenges with quiet intelligence and true courage. The whole country is in their debt, for our public school system must be preserved and improved. Our very survival as a free nation depends upon it. This is no time for schools to close for any reason, and certainly no time for schools to be closed in the name of racial discrimination. If we are to give the leadership that the world requires of us, we must be true to the great principles of our Constitution—the very principles which distinguish us from our adversaries in the world.

Let me also pay tribute to the school children and their parents, of both races, who have been on the front lines of this problem. In accepting the command of the Constitution with dignity, they, too, are contributing to the education of all Americans.

In the same spirit the Secretary of Health, Education, and Welfare turned down a request for aid from white private schools in Prince Edward County, Virginia, where public schools had been closed to avoid desegregation. The Secretary stated at the time "any aid to the Prince Edward School Foundation would not only constitute aid to a private school to the detriment so to speak of the public school system, but would also discourage efforts to reactivate the public schools in the county." The Secretary added that he hoped the department would reject any future requests "in which the donation of surplus property would contribute to the abandonment of a public school system rather than its furtherance."⁴ His successor has indicated to a Senate Committee that the policy will be continued.

The most effective executive action in public school desegregation has been the participation of the Attorney General of the United States in some desegregation suits. His activity in the traditional role as adviser on the law and his intervention as plaintiff will be recounted in this chapter.

THE SECOND BROWN CASE

The first appearance of the Attorney General in a school desegregation case came in *Brown v. Board of Education*.⁵ In its 1954 decision in the *School Segregation Cases* the Supreme Court requested further argument on the question of relief, and invited the United States Attorney General and the attorneys general of all States in which racial segregation was explicitly required or permitted by law to file briefs as *amici curiae*, or "friends of the court." Plaintiffs in the consolidated cases contended that there was no justification for delay, and that Negro children should be admitted to public schools on a nondiscriminatory basis "forthwith." On the other hand defendants and some of the *amici curiae* argued for delay. They emphasized the long history of legally sanctioned segregation and the social pattern established thereby, concluding that the Court should leave the implementation of its decision to the voluntary action of local communities. The Federal Attorney General proposed a middle course which the Court in substance adopted. He suggested that the cases be remanded to the lower courts to require the defendant school boards either to admit the plaintiffs immediately,

or to submit plans to accomplish desegregation as soon as practicable. Thus, the school boards would have the burden of showing how much, if any, time was required to carry out desegregation.

THE HOXIE CASE

The United States appeared again as *amicus curiae* to advise the court on the issues of law involved in *Brewer v. Hoxie School District No. 46 of Lawrence County, Arkansas*, which reached the United States Court of Appeals for the Eighth Circuit in October 1956.⁶ That action was brought by the Hoxie School Board against a group of individuals who had conspired to obstruct its attempt to comply voluntarily with the Supreme Court's ruling. The defendants were charged with making inflammatory speeches, trespassing on school property, causing the early closing of the schools, and reducing school attendance when the schools were open. The Federal district court had granted a temporary restraining order, and later an injunction. The United States intervened on appeal with leave of the court and a stipulation between the parties.⁷ Its brief as *amicus curiae* advocated affirmance and asserted as its reason for intervention the nationwide importance of the issue presented.⁸ This issue, whether or not State officials could be protected by the Federal courts from a purposeful obstruction to the performance of a duty imposed upon them by the Constitution of the United States (as distinct from a court order), was decided in the affirmative by the court of appeals. Its opinion borrowed extensively from the Government's brief. The court said: ⁹

The principles enunciated by the Supreme Court in the School Segregation Cases are binding upon plaintiffs in this case, as well as on all other school boards or school officials administering public education programs. . . . Plaintiffs are under a duty to obey the Constitution. Const. Art. VI, cl. 2. They are bound by oath or affirmation to support it and are mindful of their obligation. It follows as a necessary corollary that they have a Federal right to be free from direct and deliberate interference with the performance of the constitutionally imposed duty. The right arises by necessary implication from the imposition of the duty as clearly as though it had been specifically stated in the Constitution.

In the second *Brown* and *Hoxie* cases, the United States had followed the traditional pattern of *amicus* intervention, appearing only to advise

the Court on issues of law involved. The Supreme Court has stated that "[A] Federal court can always call on law officers of the United States to serve as *amici*."¹⁰ However, the function and powers of *amicus curiae* have recently become an issue in school desegregation cases because of the more extensive participation of the Attorney General in this capacity and as intervenor in some suits.

THE CLINTON CASES

In the criminal contempt proceedings brought for the violation of an injunction against Kasper for violent interference with the orderly desegregation of public schools in Clinton, Tennessee, the United States Attorney, on request of the court, participated actively as *amicus curiae*, and even interrogated witnesses. On appeal the United States Court of Appeals for the 6th Circuit upheld the conviction, noting the participation in the trial by the United States Attorney.¹¹

The Federal role in the *Hoxie* and *Kasper* cases showed an expanded concept of *amicus*—not merely an adviser on the law but a defender of those performing a Federal duty. Each was based on the theory that the school board, having a duty to admit students to the public schools on an equal basis, had a corresponding right to be protected in the performance of that duty. The interest of the United States in providing that protection justified its intervention.

THE LITTLE ROCK CASES

The special interest of the United States in supporting the orders of its courts was a crucial feature in *Aaron v. Cooper*.¹² While the Little Rock school board was preparing to desegregate Central High in accordance with a Federal court order, the Arkansas General Assembly passed a number of laws to block school desegregation. Thus armed with legislative authority, in September 1957 the Governor ordered the Arkansas National Guard to prevent Negroes from entering the school.¹³ When the school board sought instructions, the Federal district court directed the board to proceed with the desegregation forthwith, denied a stay,¹⁴ and advised the United States Attorney by letter that its original order had not been complied with.¹⁵ The Court requested him to investi-

gate and report his findings. On the basis of his report, the court ordered the Justice Department to intervene as *amicus* and directed it to file a petition against the Governor to enjoin him from further acts to prevent compliance with the court's order. The petition was filed (*United States v. Faubus*), hearings were held, and the court granted a preliminary injunction against the Governor and officers of the National Guard.¹⁶

The Governor then withdrew the National Guard. Disorder and violence followed. On September 23, 1957, a presidential proclamation ordered all persons engaged in any form of obstruction of justice in Little Rock to cease.¹⁷ On the following day the President directed the Federal troops to remove any obstruction to compliance with the court order.¹⁸ The presidential proclamation and order were issued pursuant to Title 10, United States Code, sections 332-334, which authorize the President to use the military to enforce the laws of the United States (whenever he considers that unlawful obstructions make it impracticable to enforce them by the ordinary course of judicial proceedings), and to suppress any domestic violence obstructing the execution of the laws or impeding the course of justice under those laws. The phrase, "the laws of the United States," had been held to cover not merely acts of Congress but Federal law in its broader sense, including the Federal Constitution and orders of a Federal court enforcing constitutional rights.¹⁹

This was the extent of direct intervention by the Chief Executive in the Little Rock crisis. However, the Attorney General continued as *amicus curiae* when the Arkansas Governor appealed the preliminary injunction imposed upon him. He contended that the Attorney General had no authority to file the *amicus* petition in the trial court. In his brief on appeal the Attorney General cited Title 5, United States Code, section 309, which authorizes him "whenever he deems it for the interest of the United States" to conduct and argue either in person or through any officer of the Department of Justice "any case in any court of the United States in which the United States is interested . . .," and Title 5 United States Code, section 316, providing that the Attorney General may send any officer of the Department of Justice "to attend to the interest of the United States" in any suit pending in any court of the United States. This authority is in addition to the specific power to appear in cases in which the United States is a formal party.²⁰ The brief also stressed the point that:²¹

The Government appeared in the cases only when an issue quite apart from the personal rights of the plaintiffs arose; i.e., the protection of the integrity of the district court's process from subversion by appellants' forcible obstruction to the carrying out of the court's order of September 3.

The court of appeals sustained the Government's position and upheld the district court's power to issue its order inviting the Attorney General to appear as *amicus curiae* and authorizing him to file pleadings, evidence and briefs and to file a petition for injunction to prevent obstruction of the court's order. The court of appeals said:²²

It was proper for the court to do all that reasonably and lawfully could be done to protect and effectuate its orders and judgments and to prevent them from being thwarted by force or otherwise. The court could not, with propriety, employ private counsel to do the necessary investigative and legal work. It has, we think, always in the past been customary for a Federal district court to call upon the law officers of the United States for aid and advice, in comparable situations.

In our opinion, the status of the Attorney General and the United States Attorney was something more than that of mere *amici curiae* in private litigation. They were acting under the authority and direction of the court to take such action as was necessary to prevent its orders and judgments from being frustrated and to represent the public interest in the due administration of justice.

This sanctioned a broad interpretation of the function of the United States as *amicus* in school desegregation cases. Since *Faubus* the declared purpose of such intervention has been to prevent obstruction of court orders, to protect and preserve the integrity of the Federal courts, and to maintain the proper administration of justice.

The United States submitted additional briefs as *amicus* in the subsequent Little Rock school litigation. It argued successfully against suspension of a school desegregation plan before the Supreme Court of the United States.²³ After the Little Rock high schools were closed by the Governor's order, it intervened successfully to prevent the school board from leasing high school buildings to a private educational organization contending that the action was a device to frustrate the district court's prior desegregation order.²⁴

Another *amicus* brief was submitted in *Aaron v. McKinley*,²⁵ a suit contesting the constitutionality of acts directing the Governor to close schools under court order to desegregate, and authorizing the withholding of State funds from such schools. A three-judge Federal court declared both statutes unconstitutional.²⁶ The Supreme Court of the United States affirmed *per curiam* after the Attorney General had filed an *amicus* brief.²⁷ On the basis of the precedents established in the Little Rock cases the Federal Government has continued its active role in school desegregation litigation now pending in Louisiana, Virginia, and New York.

THE LOUISIANA CASES

An Interposition Act²⁸ purported to suspend the effect of the *Brown* decision in Louisiana, and made it a crime for Federal officers to attempt to enforce Federal court orders issued pursuant to the decision in the *School Segregation Cases*. In the face of this defiance of Federal authority, the United States brought suit in a Federal district court in *United States v. Louisiana*²⁹ against the State (and certain of its officials), and filed a motion for preliminary injunction. The brief supporting the motion justified this direct intervention on the ground that the Interposition Act was designed:³⁰

. . . to impede and obstruct the performance of duties by United States courts, United States marshals, and other Federal officials and agencies, and thus to frustrate the proper execution of the laws of the United States. If enforced, the Act would have the effect of paralyzing at least one phase of the enforcement of these laws in the State of Louisiana.

The Attorney General claimed that:³¹

The standing of the United States . . . is derived from the obligation of the Executive Branch to execute the laws of the United States, including the enforcement of Federal court orders. Where the Government has a constitutional duty, it has the right to apply to its own courts for any proper assistance in the fulfillment of that duty. *In re Debs*, 158 U.S. 564, 584 (1895).

The Attorney General described the legislative measures as a "massive effort to evade, obstruct, and repudiate the law of the land, to harass Federal personnel, and to deprive American citizens of their rights under the Constitution." He asked the court for an injunction against their enforcement in the name of the "profound interest in the protection of the integrity and inviolability of the Federal courts and of the constitutional freedoms of the citizens of this Nation and their right to be immune from arbitrary and oppressive State action."³² The court granted a temporary restraining order against enforcement of the interposition statute by Louisiana, its Governor, Attorney General, Director of Public Safety, District Attorney of the Parish of Orleans, sheriff, or other officials, and later issued a temporary injunction to the same effect.³³

In the meantime, a three-judge Federal court had designated the United States *amicus curiae* in *Bush v. Orleans Parish School Board* where the issues involved the constitutionality of the new Louisiana legislation attempting to nullify the desegregation order. In so doing the court said:³⁴

. . . the public interest in the administration of justice should be represented in those proceedings and [that] it will be of assistance to the court to have the benefit of the views of counsel for the United States as *amicus curiae*, and this court being entitled at any time to call upon the law officers of the United States to serve in that capacity. . . .

The court said further that the United States Attorney General:³⁵

. . . was requested and authorized to appear, to accord the court the benefit of its views and recommendations with the right to submit to the court pleadings, evidence, arguments and briefs, and to initiate such further proceedings as may be appropriate in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States.

On Louisiana's direct appeal to the Supreme Court of the United States the Attorney General submitted a memorandum to the Court opposing a stay of the injunction that had been issued below. The Supreme Court refused to stay the injunction, stating in a *per curiam* opinion:³⁶

The scope of these enactments and the basis on which they were found in conflict with the Constitution of the United States are not matters of doubt. The nub of the decision of the three-judge court is this: "the conclusion is clear that interposition is not a constitutional doctrine. If taken seriously, it is an illegal defiance of constitutional authority." . . . The main basis for challenging this ruling is that the State of Louisiana "has interposed itself in the field of public education over which it has exclusive control." This objection is without substance as we held upon full consideration in *Cooper v. Aaron*. . . .

Again as *amicus curiae* the United States petitioned the Federal district court in *Bush* for an injunction prohibiting State officials from enforcing a Louisiana act aimed at paralyzing local administration of the New Orleans schools and transferring to the legislature all school board powers. The United States Attorney's brief argued that:³⁷

The standing of the United States as *amicus curiae* to petition for the relief here sought is established law. *Faubus v. United States*, supra. The interest which petitioner represents is not the same as that of the Negro plaintiffs in the case. Rather it is its interest in the due administration of justice by its courts. To permit the lawful orders of the Courts of the United States, whatever the subject matter in litigation, to be openly flouted or surreptitiously

circumvented would subvert our constitutional form of government. It is this interest which petitioner represents and which it asks this court to protect.

The court granted a temporary restraining order forbidding enforcement of the challenged act. A three-judge court subsequently found the statute unconstitutional, saying:³⁸

The United States obviously has a vital interest in vindicating the authority of the Federal courts. It is therefore appropriate that the Government, as *amicus curiae*, institute proceedings herein to protect the court against illegal interference. *Faubus v. United States*. . . .

On motion of the United States, *amicus curiae*, contempt proceedings were initiated for violation of the consolidated *New Orleans* cases.³⁹ The State Superintendent of Education and the presiding officers of both branches of the legislature were charged, among other things, with failure to release State funds to pay the New Orleans teachers serving in desegregated schools. A three-judge court dismissed the contempt action as to the presiding officers of the legislature upon their compliance with the order. Hearings on the charges against the superintendent were repeatedly postponed because of his illness. No final action appears to have been taken.

At the time the contempt proceedings were started the United States filed an *amicus* petition to enjoin enforcement of a law designating the attorney general of Louisiana as sole counsel for the Orleans Parish School Board. Legislation creating a new school board whose members would be appointed by the legislature, and a joint resolution dismissing the school superintendent for Orleans Parish, caused the United States to apply for another court order forbidding their enforcement. All of these statutes were held unconstitutional in March 1961.⁴⁰ The three-judge court considered the authority of the United States as *amicus curiae*:⁴¹

The pattern is obvious. The ultimate goal remains to block desegregation of the public schools and frustrate the enjoyment of constitutional rights. The method is to wrest control of the New Orleans schools from the elected board and, incidentally, to punish the members of that board and its faithful employees for complying with the mandate of the court. But, since our orders stand in the way of that design, the immediate effect of the measures is to defy the authority of this court.

In the circumstances, the United States, as *amicus curiae*, actively intervened and is the moving party on the applications now before us. Since the immediate effect of the recent legislative

measures is to frustrate orders of a court of the United States and the primary reason for enjoining those acts is to vindicate the authority of that court, this seems altogether appropriate. Nevertheless, defendants strenuously object claiming that the Government has no interest in this private litigation and should not be permitted to stand in for the original plaintiffs.

In view of the compelling precedent in the parallel case of *Faubus v. United States*, 8th Cir., 254 F. 2d 797, we might reject the objection summarily, especially since it is, at best, a delaying tactic. But we deem it important to state unequivocally the right of the United States to appear in these proceedings because it involves a principle vital to the effective administration of justice.

The United States intervened long after this court had finally declared plaintiffs' right to attend desegregated public schools, and after the time set for the practical implementation of that constitutional right. The merits had been adjudicated and the only matter remaining was the enforcement of the court's injunction. It was only when the Governor, the Legislature, and other officials of the State of Louisiana attempted to interpose the power and prestige of the State in a massive effort to frustrate the court's decrees that we called upon the United States as a friend of the court. It should also be stressed that the Government appeared *at the court's request*. The Justice Department was not intervening to protect a special interest of its own. Nor was it to champion the rights of the plaintiffs or to defend the harassed School Board. It came in, by invitation, to aid the court in the effectuation of its judgment, "to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States."

One ground of defendants' unsuccessful contention that the United States had no right to intervene was the failure of Congress in the Civil Rights Acts of 1957 and 1960 to authorize the Attorney General to initiate desegregation proceedings. In rejecting this argument, the court pointed out not only that the United States had not initiated the original action, but that it had not advised the court on the merits of its desegregation decision. It noted also that the Senate debates on the Civil Rights Act of 1957 showed that opponents of such power had recognized that the United States could intervene to preserve the integrity of its courts in litigation brought by others.⁴² The court further emphasized that the Attorney General had exercised this power of intervention in the *Faubus* case in 1958 and Congress had not withdrawn it in the Civil Rights Act of 1960. The court added: "Apparently . . . [Congress] preferred this method of enforcing court orders to the use of troops."⁴³

As to the contention that the United States as *amicus curiae* could not ask for affirmative relief, the court said: ⁴⁴

It is true that ordinarily an *amicus curiae* merely tenders a brief advising the court on the law applicable to the case. But, as shown, in these proceedings the United States is no ordinary *amicus*. Whether "*amicus curiae*" is the proper title is a quibble over labels. However, we think it singularly appropriate here since the role of the United States in this proceeding is more truly that of a friend of the court than is often the case with so-called "*amici*" who are rather friends of one party or the other. . . .

The real objection is to the participation of the United States in any guise, whether as party plaintiff, intervenor, or *amicus*. . . . And, in view of the history of the recent Civil Rights Acts, perhaps it cannot voice its obvious interest in securing for all citizens the enjoyment of constitutional rights. But that does not mean that the Justice Department of the United States can have nothing to do with the administration of justice or that it must remain indifferent when the judgments of Federal courts are sought to be subverted by State action. The interest of the Government here is the same as that which justifies its prosecution for obstruction of court orders in violation of 18 U.S.C. sec. 1509, or for contempt of those orders under 18 U.S.C. sec. 401. Admittedly, the Attorney General can act on behalf of United States courts in those instances. Why should he not be permitted to come in here to accomplish the same purpose by different, less radical means? The absence of specific statutory authority is of itself no obstacle, for it is well settled that there is no such prerequisite to the appearance of the United States before its own courts. . . .

We conclude that the participation of the United States at this stage of the proceeding is entirely appropriate. We invited the United States to enter the case in an effort to find a peaceful solution to the problem created by the State's interference with the orders of the Court. To do otherwise was to risk anarchy. Through this procedure, we sought to keep the conflict in the courts. Thus the rule of law was preferred to the law of the jungle.

Louisiana appealed to the United States Supreme Court and raised the question of "whether or not the United States has any right or interest in the subject matter of this action and whether or not it has any right, through the Department of Justice, to petition for affirmative injunctive relief as *amicus curiae* or otherwise against the defendants." ⁴⁵ On June 19, 1961, the Supreme Court affirmed *per curiam* the decision of the three-judge court. ⁴⁶

Since the decision of the district court in the *Bush* case upholding its right to intervene the United States has continued to participate actively in the New Orleans litigation. The United States moved for a temporary restraining order when the legislature adopted a joint resolution establishing a committee of 10 legislators to seize the administrative records of the Orleans Parish School Board from the State Superintendent of Education. The motion was granted. The defendants then moved to dismiss the petition and to dissolve the temporary restraining order contending again that the United States did not have the right to file action for such injunctive relief. No final disposition of this matter has been noted.

Additional legislation penalizing persons encouraging or assisting others to attend or work at schools operated on a racially nondiscriminatory basis caused the United States to petition the court for an injunction to restrain its enforcement. This petition was granted by the court on May 4, 1961.⁴⁷

There have been two other instances of participation by the Justice Department in school desegregation litigation in Louisiana. These involve the parishes of East Baton Rouge and St. Helena, both enjoined by a Federal district court in the spring of 1960 from maintaining racial segregation in their public schools.⁴⁸ After the district court decision in *Hall v. St. Helena School Board* was affirmed by the Court of Appeals in February 1961,⁴⁹ the legislature passed a law giving school boards authority to close their schools after an election at which a majority of those voting approved such suspension.⁵⁰ The plaintiffs in the *St. Helena* case attacked the constitutionality of this law and asked for an injunction to restrain the school board from acting under it. The next day the United States Attorney applied to the court for permission to intervene as *amicus*. His purpose was to file a petition for an injunction against the enforcement of other legislation and to preserve the administration of justice and integrity of the judicial process. Upon the granting of the motions, the United States filed its petition.

At a hearing on the original plaintiff's motion to restrain the school board from acting under the provision of the school-closing law, it was agreed that the election could be held provided that the board took no action as a result of the election until the court determined the constitutionality of the law.⁵¹

St. Helena Parish residents voted 1,147 to 56 in favor of closing the schools.⁵² Although the total population of the parish (about 9,000) is 56 percent Negro, only 111 Negroes were registered to vote⁵³ and only four of these were reported to have voted.⁵⁴ Last year the parish had 2,478 white and 1,243 Negroes registered but that registration expired by law on December 31, 1960.⁵⁵ The 1961 registration difficulties of St. Helena Negro residents are recounted in Part II of this report.⁵⁶

At the hearing at which the court refused to interfere with the holding of the election on school closing, the court asked the parties and the United States as *amicus* to file briefs on the following questions:⁵⁷

A. . . .

(1) Is it implicit in today's concept of due process that a child has a right to public school education, even though there is no provision in the State constitution requiring the State to maintain a public school system? (2) In the fact situation this case presents, considering especially that the State now maintains and has for many years maintained a public school system, does Act 2 violate due process if its effect is to deprive the children in St. Helena of a public school education?

The court knew of the State law providing grants-in-aid for education, but questioned whether grants-in-aid would be an adequate constitutional substitute for public school education, particularly where such aid would result in segregated private schools.

In an unprecedented move the court invited the attorneys general of each State of the Union to express their views on the constitutionality of a State's abandonment of public schools. The questions put by the court were:⁵⁸

1. Would the abandonment by a State of its public school system deprive children of rights guaranteed by the due process or equal protection clauses of the 14th amendment?
2. Would the answer be the same if the abandonment were on a local option basis after a vote of the electorate authorizing county school authorities to close public schools?

In its brief the United States contended that the Louisiana law in question as applied to St. Helena Parish constituted an evasive and obstructive scheme to prevent the execution of the order of the court. As proof of its contention the United States cited the history of the 1960-61 Louisiana legislation, particularly those providing tuition grants and authorizing private educational cooperative schools. The Attorney General urged the court to "intervene now to enjoin . . . the claimed abandonment of the public school system," rather than permit the closing of the public schools before the court was satisfied that the alternative would be constitutionally acceptable.⁵⁹

In effect, the United States answered in the affirmative the Court's question whether or not the abandonment of public education by a State is a deprivation of due process of law. It suggested, however, that the court did not have to decide that issue *a priori*; that by enjoining the enforcement of the statute the court could shift the burden to the State of explaining the reasonableness of the proposed abandonment of

public schools and of justifying it under the constitutional principles. At the date of writing no decision has been handed down.

THE PRINCE EDWARD CASE

The novelty of the Attorney General's action in the Prince Edward County case was his request to intervene not as *amicus curiae* but as a plaintiff. As indicated in Chapters 5 and 6 above, all of the public schools of Prince Edward County were closed during the school years 1959-61 to avoid compliance with a Federal court order to admit Negroes on a nondiscriminatory basis. In February 1961 the Negro plaintiffs filed a supplemental complaint seeking to reopen the schools. Then, in April the Attorney General asked for permission to intervene with a complaint and to add the State and others, as parties defendant "in order to prevent a circumvention and nullification of the prior orders of this Court and to safeguard the due administration of justice and the integrity of the judicial processes of the United States."⁶⁰ He contended that "obstruction to and circumvention of school desegregation decrees violate the interests of the United States in the due administration of justice as well as the interest of the original plaintiffs in the desegregation suit."⁶¹ The *Faubus* and the *New Orleans* cases were cited as precedents.⁶²

The essential question in the *Prince Edward* case was the effectiveness of the court order directing school desegregation; unlike the Louisiana cases, however, there was no threat of interposition nor of direct interference with Federal officials in the performance of their duties.

The United States contended that under Rule 24(a)(2) of the Federal Rules of Civil Procedure its intervention was a matter of right as in any case "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action."⁶³ Distinguishing its position from that of the other plaintiffs, the United States argued that the purpose of its intervention was to preserve its judicial process against impairment by obstruction or circumvention, and to protect its sovereign interest in the due administration of justice—whereas the other plaintiffs were seeking to secure their individual constitutional rights.

The United States urged its absolute statutory right to, ". . . conduct and argue suits and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested."⁶⁴ To demonstrate its interest, the United States stressed that:⁶⁵

Appropriate action to vindicate the authority of the court in its implementation of constitutional guarantees is . . . "by the Constitution entrusted to the care of the Nation," to be taken by the President and his subordinate officials, including his chief law enforcement officer, the Attorney General. And it is clear that this Nation owes to all citizens the duty of securing to them their common rights to be allowed the benefit of Federal judicial decrees promulgated in implementation of their constitutional rights without unlawful obstruction or circumvention by State action.

The Government's complaint asserted that the closing of Prince Edward's schools was a denial of equal protection and circumvention of the court order on three grounds: ⁶⁶

- (1) Prince Edward County schools were closed to avoid operating them in compliance with the desegregation decree;
- (2) public schools are being maintained elsewhere in the State; and
- (3) private segregated schools offering education to Prince Edward County children are receiving State support in various forms.

The Government asked for injunctive relief on the ground that the school closing involved a circumvention of a court order and a denial of equal protection either on a racial, or a geographic basis. The petition prayed for an order enjoining the county school board and other local and State authorities from failing to maintain in Prince Edward County a system of free public schools; from paying tuition grants to students attending the Prince Edward School Foundation, a private school for white children; from crediting taxpayers for contributions to the private foundation so long as the public schools were closed; from approving or paying any funds of the State for the maintenance or operation of public schools anywhere in Virginia so long as the public schools of Prince Edward County were closed; and finally, from interfering with, obstructing, or circumventing the orders of the court requiring the operation of public schools of Prince Edward County on a non-discriminatory basis.

On June 14 the Federal district court denied the Government's motion holding that it had no right to intervene as a party plaintiff at this stage of the proceedings: ⁶⁷

In Virginia, this complex problem has been and is being solved in a lawful and proper manner through the courts. There has been no defiance of this court's orders by either the State of Virginia or the County of Prince Edward. . . . The United States has no right to intervene as a party plaintiff in this case on that ground until

this court has first determined that its orders are in fact being violated or circumvented.

The court also said that Congress had refused in the past to authorize the Attorney General to initiate school desegregation cases, hence granting such permission would be "contrary to the intent of Congress."⁶⁸

THE NEW ROCHELLE CASE

The *New Rochelle* case⁶⁹ falls in the established pattern of *amicus* participation by the United States on court invitation. Participation in this case, however, was to assist the court in an area previously handled by the judiciary and local school boards—the formulation of a school desegregation plan.

Negro plaintiffs had filed the suit to enjoin the building of a new school on the site of the 93 percent Negro Lincoln school in New Rochelle, and for the desegregation of the present Lincoln school.⁷⁰ (The case is discussed in detail in Chapter 7.)

The district court found that the proposed new school was part of an established school board program to maintain racial segregation.⁷¹ It ordered the board to present a desegregation plan and, finding the submitted plan unsatisfactory, asked for the advice of the Attorney General as *amicus curiae*. In its "notice re intervention of *amicus curiae*" the court stated:⁷²

In the light of the interest which the Department of Justice has expressed in the implementation of Federal court decrees requiring desegregation, and to assure that the processes of this court will be fully respected and complied with, the court requests the Department of Justice to file a brief as *amicus curiae*.

The court is desirous of expert assistance with respect to the formulation of the final decree, and specifically in determining whether the plan submitted by the majority members . . . would bring compliance with the principles of the Fourteenth Amendment to the Constitution.

The entry of the United States into the case apparently was not opposed by the school board.

The United States submitted a brief in which it disapproved the plan proposed by the majority of the school board, advised against a stay of the execution of the desegregation order and suggested "guidelines" for

the formulation of a desegregation plan, adding:⁷³ "The Government as *amicus curiae* does not believe that it should formulate and propose a precise plan by which the desegregation of Lincoln School in New Rochelle is to be effectuated. . . ."

On May 31, 1961 the court issued its order refusing a stay and, adopted a desegregation plan closely following the "guidelines" suggested in the *amicus* brief.⁷⁴ The ruling was upheld on appeal on August 2, 1961 in a 2 to 1 decision.⁷⁵ In the *New Rochelle* case there was no threat of obstruction to the judicial process, nor was there any State legislation designed to thwart a Federal court order, as in the established *amicus* precedents. Therefore the court's invitation to the United States to intervene as *amicus* to find a solution for a local school problem marks a new phase in the history of school litigation.

SUMMARY

The role of the Attorney General in school desegregation cases has several facets. In the *Brown* cases he was in a familiar role as *amicus*—an adviser on the law. In the *Hoxie* and *Kasper* cases he was both an adviser on the law and a defender of those performing a Federal duty.

Although present at the request of the court as *amicus* in the *Clinton* cases, the United States Attorney actively participated in criminal contempt proceedings to prevent violent obstruction of a Federal court order. Indeed one of the cases was brought in the name of the United States.

In the *Little Rock* cases the United States appeared for the first time as a plaintiff in desegregation litigation, but did so by direction of the court. Although contested this was approved by the court of appeals. Again obstruction of court orders was the issue.

The Louisiana litigation brought further expansion of the role of the Attorney General. In the *New Orleans* case he was permitted to bring an action in the name of the United States to challenge the constitutionality of the Louisiana Interposition Act—a direct affront to the authority of the United States. The Attorney General has continued actively in this litigation advising the court on constitutional issues. In the *St. Helena* case the Attorney General is also taking an active role, but in this case, along more traditional lines, advising the court on the law.

In the *Prince Edward* case the district court refused to permit the United States to enter as a plaintiff. It distinguished the Virginia from the Louisiana situation, on the ground that here intervention was premature since there was no obstruction of the judicial process. The court

also found support in Congress' refusal to grant the Attorney General authority to initiate desegregation suits.

The *New Rochelle* case set a precedent in that the Government appeared as *amicus* not to protect the judicial process, prevent obstruction of court orders, preserve the sovereignty of the United States, or advise the court on constitutional issues but to advise as to a desegregation plan submitted by the defendant school board. The appearance of the United States in this role upon the invitation of the court does not appear to have been opposed by the defendant.

11. The Colleges

In January 1961 the Commission made its second report to the President and Congress in the field of education: *Equal Protection of the Laws in Public Higher Education, 1960*.¹ This traced the development of separate public colleges for Negroes in the latter half of the 19th century, the role of the Federal Government in the establishment and financial support of such institutions, and certain related Federal policies as they affect equal protection of the laws.

Three proposals were made. The first recommended that Federal funds be granted only to public institutions which do not discriminate on grounds of race, color, religion, or national origin. No executive or legislative action in this regard has been taken.

The second recommendation dealt with the enforcement of constitutional rights. The Commission proposed that Congress consider authorizing the use of three-judge courts in cases presenting substantial issues of fact as to denial of equal protection in public higher education. There has been no legislation on this matter. In the *University of Georgia* case, discussed hereafter, the only relevant case decided since the publication of the Commission's report, suit was filed in September 1960 and the court denied a preliminary injunction that would have allowed the plaintiffs to attend the university immediately. Final decision, however, was quickly reached, and the plaintiffs were admitted to the university in January 1961. The early admission of the plaintiffs was due in large measure to a change in State policy in the face of the Federal court's action (and in some degree to swift action by the United States Court of Appeals for the Fifth Circuit in vacating a stay granted by the district court). If a three-judge court had been available in this case, along the lines of the Commission's recommendation, such a court might well have been more willing than the single judge to issue a preliminary injunction in September, with the result of even earlier admission of the plaintiffs. A new suit in Mississippi should cast further light on the potential usefulness of the Commission's recommendation.

The third recommendation pointed out the need for action to alleviate academic handicaps resulting from inferior educational opportunities.

The Commission recommended Federal aid to the States for programs designed to assist public school teachers and students of native talent who are handicapped professionally or scholastically as a result of inferior educational opportunity or training. Chapter 8 of the present report describes some programs that serve this purpose and indicates a great need for them in all parts of the Nation. Although the first session of the 87th Congress has had educational bills under consideration, no measure of the type recommended by the Commission has been introduced. The President's messages and recommendations to the Congress concerning Federal aid to education likewise ignore the Commission's recommendation.

UNIVERSITY OF GEORGIA

In September 1960, two Negroes, Charlayne A. Hunter and Hamilton E. Holmes, filed suit in a Federal district court to enjoin the University of Georgia from refusing on racial grounds to admit them. They also sought damages.² At the time the action was brought only two other Negroes had ever applied for admission to the university. One of the former applicants, Horace Ward, who had applied in 1950 for admission to the law school, was one of the attorneys for the successful plaintiffs.³

On September 25, 1960, a Federal court denied the request for a preliminary injunction on the ground that the plaintiffs had not exhausted their administrative remedies. The Board of Regents had not yet acted upon their appeal.⁴ But the court refused to dismiss the complaint as requested by the university.

Thereafter the Board of Regents denied both applications for admission. Mr. Holmes was rejected on the ground that "from a review of your records and on the basis of your personal interview, we are of the opinion that you do not qualify as a suitable applicant . . ."; Miss Hunter, "due to limited facilities."⁵ The board assured both applicants that they could "renew and pursue their applications without prejudice."⁶

After a full hearing, which lasted 4½ days, the Federal district court found that the university's grounds for denying the applications were without merit, and permanently enjoined the university officials:⁷

From refusing to consider the applications of the plaintiffs and other Negro residents of Georgia for admission to the University of Georgia upon the same terms and conditions applicable to white

applicants seeking admission to said university; and from failing and refusing to act expeditiously upon applications received from Negro residents of Georgia; and from refusing to approve the applications of qualified Negro residents of Georgia for admission to said university solely because of the race and color of the Negro applicants; and from subjecting Negro applicants to requirements, prerequisites, interviews, delays, and tests not required of white applicants for admission; and from making the attendance of Negroes at said university subject to terms and conditions not applicable to white persons; and from failing and refusing to advise Negro applicants promptly and fully regarding their applications, admission requirements and status as is done by the defendant and his associates in the case of white applicants; and from continuing to pursue the policy, practice, custom, and usage of limiting admission to said university to white persons.

The court denied the plaintiffs' claim for damages. It noted that under the terms of the Georgia Appropriation Act ⁸ the university would lose State aid upon the admission of the plaintiffs; granted a stay of its order for immediate admission; ⁹ and observed that: ¹⁰

. . . [T]his court is not allowing this stay because of the terms of the Appropriations Act or because of any confusion or uncertainty that might result from the terms of that act. I am allowing this stay solely in order that the defendant in this case might exercise his legal right of appeal in order to test the correctness or incorrectness of the decree heretofore entered by this court, and in order that he might do so before the decree has to be carried out.

The United States Court of Appeals for the Fifth Circuit swiftly overturned the district court's stay thus reinstating the order for admission.¹¹

On the night following the district court's ruling, three student demonstrations opposing plaintiffs' admission were held on the university campus.¹² Meanwhile the General Assembly of Georgia enacted four measures (proposed by the Governor) to permit operation of public schools and colleges even if desegregated. At the same time the legislature adopted other measures designed to keep control of school administration out of the hands of the Federal judiciary; and to hold desegregation to a minimum.¹³

On January 11, 1961, Miss Hunter and Mr. Holmes attended their first classes at the university. After a few days of disorder and demonstrations they were suspended and removed from the campus. University officials said that the presence of the two Negro students on campus was a threat to their own safety and that of other students.¹⁴ The court ordered readmission in spite of the demonstrations. It quoted

the language of the Supreme Court in the *Little Rock* case: “. . . The constitutional rights of [plaintiffs] are not to be sacrificed or yielded to . . . violence and disorder.”¹⁵ The students returned to classes at the university on January 16 without further difficulty.

Miss Hunter lived in a campus dormitory; Mr. Holmes roomed in a private home. At first both voluntarily refrained from using dining, library, and other campus facilities. However, on March 9, 1961, Miss Hunter obtained a court ruling that the dining room, swimming pool, and all other university facilities had to be made available to all students on an equal basis.¹⁶ No further disorder or student demonstration has been reported. On May 4, 1961, the university announced that the application of an Atlanta Negro teacher for admission to the graduate school had been approved. She is the first Negro student to be accepted for graduate study.¹⁷

OTHER PUBLIC COLLEGES

On May 11, 1961, the Georgia Institute of Technology accepted the applications of three Negro students for admission in the fall of 1961. They are the first of their race to be admitted to the school in its 76-year history.¹⁸ The voluntary lifting of the racial barriers at Georgia Tech came 4 months after the two Negroes were admitted to the University of Georgia.¹⁹

Georgia Tech student leaders and prominent alumni supported the action as in keeping with the United States Supreme Court's decision in the *School Segregation Cases*.²⁰ The student body president stated that the students at the school were “mature and responsible” enough to understand and abide by sound decisions.²¹ Governor Vandiver in commenting on the action of Georgia Tech officials said at a news conference that the problem had been thoroughly explored by school officials and the State Board of Regents and found to be in Tech's best interest.²²

In Charlotte, N.C., the trustees of Charlotte and Carver Junior Colleges—one formerly for whites, the other for Negroes—announced in February 1961 that after completion of their permanent buildings, they would both be opened to qualified students regardless of race or color.²³ Two Negro taxpayers brought suit in a State court to halt construction of segregated buildings for Carver College on the ground that it “will in fact prolong the existence of segregated education.”²⁴ A State superior court held for the defendants on the ground that the complaint did not state a cause of action²⁵ in light of the announcement that both colleges would be open to all qualified students.

In May 1961 a Negro applied for admission to the University of Mississippi.²⁶ His application was denied on the grounds that he was attending a nonaccredited college, and that he did not have the certificates from alumni of the university required by law.²⁷ The student then brought action in a Federal district court alleging that he was a student at Jackson State College, a public institution administered by the same board of trustees as the University of Mississippi.²⁸ This suit, the first of its kind in the State of Mississippi, seeks to restrain the university from refusing to permit the plaintiff to enroll in the summer session beginning June 8, 1961.²⁹ It also seeks to open all of Mississippi's colleges and universities to qualified Negroes. The court denied the plaintiff's request for a restraining order, and set June 12 for hearing on a preliminary injunction.³⁰ No decision has been announced.

The university's chancellor, J. D. Williams, said in an address to students, that steps to prevent desegregation of Mississippi's white senior colleges will not be determined by the individual institutions. He asserted that they will be mapped "in Jackson," by the Governor, legislature, and board of trustees of State institutions of higher learning.³¹

It is reported that three Negro women have applied for admission to Winthrop State College for Women at Rock Hill, S.C. President Charles S. Davis of Winthrop said that he did not know whether the applications were from publicity seekers or genuine students.³² Two Negro college men have applied for transfers to Clemson College at Clemson, and one has applied for admission to South Carolina Medical College at Charleston in September 1961.³³ Under South Carolina law, a court order admitting a Negro to any of the white State-supported colleges will automatically close not only that college, but also South Carolina State College for Negroes at Orangeburg,³⁴ the only public Negro college in the State.

The University of Tennessee admitted two Negroes to the undergraduate division for the second semester of the school year 1960-61.³⁵ They were accepted under a desegregation policy adopted by the board of trustees in November 1960.³⁶ They registered routinely and without disturbance.³⁷ The university's graduate and law schools have been desegregated since 1952.³⁸

PRIVATE COLLEGES

Several private institutions for higher education have announced plans to desegregate since the publication of the Commission's *Higher Education Report*. All of them receive Federal funds.³⁹ On January 31, 1961, the trustees of the University of Miami announced that in the

future the university would accept "any qualified student in any of its schools or colleges . . . regardless of race, creed, or color."⁴⁰ On April 19, 1961, Tulane University at New Orleans, Louisiana, announced that it would "admit qualified students regardless of race or color" if it were legally permissible.⁴¹ Duke University at Durham, N.C., has indicated that it will admit Negroes to its graduate and professional schools beginning in the fall of 1961. Duke was the first private college in North Carolina to announce such a policy.⁴² Following Duke's example, the trustees of Wake Forest College at Winston-Salem, N.C., authorized the college's three graduate divisions to admit qualified applicants without regard to race. This, however, left the final decision on admitting particular applicants to the discretion of the deans and faculties of each graduate school.⁴³ (Duke and Wake Forest are the only two private colleges in North Carolina which have graduate schools in law and medicine.) On June 5, 1961, Wake Forest trustees further liberalized their policy. They said the college could admit a "limited number of special students for evening classes or summer term classes without discrimination as to race."⁴⁴

At least some of these changes in admission policy were reported to have been influenced by the Commission's *Higher Education Report*.

12. Conclusions

The Nation's progress in removing the stultifying effects of segregation in the public elementary and secondary schools—North, South, East, and West—is slow indeed.

During the period 1959–61, only 44 school districts in the 17 Southern and border States initiated desegregation programs; 13 of these acted under court orders; 15 more were pressured into action by pending suits. Seven years after the Supreme Court decision in the *School Segregation Cases*, 2,062 school districts in the South that enroll both white and Negro pupils had not even started to comply with the requirements of the Constitution. These include all districts in Alabama, Georgia, Mississippi, and South Carolina; all but one in Florida and one in Louisiana. Some of the 775 that have started to desegregate have barely begun a 12-year progression; others, by making all initial assignments by race and placing the burden of seeking transfer on Negro pupils—often under extensive pupil placement procedures—have kept at a minimum the number of Negroes in attendance at formerly white schools.

In the North and the West, where segregation by race, color, religion, or national origin is not officially countenanced, it exists in fact in many public schools. A Federal court decision in the *New Rochelle, N.Y.*, case in January 1961 (affirmed by the court of appeals) which required the desegregation of a public school in a northern city, was probably the most significant single event affecting equal protection of the laws in public education since the Supreme Court's decision in the *Little Rock* case in 1958.

Legislative resistance to desegregation has continued in some Southern States, notably Louisiana. Others, such as Virginia and Georgia, have shifted from massive resistance to freedom of choice fortified by tuition grants. The former proved unconstitutional; the new strategy is now before the courts. The *Prince Edward* (Va.) case raised the question whether the closing of the public schools and financing the education of all children who seek it in private schools is an evasion of a court order to desegregate. In the *St. Helena* case the closing of a public school in accordance with Louisiana State law to avoid the neces-

sity of desegregating has been successfully challenged as a denial of equal protection under the 14th amendment.

The Attorney General of the United States has been active in the *New Orleans* case to prevent nullification of constitutional principles by State action; to prevent evasion of the Federal court order to desegregate public schools; and to provide protection to Negro children assigned to formerly white schools. He has also filed a brief as *amicus curiae* in *St. Helena*. By invitation of the Federal court in the *New Rochelle* case, he filed a brief advising the court with regard to the order to be entered. Only in *Prince Edward* has the Federal court denied the Attorney General the right to intervene to protect the interests of the United States.

During the period 1959-61 there have been numerous desegregation suits in the Federal courts. The law of desegregation is gradually emerging as lower courts have had to apply the principles of the *School Segregation Cases*, and other pertinent Supreme Court pronouncements, to specific problems. Recent decisions indicate that initial assignment of all pupils by race subject to the right to apply for transfer does not meet constitutional requirements, and that equal protection of the laws demands that the same criteria for assignment must be applied to both whites and Negroes. This should lead to a reevaluation not only of administrative procedures under pupil placement plans but of the entire concept of pupil placement as a method of desegregation.

In *New Rochelle* the court placed on the school board the obligation of undoing segregation created prior to 1949 by gerrymandering of school zones. As this principle has been affirmed on appeal, school boards having uniracial schools can no longer justify it merely on the basis of residential patterns in combination with a neighborhood school policy. Any existing segregation may be constitutionally suspect. School boards that want to operate their schools in a constitutional manner may have to inquire into the cause of any existing segregation. They may have to prove that zoning lines follow residential patterns by coincidence, not design; that the sites and sizes of schools were not fixed to assure segregation; that racial residential patterns were not officially created in the first instance. Thus *New Rochelle* challenges many school boards in the North and the West which have thought they were immune from attack because existing segregation did not result from school assignment explicitly by race.

Many dependents of military personnel are still attending segregated off-base schools in the Southern States, particularly in Alabama, Georgia, Louisiana, Mississippi, and South Carolina. In the past 2 years a few off-base schools have been desegregated in Arkansas, Florida, and North Carolina by voluntary agreement; and in Tennessee by court order. In Texas an on-base school operated by local school authorities was desegregated only after suit was filed. In many places integrated on-base

schools provide elementary school instruction only; high school students must face the problem of segregated schools in local communities.

The growing recognition in the North and the West that "we have to do a lot more for some children just to give them the same chance to learn" forecasts an affirmative approach to equal protection. School systems that have initiated projects to help minority-group children surmount economic, social, and cultural barriers inherited from generations of deprivation have found marked improvement in their scholastic achievement. Private groups also are offering programs to meet the same need. If the function of public schools is to provide opportunity for *all* American children to develop the skills, attitudes, and knowledge that will enable them to contribute fully to American life, the extension of such programs throughout the Nation should be expected.

Many public libraries in Southern States that receive Federal aid under the Library Services Act of 1956 fail to provide free library service to all residents of the community, or do so only on a separate but unequal basis. In some places only white residents are served.

The admission of two Negro students to the University of Georgia in January 1961 is the outstanding event in the field of higher education since the publication of the Commission's *Higher Education Report*. Several other colleges and universities, both public and private, have announced a policy, effective September 1961, of admitting students without regard to race or color. The first school desegregation suit of any kind in the State of Mississippi has been filed to secure admission to the State university. It has not been decided.

With the opening of school in September 1961, initial desegregation under court order is scheduled in Atlanta, Ga.; Dallas and Galveston, Tex.; Escambia County (Pensacola), Fla.; and several communities in southern Delaware. Asheville, N.C.; two small communities and one county in Tennessee; two small school districts in Texas; and four in Virginia will voluntarily open their formerly white schools to Negroes for the first time.

A substantial extension of desegregation has been announced in Little Rock, Ark., Dade County (Miami), Fla., and several counties in Virginia. Perhaps the most significant announcement is from Chapel Hill, N.C. It will abandon pupil-placement desegregation in the fall of 1961 in favor of a Nashville-type grade-a-year plan. Grade-a-year plans in Nashville, Knoxville, and Davidson County, Tenn.; Dollarway, Ark.; and Houston, Tex., will desegregate new grades per schedule.

Numerically, the greatest increases in Negroes attending school with whites for the first time will occur in counties of Maryland and Virginia suburban to Washington, D.C. In Arlington and Fairfax Counties, Va., 180 Negroes are expected in the formerly white schools as compared with 71 in 1960-61. In Montgomery County, Md., the closing of the

last three Negro schools marks the completion of a desegregation program by transfer of 764 Negro pupils to formerly white schools.

In spite of these anticipated advances, the threat of more school closings, reduction of financial aid to public school systems by tuition grants for attendance at private schools, tax credits for contributions thereto, and repeal of compulsory school attendance laws are weakening public education in some parts of the land—when the national interest demands its strengthening.

As a distinguished observer has said: ¹

It becomes even more difficult to conceive of retreating from public education into private education, anarchic education, or no education at all when one thinks of the cold war. Doubtless the educational philosopher should rise above considerations of international tension as a determinant force in shaping the schools. But it is nonetheless true that the principal rival of the United States, the Soviet Union, shapes its education on public lines and on public lines only. Before we retreat from public education as a predominant pattern of civic responsibility, we ought to ponder the report of William Benton, publisher of the Encyclopaedia Britannica, when, returning from a trip to Russia, he said: "I have returned convinced that education has become a main theater of the cold war; Russia's classrooms and libraries, her laboratories and teaching methods may threaten us more than her hydrogen bomb or her guided missiles. . . ."

FINDINGS

Need for Federal action to speed desegregation

1. Seven years after the Supreme Court's decision in the *School Segregation Cases* (May 17, 1954) only 775 of 2,837 biracial school districts in the 17 Southern States that required racial segregation in the public schools on that date had taken any action to abolish racial segregation. The school districts in which racial segregation is still maintained include all those in Alabama, Georgia, Mississippi, and South Carolina, all but one in Florida and but one in Louisiana, and a large percentage of those in Arkansas, North Carolina, Virginia, Tennessee and Texas.

2. In many of the school districts where some start has been made, actual desegregation is minimal. In fact only 7 percent of all Negroes enrolled in the public schools in the 17 Southern States attended school with white pupils in 1960-61, whereas 27 percent of the school districts

have made some start towards compliance with constitutional requirements.

3. The trend observed in 1957-59 toward desegregation by court order rather than by voluntary action has continued. In 1959-61, 44 school districts initiated desegregation plans; 13 of those acted under court order and another 15 were at least pressured into action by pending suits or orders that could be extended to them.

4. In the *Little Rock* case the Supreme Court emphasized the duty of all school boards to abolish compulsory segregation in the public schools under their jurisdiction. The adoption of a desegregation plan is a necessary preliminary step. Nevertheless, in recent years such action has depended increasingly upon court orders.

5. Congressional specification of a time limit on the making and implementation of segregation plans would remove all doubt as to the duty of school boards to abolish segregation in their schools even in the absence of a court order and should speed the desegregation process. It would also make clear that enforcement of the commands of the Constitution is the concern not only of the judiciary, but of every branch of Government.

6. Federal funds in support of educational programs are granted to public school systems which operate schools in a manner that denies pupils equal protection of the laws on the ground of race, color, religion or national origin.

7. Allotting to each State only 50 percent of any authorized grants-in-aid and prorating the remaining 50 percent in proportion to the percentage of pupils in desegregated school districts as compared to the total school population, would recognize the efforts of some States to bring the operation of their school systems into compliance with constitutional requirements and should spur other States to follow the same path. Under a proration formula proportionate effort would be recognized and wholly resistant States would not be totally penalized for their intransigence since they would receive 50 percent of all authorized funds.

8. In the typical public school case, several years elapse between the initial court decision and actual admission of Negro pupils on a non-discriminatory basis. For example, in the following cases where admission was realized in September 1960 the first court decision came on the dates indicated: Houston—September 1958, New Orleans—February 1956; and in cases where admission has been ordered for September 1961: Atlanta—May 1958, Dallas—September 1955.

Need for Federal assistance

9. Even able Negro pupils entering a formerly white school from a segregated school may have problems of adjustment. Desegregation has focused attention on the gap between the scholastic achievement of the

average white and the average Negro student of the same age and grade level.

10. Programs have been devised by public school systems and private organizations in Northern, Western and Border States to afford minority-group members a fairer chance to compete and to encourage them to aspire to and achieve higher scholastic levels. For the most part such programs have been developed with private financial aid. They have demonstrated that minority-group members can achieve higher performance if the educational opportunity offered them is fitted to their particular needs.

11. Most of the programs studied by the Commission stress the minority-group child's need for special counseling and guidance, remedial instruction, and stimulus to overcome the effect of past deprivations.

12. School systems might be more willing to undertake desegregation if Federal funds and technical assistance were available to provide the programs needed to close the cultural and academic gap.

13. The Legislature of Louisiana met in extraordinary and regular session almost continually during the school year 1960-61 in an attempt to prevent the desegregation of the New Orleans schools pursuant to the order of a Federal court. Its temporarily successful attempts to deny State funds to Orleans Parish School District, to cut off the salaries of teachers in the desegregated schools, and to prevent the school board from borrowing from the usual commercial sources, although later invalidated by a Federal court, greatly hampered, embarrassed and tended to demoralize the school officials, teachers and other personnel in carrying out their assigned duties throughout the school year.

14. The experience of Orleans Parish School District in 1960-61 shows the need of temporary outside financial assistance when a State attempts to cut off financial aid and credit to a school system trying to desegregate its schools in compliance with a Federal court order. Two other States (Arkansas and South Carolina) have laws for cutting off State aid to desegregating school districts and South Carolina has authorized two counties to cut off local funds.

15. Public education available to all children in all States, and compulsory school attendance for a minimal period averaging age 7-16 years, have contributed to the strength and unity of the Nation. The closing of public schools even temporarily, the diversion of State and local funds to tuition grants for private schooling, and the repeal of compulsory school attendance laws, threaten public education and the welfare of the Nation as a whole.

16. No Federal agency is charged with the duty of: disseminating information concerning desegregation plans, problems, and possible solutions; assisting local school officials in formulating plans to meet local conditions and constitutional requirements; or of using its good offices to mediate and conciliate disputes.

Need for Federal protection

17. The Attorney General of the United States in the period 1959-61 diligently sought to forestall nullification of constitutional principles by State actions; to prevent evasion of Federal court orders; and to provide protection to Negro children assigned to formerly white schools. Nevertheless, disorder accompanied desegregation in New Orleans and white people supporting Federal law and order were not adequately protected by the Federal Government. No member of the rioting crowds in New Orleans was prosecuted for attempting by threats or force to prevent, obstruct, impede or interfere with the performance of duties under the Federal court order to desegregate the New Orleans schools. (See the Civil Rights Act of 1960)

18. In New Orleans white pupils attempting to attend desegregated schools and their parents were exposed to threats, loss of employment, harassment and persecution. They received no direct aid from the Federal Government and no protection was available to citizens groups working to keep the public schools open even if desegregated. In such situations Federal protection is needed to prevent private or official harassment and reprisals.

Education of dependents of military personnel

19. Many dependents of military personnel assigned to duty in Southern States have had to attend racially segregated public schools particularly in Georgia, Louisiana, Mississippi, and South Carolina where there are very few on-base schools.

20. No consistent overall policy as to the responsibility of the United States for the education of the children of military personnel in a manner consistent with constitutional principles appears to have been established by the Executive branch. In a few places in the last 2 years agreement was reached with local school authorities to admit such children to off-base schools without regard to race; in many more places they still attend racially segregated schools. In one instance Negro plaintiffs had to bring suit in a Federal court to secure admission of their children to a school located on a military base.

21. Congress has recognized that the Federal Government has a particular responsibility to provide suitable education for the children of military personnel on active duty. Racially segregated public schools are in violation of the Constitution and, therefore, are unsuitable for the education of children of military personnel.

Financial aid to public libraries

22. Some public libraries in the 17 Southern States that receive Federal aid under the Library Services Act of 1956 serve whites but not

Negroes; in others the segregated services for Negroes are greatly inferior to those for whites.

23. The Library Services Act of 1956 requires that all participating libraries shall provide free service to all residents of the communities they serve and also directs the Commissioner of Education to withhold Federal funds if he finds that the administration of a State plan fails to comply with the requirements of the act.

Alleviation of academic handicaps

24. The deprivations that school segregation imposes on minority-group members tend to be perpetuated through inferior segregated colleges, devoted primarily to training graduates for teaching careers for the most part in segregated public schools. These deprivations raise problems not only in connection with the desegregation of school systems (see findings 9 to 11 *supra*), but in limiting the opportunities of individual minority-group students and teachers.

25. Educational programs at the precollege and graduate levels designed to identify and assist students and teachers of native talent could help to overcome the cumulative deprivations of the past; and would benefit the education system of the Nation.

Higher education

26. Federal support of higher educational institutions that do not comply with constitutional principles is unconscionable and should be terminated. There is no justification for delay in compliance with constitutional requirements in institutions of higher education.

School census by ethnic classification

27. A comprehensive nationwide study of equal protection of the laws in public education requires complete and accurate factual information as to the schools attended by all major ethnic groups, including, for example, Puerto Ricans and Mexican-Americans, as well as racial groups, such as Negroes and Orientals. An annual headcount in school districts, colleges and universities that would not be part of the permanent record of individual students would provide the data needed for evaluation of equal protection in educational institutions without exposing students to the risk of discrimination.

28. The *New Rochelle* case, affirmed by the United States Court of Appeals for the Second Circuit, and other lower court decisions, make it clear that denial of equal protection of the laws under the 14th amendment does not depend solely upon assignment to school by race. Information about racial segregation in Northern schools, viewed in the light of the *New Rochelle* case and other decisions, indicates that denial

of equal protection in public schools on the ground of race is a national, not regional problem.

29. Reliable data showing the ethnic composition of individual public schools and higher educational institutions would be helpful in studying practices in Northern, Western and Border States that may constitute a denial of equal protection of the laws.

RECOMMENDATIONS

Federal action to speed desegregation

Recommendation 1.—That the Congress enact legislation making it the duty of every local school board which maintains any public school from which pupils are excluded on the basis of race, to file a plan for desegregation with a designated Federal agency within six months after the adoption of such legislation, said plan to call for at least a first step toward full compliance with the Supreme Court's decision in the *School Segregation Cases* at the beginning of the following school year, and complete desegregation as soon as practicable thereafter. Further, that Congress direct the Attorney General to take appropriate action to enforce this obligation.

Recommendation 2.—That the Congress provide that any and all Federal grants-in-aid to the various States for educational programs in elementary and secondary public schools be allocated so that States wherein all school districts are operated on a nondiscriminatory basis shall receive the full amount computed under the applicable statutory formula; that States wherein no school districts are so operated shall receive only 50 percent of such funds; that States wherein school districts have initiated desegregation programs shall receive 50 percent of such sum plus the same proportion of the remaining 50 percent as the number of pupils enrolled in all school districts in the State which have initiated a program of desegregation bears to the total number of pupils enrolled in all school districts in the particular State which have a biracial school population.

Dissent to Recommendation 2 by Commissioner Rankin

Although this recommendation does not provide for the withholding of all funds from public schools, its purpose is similar to that of the "Powell Amendment" and its net effect might be punitive. I do not believe that school children should be made to suffer for the errors of their elders.

Recommendations requiring the withholding of funds from States which are not completely desegregated would warrant serious consideration only if there were no other way to achieve conformity with the Constitution without penalizing students. Many of the other recommendations in this report are designed to bring about desegregation without harming education.

Thus I dissent from Recommendation 2 because I believe it to be unnecessary and potentially punitive.

Recommendation 3.—That Congress consider the advisability of adopting measures to expedite the hearing and final determination of actions brought in Federal courts to secure admission to publicly-controlled educational institutions without regard to race, color, religion or national origin.*

Federal assistance to desegregating school districts

Recommendation 4.—That the Congress enact legislation authorizing a Federal agency, upon request, to provide technical or financial assistance to local school systems at any time within 5 years after the initiation of a desegregation program, or to local citizens' groups attempting to help solve problems arising from such desegregation, in any of the following ways: (1) financial aid to school districts on a 50-50 matching basis for the employment of social workers, or specialists in desegregation problems, or for inservice training programs for teachers or guidance counselors; (2) technical assistance to school districts or citizens' groups to train school personnel or community leaders in techniques useful in solving desegregation problems, including the establishment of home study programs for the academically and culturally handicapped; provided, however, that the desegregation program and its execution shall have been found by the agency administering the program to meet constitutional requirements.

Recommendation 5.—That the Congress enact legislation authorizing loans to local school districts from which State or local financial aid has been withdrawn as a result of desegregation, or whose ability to borrow funds from commercial sources has been cut off by State or local action, said loans to be repayable by the borrower upon the receipt of the State or local aid withheld or the restoration of commercial credit.

Recommendation 6.—(a) That the President direct, or the Congress enact legislation authorizing, the Commission on Civil Rights, if ex-

*Recommendation 3 reaffirms in principle one made by the Commission in its *Higher Education Report*. At that time the Commission suggested the use of three-judge courts to expedite final determinations in desegregation cases at the college level. Since there are additional ways that desegregation cases may be expedited, the Commission has now framed its recommendation in general terms and expanded it to include desegregation cases at the elementary and secondary school levels as well.

tended, to serve as a clearinghouse to collect and disseminate information concerning programs and procedures used by school districts to achieve an organization and operation of their schools in accordance with constitutional principles, including data as to the known effects of such programs on the quality of education and the cost thereof; (b) That the Commission further be authorized to establish an advisory and conciliation service to assist local school officials in developing plans designed to meet constitutional requirements and local conditions, and to attempt to mediate and conciliate disputes between school officials and school patrons, upon the request of either, as to desegregation of schools—proposed plans for desegregation, or the implementation of plans already in operation. The Commission agrees that the use of such an advisory and conciliation service should not be a prerequisite to the bringing of legal action in a Federal court nor a ground for delay in the prosecution of a pending action; that its purpose is to obviate the necessity of legal action where possible and, in the case of pending suits, to speed, not delay, a final determination.*

Federal protection to school officials and citizens

Recommendation 7.—That the President or the Congress direct the Attorney General to take such action as may be appropriate, in any case where a school system is operating under a plan to bring it into conformance with the requirements of the 14th amendment, to protect the school board members carrying out such plan, supervisory officials and teachers in school systems executing the orders of such school boards, school children of both races attempting to attend schools affected by the plan and their parents, and citizens helping such children or their parents, from bodily harm, harassment, intimidation, and/or reprisal by officials or private persons.

Education of dependents of military personnel

Recommendation 8.—That the President direct the Department of Defense to make a complete survey of the segregated-desegregated status of public schools attended by dependents of military personnel living on-base or in the absence of sufficient housing on-base, living in the vicinity of a base, and report its findings to him. Further, that insofar as such dependents are found to be attending compulsorily racially segregated schools, the President instruct the Commissioner of Education to make suitable arrangements for their education in public schools or on-base schools open to all such dependents without discrimination because of color or race.

*Recommendation 6 is similar to a recommendation made by the Commission in its 1959 *Report*.

Aid to public libraries under Library Services Act

Recommendation 9.—That the President direct the Office of Education of the Department of Health, Education, and Welfare, to make a survey of the practices of all public libraries receiving Federal financial aid under the Library Services Act of 1956 to determine whether or not they are offering free service to all residents of the community as required by the terms of that law and by the equal protection clause of the 14th amendment of the Constitution. Further, that the Commissioner, as provided in the law granting such Federal aid, withhold Federal funds from States which include under the State plan libraries not serving all residents of the community or not serving all of them in a manner consonant with constitutional principles.

Alleviation of academic handicaps

Recommendation 10.—That the Federal Government sponsor in the several States, upon their application therefor, educational programs designed to identify and assist teachers and students of native talent and ability who are handicapped professionally or scholastically as a result of inferior training or educational opportunity.*

Higher education

Recommendation 11.—That the Federal Government, either by executive or by congressional action, take such measures as may be required to assure that funds under the various programs of Federal assistance to higher education are disbursed only to such publicly-controlled institutions of higher education as do not discriminate on grounds of race, color, religion or national origin.

The Commission agrees that in any such Federal action taken it should be stipulated that no Federal agency or official shall be given power to direct, supervise or control the administration, curricula or personnel of an institution operated and maintained by a State or a political subdivision thereof;**

School census by ethnic classification

Recommendation 12.—That the President or the Congress direct a Federal agency or agencies to conduct an annual school survey to determine

* Recommendation 10 reaffirms a recommendation made by the Commission in its *Higher Education Report*.

** Recommendation 11 reaffirms without change one made in the *Higher Education Report*. Four Commissioners believe, however, that as a matter of sound public policy the same principle should be extended to privately controlled institutions.

the number and ethnic classification of all students enrolled in all public educational institutions in the United States and compile such data by States, by school districts, by individual schools, and by individual institutions of higher education within each State.*

* Recommendation 12 reaffirms a similar recommendation made by the Commission in its 1959 *Report*. The Commission reemphasizes its position that this recommendation does *not* contemplate the establishment of school records by race or ethnic classification. The trend toward the elimination of such identification on student records should, in fact, be accelerated.

Documentation—Book 2

NOTES: EDUCATION, Chapter 1

1. 347 U.S. 483 (1954).
2. *Id.* at 493.
3. Civil Rights Act of 1957, secs. 104(a) (2) and (3), 71 Stat. 635, 42 U.S.C., sec. 1975c(a) (1958).
4. *United States Commission on Civil Rights, Equal Protection of the Laws in Public Higher Education, 1960* (hereinafter cited to as *Higher Education Report*).
5. The 17 Southern States requiring racially segregated schools were: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The three States permitting segregation under certain circumstances were: Arizona, Kansas, and New Mexico. Additionally, the laws of the State of Wyoming permitted segregated schools but, in fact, none were ever established.
6. *Taylor v. Bd. of Education of New Rochelle, N.Y.*, 191 F. Supp. 181 (S.D. N.Y. 1961), *aff'd* 2d Cir. 1961). A classification based on race, religion or national origin has been held to be arbitrary, hence, a denial of equal protection of the laws. See *Hernandez v. Texas*, 347 U.S. 475, 477-78 (1954) (national origin); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (race, color, or nationality); *Harris v. Sunset Islands Property Owners, Inc.*, 116 S. 2d 622, 625 (Fla. 1959) (religion). See also *Griffin v. Illinois*, 351 U.S. 12, 17 (1956) (poverty no more than religion, race, or color).
7. 70 Stat. 293, as amended, 20 U.S.C. secs. 351-58 (1958).
8. 18 U.S.C. sec. 1509 (Supp. II, 1959-60).
9. *Report of the United States Commission on Civil Rights, 1959* at 324 (hereinafter cited as *1959 Report*).
10. "Where the Great Change Took Place," *New York Times Magazine*, February 5, 1961, p. 68.

NOTES: EDUCATION, Chapter 2

1. *Brown v. Board of Education of Topeka*, 347 U.S. 483, 492 (1954).
2. *Id.* at 495.
3. *Id.* at 493.
4. 349 U.S. 294, 298 (1955).
5. *Steiner v. Simmons*, 111 A. 2d 574 (Del. 1955).
6. *E.g.*, *Borders v. Rippey*, Civ. No. 16483, 5th Cir., July 23, 1957, 2 *Race Rel. L. Rep.* 805 (1957); *Bush v. Orleans Parish School Board*, 138 F. Supp. 335 (E.D. La. 1956); *Covington v. Montgomery County School Board*, 139 F. Supp. 161 (M.D.N.C. 1956); *Davis v. School Board of Prince Edward County*, 142 F. Supp. 616 (E.D. Va. 1956).
7. *Sweatt v. Painter*, 339 U.S. 629, 635 (1950); *Sipuel v. Board of Regents*, 332 U.S. 631, 633 (1948); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 351 (1938).
8. See 1959 Report 167.
9. *Brown v. Board of Education*, *supra*, note 4, at 299.
10. *Ibid.*
11. *Id.* at 300.
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. *Id.* at 300-01.
16. *Id.* at 301.
17. *Id.* at 300.
18. 358 U.S. 1; 358 U.S. 28 (1958).
19. 358 U.S. 1, 4 (1958).
20. *Id.* at 17.
21. *Id.* at 7.
22. *Ibid.* [Emphasis added.]
23. *Ibid.*
24. See p. 22, *infra*.
25. 358 U.S. 101 (1958).
26. 162 F. Supp. 372 (N.D. Ala. 1958).
27. *Id.* at 384.
28. 353 U.S. 230 (1957).
29. *Cooper v. Aaron*, *supra*, note 19, at 4.
30. *Pennsylvania v. Board of Directors of City Trusts*, *supra*, note 28, at 231.
31. *Brown v. Board of Education*, *supra*, note 4, at 300.
32. *Brown v. Board of Education*, *supra*, note 1, at 493.
33. *Brown v. Board of Education*, *supra*, note 4, at 300.

NOTES: EDUCATION, Chapter 3

1. See 1959 Report 299-305.
2. *Cooper v. Aaron*, 358 U.S. 1, 7 (1958). [Emphasis added.]
3. 347 U.S. 497, 498 (1954). [Emphasis added.]
4. 238 F. 2d 91, 99 (8th Cir. 1956).
5. *Dove v. Parham*, 282 F. 2d 256, 259, 261 (8th Cir. 1960).
6. *Beckett v. School Board of the City of Norfolk*, Civ. No. 2214, E.D. Va., Aug. 25, 1958 (statement of Federal district court), 3 *Race Rel. L. Rep.* 946, 949 (1958).
7. *Dove v. Parham*, 183 F. Supp. 389, 392 (E.D. Ark. 1960).
8. *Dove v. Parham*, *supra*, note 5, at 261.
9. Letter from Dr. John Fischer, then Supt. of Schools, Baltimore, Md., to the Commission, Feb. 20, 1959, and attachments.
10. *Williamsburg Transcript* 41.
11. *Briggs v. Elliott*, 132 F. Supp. 776 (E.D.S.C. 1955); *Dove v. Parham*, 181 F. Supp. 504, 513 (E.D. Ark. 1960); *Kelley v. Board of Education of City of Nashville*, 270 F. 2d 209, 228-29 (6th Cir. 1959). See also: *Thompson v. County School Board of Arlington*, 144 F. Supp. 239 (E.D. Va. 1956); *School Board of the City of Newport News v. Atkins*, 246 F. 2d 325 (4th Cir. 1957); *Covington v. Edwards*, 165 F. Supp. 957 (M.D.N.C. 1958), *aff'd*, 264 F. 2d 780 (4th Cir. 1959); *McKissick v. Durham City Board of Education*, 176 F. Supp. 3 (M.D.N.C. 1959).
12. 159 F. Supp. 272 (M.D. Tenn. 1958).
13. *Id.* at 278.
14. Civ. No. 10444, S.D. Tex. Aug. 3, 12, 1960, 5 *Race Rel. L. Rep.* 709 (1960).
15. *Ibid.*
16. 184 F. Supp. 402 (N.D. Tex. 1960).
17. *Sub nom., Boson v. Rippy*, 85 F. 2d 43 (5th Cir. 1960).
18. *Id.* at 45.
19. *Id.* at 45-46.
20. *Ross v. Peterson*, *supra*, note 14, at 709.
21. *Ibid.*
22. *Id.* at 710.
23. Houston School Census, 1961.
24. (New Orleans) Times-Picayune, Aug. 30, 1960, p. 3. See also N.Y. Times, Sept. 8, 1960, p. 59.
25. Under a plan adopted Apr. 24, 1961, by the New Orleans school board, no first-grade pupil will be transferred if his brothers or sisters attend another elementary school "and such permits would separate him from them." So. School News, June 1961, p. 9. It has been announced that the Dallas school board has also enacted the brother-sister provision to be used in September 1961, when

- Dallas initiates its court-ordered grade-a-year desegregation plan. Dallas Morning News, June 18, 1961, p. 1. These provisions will undoubtedly limit the number of Negro pupils eligible to attend a formerly white school.
26. *Nashville Transcript* 153.
 27. *Kelley v. Board of Education of the City of Nashville*, 270 F. 2d 209 (6th Cir. 1959).
 28. *Ibid.*
 29. *Id.* at 229.
 30. So. School News, Oct. 1960, p. 5.
 31. *Goss v. Board of Education of the City of Knoxville*, 186 F. Supp. 559 (E.D. Tenn. 1960).
 32. *Maxwell v. County Board of Education of Davidson County*, Civ. No. 2956, M.D. Tenn., Nov. 23, 1960, 5 *Race Rel. L. Rep.* 1040 (1960).
 33. *Mapp v. Board of Education of the City of Chattanooga*, Civ. No. 3564, E.D. Tenn., Oct. 21, 1960, 5 *Race Rel. L. Rep.* 1035 (1960).
 34. See *Williamsburg Transcript* 111.
 35. *Borders v. Rippy*, *supra*, note 16.
 36. *Boson v. Rippy*, *supra*, note 17 at 46.
 37. *Kelley v. Board of Education of the City of Nashville*, 361 U.S. 924 (1960).
 38. *Boson v. Rippy*, *supra*, note 17, at 48.
 39. Ala. Acts 1955, Vol. 1, No. 201, p. 492; Ark. Acts 1959, Vol. 2, No. 461, p. 1827; Fla. Laws 2d Ex. Sess. 1956, ch. 31380, p. 30; Ga. Laws 1961, H. Res. No. 225; La. Acts 1958, Act No. 259, p. 856; Miss. Acts 1960, S. Bill Nos. 2010, 1900; N.C. Laws Ex. Sess. 1956, ch. 7, p. 14; S.C. Acts 1955, No. 55, p. 83; Tenn. Acts 1957, ch. 13, p. 40; Tex. Acts 1957, ch. 287, p. 683; Va. Acts Ex. Sess. 1956, ch. 70, p. 74, as amended by Va. Acts 1958, ch. 500, p. 638, as amended by Va. Acts Ex. Sess. 1959, ch. 71, p. 165.
 40. *Id.*, N.C. Laws.
 41. *Id.*, Ala. Acts.
 42. *Id.*, Va. Acts.
 43. Arlington County, Falls Church, Fairfax County and Newport News. See ch. 4 at 62, *infra*.
 44. *Shuttlesworth v. Birmingham Board of Education*, 162 F. Supp. 372 (N.D. Ala., 1958); *aff'd*, 358 U.S. 101 (1958). See ch. 2 at 8-9, *supra*.
 45. Plaintiffs could sue on behalf of themselves and all others similarly situated.

Notes: Education, Chapter 3—Continued

46. *Carson v. Warlick*, 238 F. 2d 724 (4th Cir. 1956), *Covington v. Edwards*, 264 F. 2d 780 (4th Cir. 1959); *Holt v. Raleigh City Board of Education*, 265 F. 2d 95 (4th Cir. 1959).
47. 272 F. 2d 763 (5th Cir. 1959).
48. *Id.* at 766.
49. 176 F. Supp. 242 (E.D. Ark. 1951).
50. *Dove v. Parham*, 271 F. 2d 132, 139 (8th Cir. 1959).
51. *Id.* at 140.
52. 277 F. 2d 370 (5th Cir. 1960).
53. *Id.* at 375.
54. Virginia Pupil Placement Act, *supra*, note 39.
55. 185 F. Supp. 459 (E.D. Va. 1959).
56. Civ. No. 8238, 4th Cir., Apr. 14, 1961.
57. *Ibid.*
58. Civ. No. 16, 586, 8th Cir., Mar. 2, 1961.
59. See *supra*, note 39.
60. *Norwood v. Tucker*, *supra*, note 58.
61. *Ibid.*
62. *Ibid.*
63. *Wheeler v. Durham City Board of Education*, Civ. No. C-54-D-60, and *Spaulding v. Durham City Board of Education*, Civ. No. C-116-D-60, M.D.N.C., July 20, 1961.
64. 137 F. Supp. 776 (E.D. S.C. 1955).
65. 144 F. Supp. 239 (E.D. Va. 1956).
66. See note 63, *supra*.
67. *Ibid.*
68. *Ibid.*
- 68a. The school board met in three closed sessions to reconsider the requests and approved less than 10 Negro pupils for reassignment to formerly white schools. *Durham (N.C.) Morning Herald*, Aug. 9, 1961, p. 1B.
69. 186 F. Supp. 511 (W.D. N.C. 1960).
70. *Id.* at 518.
71. *Dodson v. School Board of the City of Charlottesville*, *supra*, note 56.
72. Civ. No. 3931, W.D. Tenn., Apr. 14, 1961.
73. *Ibid.*
74. E.g., *Hamm v. County School Board of Arlington County*, 264 F. 2d 945 (4th Cir. 1959). See also *Beckett v. School Board of Norfolk*, *supra*, note 55.
75. E.g., *Thompson v. County School Board of Arlington* Civ. No. 1341, E.D. Va., July 25, 1959, 4 *Race Rel. L. Rep.* 609, 610 (1959).

76. *E.g., Jones v. School Board of Alexandria*, Civ. No. 1770, E.D. Va., Feb. 6, 1959, 4 *Race Rel. L. Rep.* 29, 34 (1959).
77. *E.g., Thompson v. County School Board*, *supra*, note 75, at 610-11.
78. *Norwood v. Tucker*, *supra*, note 58.
79. *Ibid.*
80. *E.g., Hamm v. County School Board of Arlington*, *supra*, note 74.
81. *E.g., Thompson v. County School Board of Arlington*, *supra*, note 75.
82. Cubberley, *Public Education in the United States* 23-24 (1919). The colonial States often enacted laws to provide for apprenticeship training or special schools for paupers, orphans, children of the poor, and in some instances Western Indians.
83. *Norwood v. Tucker*, *supra*, note 58.
84. *Evans v. Buchanan*, Civ. No. 1816-22, D. Del., June 26, 1961, which involved a desegregation plan for the still segregated districts of Delaware is an exception. The court stated:

. . . it must be made clear that the standard of geographical location relates only to the question of which white or integrated school the pupil [Negro] desiring transfer may attend. It may not, for instance, be used by local authorities to deny integration because the pupil seeking it lives nearer to a presently wholly colored school than to white or integrated facilities. This must be made clear in the plan. . . .
85. *E.g., Jones v. School Board of Alexandria*, *supra*, note 76; *Hill v. School Board of Norfolk*, 282 F. 2d 473 (4th Cir. 1960).
86. *E.g., Dodson v. School Board of Charlottesville*, *supra*, note 56; *Thompson v. County School Board of Arlington*, *supra*, note 75.
87. *E.g., Jones v. School Board of Alexandria*, *supra*, note 76, *aff'd*, Civ. No. 7897, 4th Cir., Apr. 20, 1960, 5 *Race Rel. L. Rep.* 399, 402 (1960). See also *Wheeler v. Durham City Board of Education* and *Spaulding v. Durham City Board of Education*, *supra*, note 63.
88. *Thompson v. County School Board of Arlington*, Civ. No. 1341, E.D. Va., Sept. 16, 1960, 5 *Race Rel. L. Rep.* 1054 (1960).
89. *Warden v. Richmond School Board*, Civ. No. —, So. School News, Oct. 1960, p. 6.
90. *E.g., Jones v. School Board of Alexandria*, *supra*, note 76, and 179 F. Supp. 280, 284 (E.D. Va. 1959). See also *Thompson v. County School Board of Arlington*, *supra*, note 75.
91. *Id.* See also *U.S. v. Alabama*, Civ. No. 479-E, M.D. Ala., Mar. 17, 1961, where the court enjoined defendants from refusing to register to vote any Negro applicant otherwise qualified whose

performance in attempting to qualify equals the performance of the least qualified white applicant allowed to register.

92. *E.g.*, *County School Board of Arlington v. Thompson*, 166 F. Supp. 529 (E.D. Va. 1958).
93. *Thompson v. County School Board of Arlington*, *supra*, note 75.
94. *Beckett v. School Board of Norfolk*, Civ. No. 2214, E.D. Va., Sept. 18, 1958, 3 *Race Rel. L. Rep.* 1155 (1958).
95. *Blackwell v. Fairfax County School Board*, Civ. No. 1967, E.D. Va., Sept. 22, 1960, 5 *Race Rel. L. Rep.* 1056 (1960).
96. *E.g.*, *Beckett v. School Board of Norfolk*, *supra*, note 94. See also *Beckett v. School Board of Norfolk*, Civ. No. 2214, E.D. Va., Aug. 25, 1958 (Statement of Federal district court), 3 *Race Rel. L. Rep.* 946, 951 (1958); *Calhoun v. Board of Education of Atlanta*, Civ. No. 6298, N.D. Ga., Dec. 30, 1959, 5 *Race Rel. L. Rep.* 59, 62 (1960).
97. *Ibid.*
98. 358 U.S. 1 (1958).
99. *Beckett v. School Board of Norfolk* (Statement of Federal district court), *supra*, note 96, at 952.
100. *Thompson v. County School Board of Arlington*, 166 F. Supp. 529 (E.D. Va. 1958). Refusal of transfer for lack of mental or emotional stability has been rejected for lack of an evidentiary basis as to particular pupils, but the factor itself has not been disapproved. *Jones v. School Board of Alexandria*, *supra*, note 76.
101. *Dove v. Parham*, 271 F. 2d 132 (8th Cir. 1959).
102. *Calhoun v. Board of Education of Atlanta*, Civ. No. 6298, N.D. Ga., Jan. 20, 1960, 5 *Race Rel. L. Rep.* 56, 67, 70.
103. *Norwood v. Tucker*, *supra*, note 58.
104. See ch. 2 at 5, *supra*.
105. *Id.* at 6.
106. Civ. No. 530, W.D. Va., Sept. 8, 1958 (summarized in), 3 *Race Rel. L. Rep.* 972 (1958).
107. *Corbin v. School Board of Pulaski County*, 177 F. 2d 924 (4th Cir. 1949).
108. 305 U.S. 337 (1938).
109. *Walker v. Floyd County School Board*, Civ. No. 1012, W.D. Va., Sept. 8, 1959, 5 *Race Rel. L. Rep.* 714 (1960); *Goins v. School Board of Grayson County*, 186 F. Supp. 753 (W.D. Va. 1960); *Crisp v. Pulaski County School Board*, Civ. No. 1052, W.D. Va., Apr. 26, 1960, 5 *Race Rel. L. Rep.* 721 (1960).
110. *Pettit v. Board of Education of Harford County*, Civ. No. 11955, D. Md., May 25, 1960, 5 *Race Rel. L. Rep.* 379; *Groves v. Board of Education of St. Marys County*, 261 F. 2d 527 (4th Cir. 1958).

111. See note 98, *supra*.
112. *Id.* at 7.
113. *Hayes v. County School Commission of Rutherford County*, Civ. No. 2767, M.D. Tenn., Sept. 11, 1959, 4 *Race Rel. L. Rep.* 874 (1959).
114. *E.g.*, Pulaski County School District (Ark.) and Frenship Rural School District (Tex.). (See ch. 4 at 45 and 53, *infra*.) For general discussion, see So. School News, Mar. 1960, p. 1.
115. 281 F.2d 385 (3d Cir. 1960).
116. *Id.* at 393.
117. *Ibid.*
118. *Ibid.*
119. Another problem in the Delaware case arises from the existence of all-Negro districts that overlap white districts, some of which maintain Negro schools. The board's statement to the Supreme Court describes the school district organization of Delaware as a hodgepodge:

. . . There are 15 special school districts, 81 State board districts, and the city of Wilmington. A number of these districts are Negro school districts The Negro school districts overlap from one to six white school districts Special districts have Negro schools One white school district includes three Negro school districts The hodgepodge exists as a result of the physical growth of the public school system in Delaware While the Negro districts exist as such, there are no definite boundaries available now *Ennis v. Evans*, Sup. Ct. No. 537, Oct. 1960, Petition for Writ of Certiorari to U.S.C.A., 3d Cir., p. 66a.

A Delaware statute prohibits transfers from one district to another if the sending district provides instruction at the grade level for which application for transfer is made. The State board claimed that revision of State law is required to transfer a Negro pupil from a Negro district to a white school in a "Specialist" district even though by reason of overlap of districts the applicant may live in the geographic area of both. The district court held the statute unconstitutional insofar as it would prohibit, condition, or otherwise qualify pupil transfers under the desegregation plan as approved by the court. *Evans v. Buchanan*, Civ. No. 1816-22, D. Del., June 26, 1961. Except that this problem is of districts instead of school zones, it is like the *Houston* case, *Ross v. Peterson*, Civ. No. 10, 444, S.D. Tex., Aug. 3, 12, 1960, 5 *Race Rel. L. Rep.* 709 (1960), where students were given the choice of

attending either the white or the Negro school under the court order.

120. *Evans v. Ennis*, *supra*, note 115, at 393.
121. 350 U.S. 1 (1955)
122. *Evans v. Ennis*, *supra*, note 115, at 389.
123. 152 F. Supp. 114 (D. Md., 1957), *aff'd. sub. nom.*, *Slade v. Board of Education*, 252, F. 2d 291 (4th Cir. 1958), *cert. denied*, 357 U.S. 906 (1958).
124. *E.g.*, *Kelley v. Board of Education of the City of Nashville*, 270 F. 2d 209 (6th Cir. 1959) (beginning with the first grade). *Calhoun v. Board of Education of Atlanta*, Civ. No. 6298, N.D. Ga., Dec. 30, 1959, Jan. 20, 1960, 5 *Race Rel. L. Rep.* 56, 59, 70 (1960) (beginning with the 12th grade).
125. *Boson v. Rippy*, 285 F. 2d 43, 47 (5th Cir. 1960).
126. *Evans v. Ennis*, *supra*, note 115; *Blackwell v. Fairfax County School Board*, Civ. No. 1967, E.D. Va., Sept. 22, 1960, 5 *Race Rel. L. Rep.* 1056 (1960); *Mitchell v. Pollock*, Civ. No. 708, W.D. Ky., Sept. 27, 1956, 1 *Race Rel. L. Rep.* 1038 (1956). See also *Mitchell v. Pollock*, 2 *Race Rel. L. Rep.* 304 (1957).
127. *Brown v. Board of Education of Topeka*, 349 U.S. 294, 300 (1955).
128. *Dodson v. School Board of the City of Charlottesville*, Civ. No. 8238, 4th Cir., Apr. 14, 1961.
129. *Ibid.*
130. 282 F. 2d 473 (4th Cir. 1960).
131. *Id.* at 475.
132. 282 F. 2d 256, 262 (8th Cir. 1960).

NOTES: EDUCATION, Chapter 4

1. *Cf. 1959 Report* 296. There, at the close of the school year 1958-59, a total of 797 of the 2,907 school districts in the 17 Southern States having both white and Negro pupils, had desegregated one or more of their schools. Because of mergers the total number of biracial districts has been reduced to 2,839. The number desegregated as of May 1959, has been adjusted to reflect the fact that some of the districts that have merged in the last 2 years had desegregated at an earlier date.
2. Dade County, Fla.
3. *Bush v. Orleans Parish School Board*, Civ. No. 3630, D. La., May 16, 1960, 5 *Race Rel. L. Rep.* 378 (1960).
4. See p. 236, *infra*.
5. *Gatlinburg Transcript* 110.
6. *Gibson v. Board of Public Instruction of Dade County*, 272 F. 2d 763 (5th Cir. 1959).
7. *Gatlinburg Transcript* 118.
8. *Ibid.*
9. *Id.* at 118-19.
10. So. School News, Oct. 1960, p. 8.
11. *Gatlinburg Transcript* 119.
12. *Ibid.*
13. *Ibid.*
14. See note 10, *supra*.
15. *Gatlinburg Transcript* 112. In Virginia also local authorities refused to continue to operate on base schools after their desegregation. So. School News, Mar. 1960, p. 9.
16. So. School News, Oct. 1960, p. 8; and Mar. 1961, p. 14.
17. *Bush v. Orleans School Board*, Civ. No. 3630; *Hall v. St. Helena Parish School Board*, Civ. No. 1068; and *Davis v. East Baton Rouge Parish School Board*, Civ. No. 1662.
18. At 1-20, 124. The legislative response, both before and after the admission of the Negro pupils, is recounted in ch. 5.
19. *Williamsburg Transcript* 52.
20. Letter From Louisiana State Advisory Committee to the Commission, Apr. 20, 1961.
21. U.S. Bureau of the Census, News Release, Mar. 24, 1961.
22. La. Acts 1960, Act No. 492, p. 939.
23. *Shuttlesworth v. Birmingham Board of Education*, 162 F. Supp. 372, (N.D. Ala. 1958), *aff'd*, 358 U.S. 101 (1958).
24. So. School News, Nov. 1960, p. 14.
25. *Id.* at 1.
26. *Williamsburg Transcript* 52-53.
27. So. School News, Jan. 1961, p. 10.

Notes: Education, Chapter 4—Continued

28. *Id.*, Feb. 1961, p. 6.
29. See *Report of the Louisiana State Advisory Committee, The New Orleans School Crisis* 25 (1961); Atlanta Constitution, Feb. 1, 1961, p. 16. See also N.Y. Times, Jan. 30, 1961, p. 14; Washington (D.C.) Post, Jan. 28, 1961, p. 9A; Shreveport Times, Jan. 28, 1961, p. 7A.
30. See Christian Science Monitor, Feb. 1, 1961, p. 10, sec. 2; N.Y. Times, Feb. 2, 1961, p. 17; Washington (D.C.) Post, Feb. 2, 1961, p. 4A.
31. N.Y. Times, June 2, 1961, p. 21.
32. (New Orleans) Times Picayune, June 2, 1961, p. 19.
- 32a. The public schools attended by military dependents in Ala., Ga., La., Miss. and S.C. are all segregated, as are one or two in Tenn., Texas and Va. Desegregated on-base schools for elementary school pupils reduce the number affected by segregation in these and other States. So. School News, Mar. 1960, pp. 1, 8, and 9.
33. *McKissick v. Durham City Board of Education*, 176 F. Supp. 3 (M.D.N.C. 1959).
34. *Weaver v. Chapel Hill Board of Education*, Civ. No. —, 1956, 1957. The first application (1956) for reassignment was submitted too late. The action was brought for admission to the white school that offered art instruction. The second application (1957) was denied because art classes were to begin that fall at the Negro school. *Vickers v. Carrboro School Board*, Civ. No. —, 1959. On Aug. 4, 1961, the court ordered the plaintiff admitted to the white junior high school to which white pupils residing in the area in which he lived were assigned. Durham (N.C.) Morning Herald, Aug. 5, 1961, p. 1A.
35. *Holt v. Raleigh City Board of Education*, 265 F. 2d 95 (4th Cir. 1959).
36. *Warden v. Richmond School Board*, Civ. No. —, E.D. Va., Sept. 11, 1958, 3 *Race Rel. L. Rep.* 971 (1958).
37. *Blackwell v. Fairfax County School Board*, Civ. No. 1967, E.D. Va., Sept. 22, 1960, 5 *Race Rel. L. Rep.* 1056 (1960).
38. *Dove v. Parham*, 176 F. Supp. 242 (E.D. Ark. 1959), 271 F. 2d 132 (8th Cir. 1959).
39. 173 F. Supp. 891 (D. Del. 1959). See *Evans v. Buchanan*, Civ. Nos. 1816-22, D. Del., July 15, 1957, 2 *Race Rel. L. Rep.* 781 (1957), where the court order was extended to all school districts of the State of Delaware which had not prior thereto admitted pupils under a plan of desegregation approved by the State board of education. Hence, although only seven districts were parties defendant, the court order could upon application be extended to any other such districts.

40. *Evans v. Ennis*, 281 F. 2d 385 (3d Cir. 1960).
41. See note 39, *supra*.
42. *Aaron v. McKinley*, 173 F. Supp. 944 (E.D. Ark. 1959).
43. *Faubus v. Aaron*, 361 U.S. 197 (1959).
44. Ark. Acts 1959, Vol. 2, Ex. Sess. 1958, No. 4, p. 2000.
45. Ark. Acts 1959, Vol. 2, Ex. Sess. 1958, No. 5, p. 2004, as amended, see also 1959 *Report*, 196-200. Ark. Acts 1959, Vol. 1, No. 151, p. 936.
46. *Gatlinburg Transcript* 79-80.
47. For résumé of facts, see *Aaron v. Tucker*, 186 F. Supp. 913 (E.D. Ark. 1960).
48. *Gatlinburg Transcript* 80.
49. Arkansas Gazette, Nov. 17, 1960, p. 13C.
50. So. School News, Oct. 1959, p. 2.
51. *Ibid.*
52. *Ibid.*
53. *Ibid.*
54. *Ibid.*
55. See note 38, *supra*.
56. Only 10 districts actually have biracial schools. The 11th district, Ozark, that desegregated in 1957 has reverted to segregation.
57. Atlanta Constitution, Nov. 20, 1960, p. 6; So. School News, Sept. 1960, p. 10.
58. Arkansas State Advisory Committee, 1957-58 *Enrollment Report*.
59. *Gatlinburg Transcript* 176.
60. *Id.* at 164-65. Cf. 1959 *Report* 185-86.
61. So. School News, Oct. 1959, p. 6; and Oct. 1960, p. 15.
62. Letter From Director of Division of Research, Records and Information, Louisville Public Schools, to the Commission, Apr. 12, 1961.
63. *Ibid.*
64. So. School News, Nov. 1960, p. 12.
65. The original order, *Grimes v. Smith*, Civ. No. 167, E.D. Ky., Feb. 20, 1958, 3 *Race Rel. L. Rep.* 454 (1958), allowed leave to request an extension of time. The report of the order, finally effective Sept. 1959, appears in So. School News, Oct. 1959, p. 10.
66. *Report*, Maryland State Department of Education, Division of Administration, Finance and Research, revised Feb. 1961.
67. City of Baltimore school population from Superintendent of Public Schools of Baltimore, *Williamsburg Transcript* 41. Figures for remaining school districts from *Report*, *supra*, note 66.
68. Southern Educational Reporting Service, *Status of School Segregation in the Southern and Border States*, Nov. 1960, p. 11.

69. See note 67, *supra*.
70. *Ibid*.
71. *Williamsburg Transcript* 38-39.
72. The 1961 Report of the Missouri State Advisory Committee indicated that 90 percent of the Negro schoolchildren are concentrated in St. Louis and Kansas City.
73. So. School News, Feb. 1961, p. 16.
74. *Gatlinburg Transcript* 18.
75. Information received from Administrative Assistant to the Superintendent of School Districts of Kansas City, Mo. by telephone June 9, 1961. See also So. School News, Jan. 1961, p. 4.
76. *Gatlinburg Transcript* 120.
77. *Ibid*.
78. *Report of the North Carolina State Advisory Committee 2* (1960).
79. *Ibid*.
80. *Ibid*.
81. So. School News, Sept. 1959, p. 10.
82. See note 78, *supra*.
83. 4 *Race Rel. L. Rep.* 785 (1959).
84. So. School News, Oct. 1959, p. 14.
85. See So. School News, Apr. 1959, p. 4 (Wayne County), and Sept. 1960, p. 6 (Craven County).
86. N.C. Laws 1955, ch. 366, p. 309, as amended by N.C. Laws (Ex. Sess.) 1956, ch. 7, p. 14.
87. *Griffith v. The Board of Education of Yancey County*, 186 F. Supp. 511 (W.D.N.C. 1960).
88. *Carson v. Warlick*, 238 F. 2d 724 (4th Cir. 1956). See also *Covington v. Edwards*, 264 F. 2d 780 (4th Cir. 1959); *Holt v. Raleigh City Board of Education*, 265 F. 2d 95 (4th Cir. 1959).
89. See note 84, *supra*.
90. *McCoy v. Greensboro City Board of Education*, 179 F. Supp. 745 (M.D.N.C. 1960).
91. *McCoy v. Greensboro City Board of Education*, 283 F. 2d 667 (4th Cir. 1960).
92. So. School News, June 1961, p. 5.
93. *Holt v. Raleigh City Board of Education*, *supra*, note 88, *cert. denied*, 361 U.S. 818 (1959). A Negro high school student was denied transfer to a white school under the N.C. Pupil Assignment Act for failure to exhaust administrative remedy.
94. Durham (N.C.) Morning Herald, Sept. 8, 1960, p. 4C.
95. *Ibid*.
- 95a. Durham (N.C.) Morning Herald, June 18, 1961, p. 8A.

- 95b. *Id.*, July 18, 1961, p. 1A. On Aug. 1 the board reassigned 8 of the plaintiffs to white schools. *Id.*, Aug. 3, 1961, p. 14B.
96. See note 34, *supra*.
97. See note 78, *supra*.
98. So. School News, Sept. 1960, p. 6.
99. League of Women Voters (Chapel Hill, N.C.), *Facts on Pupil Assignment in Chapel Hill* (1960).
- 99a. Washington (D.C.) Post, July 5, 1961, p. 5A.
- 99b. Durham (N.C.) Morning Herald, July 6, 1961, p. 9D.
100. Report, *op. cit. supra*, note 78, at 4.
101. Summary of Integration Questionnaire, Oklahoma State Dept. of Education, Sept. 27, 1960.
102. *Ibid.*
103. U.S. Bureau of the Census, *U.S. Census of Population: 1960, Advance Reports: Final Population Count PC (A1)-38 (Okla.) 1* (1961).
104. Knox County, Kingsport and Johnson City. See note 179, *infra*.
105. *Hayes v. County School Commission of Rutherford County*, Civ. No. 2767, M.D. Tenn., Sept. 11, 1959, 4 *Race Rel. L. Rep.* 874 (1959).
106. So. School News, Dec. 1959, p. 4.
107. So. School News, Oct. 1959, p. 12.
108. See *Williamsburg Transcript* 10, 19-20 (minutes of the Board meeting of Apr. 4, 1960).
109. *Id.* at 10.
110. *Id.* at 15-16.
111. *Id.* at 10, 16-17.
112. *Maxwell v. Board of Education of Davidson County*, Civ. No. 2956, M.D. Tenn., Nov. 23, 1960, 5 *Race Rel. L. Rep.* 1040 (1960).
113. *Ibid.*
114. So. School News, Feb. 1961, p. 1.
115. Texas Acts 1957, ch. 283, p. 671.
116. Districts that voted to admit Negroes were Andice, Frenship, and Fredericksburg. Districts that voted against were Houston, Dallas, Boerne, and Goliad.
117. So. School News, Apr. 1960, p. 11.
118. *Simmons v. Edwards*, Civ. No. 2631, N.D. Tex. 1960, So. School News, June 1960, p. 3.
119. In a letter to the U.S. Commission on Civil Rights From the Assistant Secretary of Defense, dated July 17, 1961, it was stated: "It is to be noted that all educational and training programs operated by the Department of Defense from kindergarten to the postgradu-

ate specialties are open to all who qualify regardless of race, religion, or national origin. When any educational agencies contract to operate such programs for the Department on-base they must abide by this policy."

120. So. School News, Oct. 1960, p. 16.
121. N.Y. Times, Aug. 5, 1960, p. 15.
122. 5 *Race Rel. L. Rep.* 711 (1960).
123. *Ross v. Rogers*, Civ. No. 10444, S.D. Tex., Oct. 15, 1957, 2 *Race Rel. L. Rep.* 1114 (1957).
124. *Ross v. Peterson*, Civ. No. 10444, S.D. Tex., Aug. 3, 12, 1960, 5 *Race Rel. L. Rep.* 703, 709 (1960).
125. (New Orleans) Times Picayune, Aug. 30, 1960, p. 3, sec. 1. See also N.Y. Times, Sept. 8, 1960, p. 59.
126. Tex. Acts 1957, ch. 287, p. 683.
127. N.Y. Times, Sept. 1, 1960, p. 18. *But see* Houston Council on Human Relations, *News*, June 9, 1961. The council invited the mothers of the Negro children attending desegregated schools to tell what had happened. More than half of the mothers accepted the invitation and in varying degrees they agreed that the first year of desegregation had worked out rather well.
128. Christian Science Monitor, Sept. 8, 1960, p. 3.
129. N.Y. Times, Sept. 10, 1960, p. 14. See also So. School News, Oct. 1960, p. 1.
130. Baltimore Sun, Jan. 23, 1961, p. 5, sec. 1.
131. *Harrison v. Day*, 106 S.E. 2d 636 (Va. 1959).
132. 4 *Race Rel. L. Rep.* 183, 188 (1959).
133. *Allen v. The School Board of the City of Charlottesville*, Civ. No. 51, W.D. Va., Sept. 13, 1958, 3 *Race Rel. L. Rep.* 937 (1958).
134. *Gatlinburg Transcript* 107.
135. *Id.* at 100.
136. *Id.* at 107.
137. Fairfax and Arlington Counties, and Alexandria.
138. *Walker v. Floyd County School Board*, Civ. No. 1012, W.D. Va., (original order entered Sept. 23, 1959.). Subsequent appeal, 5 *Race Rel. L. Rep.* 714 (1960).
139. *Crisp v. School Board of Pulaski County*, Civ. No. 1052, W.D. Va., Apr. 26, 1960, 5 *Race Rel. L. Rep.* 721 (1960).
140. *Goins v. County School Board of Grayson County*, 186 F. Supp. 753 (W.D. Va. 1960).
141. Although a Federal court ordered the admission of the eight named plaintiffs, only seven actually enrolled. So. School News, Oct. 1960, p. 6.

Notes: Education, Chapter 4—Continued

142. No case can be found which was brought to desegregate the schools of Roanoke prior to the placement board's assignment of Negro pupils to formerly white schools. However, there is a class suit presently pending, *Green v. School Board of the City of Roanoke*, Civ. No. 1093, W.D. Va.
143. *Warden v. Richmond School Board*, Civ. No. —, E.D. Va., Sept. 11, 1958, 3 *Race Rel. L. Rep.* 971 (1958). This suit is still pending and there are 28 Negro plaintiffs seeking admission to formerly white schools. *Richmond (Va.) News Leader*, June 16, 1961, p. 21.
144. *So. School News*, Oct. 1960, p. 6.
145. See note 68, *supra*.
146. See note 144, *supra*.
147. *Blackwell v. Fairfax County School Board*, Civ. No. 1967, E.D. Va. Sept. 22, 1960, 5 *Race Rel. L. Rep.* 1056 (1960).
148. See note 144, *supra*.
149. Reviewed in *Washington (D.C.) Post*, Dec. 4, 1960, p. 4B.
150. *So. School News*, Mar. 1961, p. 13.
151. *Ibid.* See also (*Washington, D.C.*) *Evening Star*, Feb. 22, 1961, p. 1. Over 2,000 Fairfax County white students signed petitions requesting the school board to rescind the ban. See also *Washington (D.C.) Post*, Feb. 27, 1961, p. 10A.
152. See note 144, *supra*.
153. *Williamsburg Transcript* 162; *So. School News*, Nov. 1960, p. 7.
154. See 1959 *Report* 296.
155. See *So. School News*, Oct. 1960, p. 8.
156. *Id.*, April 1961, p. 9.
157. See app. IV, table 2. Cf. 1959 *Report* 317.
158. *Christian Science Monitor*, Dec. 8, 1960, p. 5, sec. 1.
159. *So. School News*, Jan. 1961, pp. 1, 5.
160. 162 F. Supp. 372 (N.D. Ala. 1958), *aff'd*, 358 U.S. 101 (1958).
- 160a. *Atlanta Constitution*, Aug. 27, 1961, p. 5B.
161. *So. School News*, Feb. 1960, p. 7.
162. A 27-year-old Negro has filed suit for admission to the all-white University of Mississippi. His original application of Jan. 31, 1961, was finally and formally refused by letter from the registrar May 26, 1961. June 12, 1961, was set to hear a motion for a preliminary injunction against the university. (*Jackson, Miss.*) *Clarion-Ledger*, June 1, 1961, p. 1A. *Meredith v. Fair*, Civ. No. 3130, S.D. Miss., May 31, 1961.
163. *So. School News*, Oct. 1959, p. 13.
164. *Sub nom.*, *Brown v. Board of Education*, 347 U.S. 483 (1954).
165. 132 F. Supp. 776, 779 (E.D.S.C. 1955).

166. So. School News, Mar. 1960, p. 1. An elementary school, serving children of military personnel at Beaufort Marine Air Station, built with Federal funds, has been sold to the Federal Government for \$1.00 to avoid its integration as a unit of the State school system. N.Y. Times, Aug. 25, 1961, p. 10.
- 166a. On Aug. 30, 1961, nine Negro 11th- and 12th-grade pupils quietly entered four formerly white high schools with only minor disturbance caused by a handful of pickets. N.Y. Times, Aug. 31, 1961, p. 1.
167. *Calhoun v. Latimer*, Civ. No. 6298, N.D. Ga., May 9, 1960, 5 *Race Rel. L. Rep.* 374 (1960).
168. Christian Science Monitor, May 2, 1961, p. 12.
169. N.Y. Times, June 6, 1961, p. 27.
170. *Calhoun v. Latimer*, note 167, *supra*.
171. *Gatlinburg Transcript* 44-45.
172. Washington (D.C.) Post, June 4, 1961, p. 2A.
173. *Ibid.* A "great majority" of those rejected plan to make appeals. Atlanta Constitution, June 6, 1961, p. 1.
- 173a. Atlanta Constitution, July 7, 1961, p. 1.
- 173b. *Id.*, Aug. 8, 1961, p. 1.
174. So. School News, Mar. 1960, p. 1.
175. Dallas, Morning News, May 16, 1961, p. 14, Sec. 1.
176. *Robinson v. Evans*, Civ. No. 2643, S.D. Tex., Jan. 23, 1961, So. School News, Feb. 1961, p. 3.
177. Texas Education Agency, Research Division, *Public School Directory 1959-60* at 57.
178. So. School News, May 1961, p. 4. Atlanta Constitution, Aug. 27, 1961.
179. On Aug. 29, 1960, Knox County school officials announced a desegregation policy. So. School News, Sept. 1960, p. 1. On Jan. 3, 1961, the Board of Education of Johnson City unanimously voted to begin a grade-a-year desegregation plan in the fall of 1961. So. School News, Feb. 1961, p. 1. Kingsport on Apr. 7, 1960, adopted a grade-a-year desegregation plan without, however, setting any date for its inception. So. School News, May 1960, p. 5. Elizabethton and Washington County, N.Y. Times, Aug. 8, 1961, p. 42.
180. So. School News, May 1961, p. 2.
181. Miami (Fla.) Herald, Aug. 18, 1961, p. 2B.
182. See p. 40, *supra*.
183. So. School News, May 1961, p. 6.
184. See Arkansas Gazette, May 26, 1961, p. 1, and May 27, 1961, p. 2A. See also N.Y. Times, May 27, 1961, p. 16; Washington (D.C.) Post, May 27, 1961, p. 4, sec. 4.

- 185. See N.Y. Times, May 31, 1961, p. 26. See also Washington (D.C.) Post May 30, 1961, p. 5A. Four Negro pupils made requests for transfers to predominantly white schools—two second-graders, one third, and one fourth-grader. The school board's plan says that it does not intend to assign students above the first grade to a school other than that which they first attended. Arkansas Gazette, June 17, 1961, p. 2A.
- 186. *Evans v. Buchanan*, Civ. Nos. 1816–22, D. Del., June 26, 1961, p. 12.
- 187. See *Evans v. Ennis*, 281 F.2d 385 (3d Cir. 1960).
- 188. *Evans v. Buchanan*, *supra*, note 186, at 4.
- 189. Washington (D.C.) Post, Apr. 15, 1961, p. 2C.
- 190. *Ibid.*
- 191. *Ibid.* Richmond (Va.) News Leader, Aug. 8, 1961, p. 1.
- 191a. Richmond (Va.) News Leader, July 14, 1961, p. 17, and July 26, 1961, p. 4. Washington (D.C.) Post, Aug. 1, 1961, p. 3B.
- 192. *White v. Lov*, Civ. No. 1086, E.D. Ky., 1961.
- 192a. Durham (N.C.) Morning Herald, July 7, 1961, p. 15A.
- 192b. Norfolk (Va.) Journal and Guide, Aug. 5, 1961, p. 12.
- 192c. *Wheeler v. Durham City Board of Education and Spaulding v. Durham City Board of Education*, Civ. No. C-54-D-60 and C-116-D-60, M.D.N.C., July 20, 1961.
- 192d. Durham (N.C.) Morning Herald, Aug. 4, 1961, p. 1A.
- 192e. *Id.*, Aug. 3, 1961, p. 1A.

NOTES: EDUCATION, Chapter 5

1. *James v. Almond*, 170 F. Supp. 331 (E.D. Va. 1959); *Aaron v. McKinley*, 173 F. Supp. 944 (E.D. Ark. 1959), *aff'd sub nom., Faubus v. Aaron*, 361 U.S. 197 (1959).
2. *Adkins v. School Board of Newport News*, 148 F. Supp. 430 (E.D. Va. 1957), *aff'd*, 246 F. 2d 325 (4th Cir. 1957), *cert. denied*, 355 U.S. 855 (1957).
3. *Kelley v. Board of Education of Nashville*, Civ. No. 2094, M.D. Tenn., Sept. 6, 1957, 2 *Race Rel. L. Rep.* 970 (1957).
4. *Orleans Parish School Board v. Bush*, 242 F. 2d. 156 (5th Cir. 1957, *cert. denied*, 354 U.S. 921 (1957).
5. 358 U.S. 1, 19 (1958).
6. See *James v. Almond*, *supra*, note 1.
7. *Aaron v. McKinley*, *supra*, note 1.
8. The Warren County High School; the high school and one elementary school in Charlottesville, Va.; and the high schools in Norfolk, Va.
9. "Education in Virginia," Report of the Commission on Education, Mar. 31, 1959, 4 *Race Rel. L. Rep.* 392 (1959).
10. Va. Acts 1959, Ex. Sess., ch. 53, p. 131.
11. Va. Acts 1959, Ex. Sess., ch. 72, p. 170.
12. Va. Acts 1959, Ex. Sess., ch. 52, p. 130.
13. Va. Acts 1959, Ex. Sess., ch. 71, p. 165.
14. Va. Acts 1959, Ex. Sess., ch. 80, p. 186.
15. Va. Acts 1959, Ex. Sess., ch. 68, p. 151.
16. Va. Acts 1959, Ex. Sess., ch. 49, p. 127.
17. Tenn. Acts 1959, ch. 289, p. 894.
18. So. School News, May 1959, p. 16.
19. Ala. Laws 1959, No. 652, p. 1576.
20. The Commission's report stated in part:

. . . [T]he State cannot constitutionally maintain a system of open and closed schools. All of our schools must be kept open or all must be closed down. . . . [W]e have concluded that one of our purposes and obligations is to maintain the public school system. We might add that we cannot believe that a plan which in effect destroys our system of public schools would obtain even limited public acceptance. We do not recommend an amendment to our State constitution. . . . We believe the experience of our State and other States demonstrates that the assignment law offers the best, the most reliable and the only lawful means yet produced to minimize the impact of the desegregation decisions. Fla., Governor's Advisory Commission on Race Relations, *Report to the Governor*, Mar. 16, 1959, pp. 18-19.

Notes: Education, Chapter 5—Continued

21. Fla. Acts 1959, ch. 59-113, p. 209.
22. Fla. Acts 1959, ch. 59-138, p. 266.
23. Fla. Acts 1959, ch. 59-428, p. 1455.
24. Fla. Acts 1959, ch. 59-471, p. 1599.
25. Fla. Acts 1959, ch. 59-412, p. 1402.
26. Ark. Acts 1959, No. 46, p. 164.
27. Ark. Acts 1959, No. 55, p. 173.
28. Ark. Acts 1959, No. 151, p. 936.
29. Ark. Acts 1959, No. 236, p. 1197.
30. Ark. Acts 1959, No. 461, p. 1827.
31. So. School News, Dec. 1960, p. 11.
32. Ga. Laws 1959, Vol. 1, No. 7, p. 15.
33. Ga. Laws 1959, Vol. 1, No. 3, p. 7.
34. Ga. Laws 1959, Vol. 1, No. 382, p. 350.
35. Ga. Laws 1959, Vol. 1, No. 2, p. 5.
36. Ga. Laws 1959, Vol. 1, No. 212, p. 157.
37. Hartsfield, "The Role of Public Officials III," 34 *Notre Dame Law*. 620 (1959).
38. Miss. Laws 1960, ch. 316, p. 462.
39. Miss. Laws 1960, ch. 314, p. 461; Miss. Laws 1960, ch. 315, p. 461.
40. Miss. Laws 1960, ch. 215, p. 329.
41. Miss. Laws 1960, ch. 319, p. 470.
42. Miss. Laws 1960, ch. 547, p. 879.
43. So. School News, Dec. 1960, p. 4.
44. S.C. Acts 1960, No. 802, p. 1779, 1889.
45. (Charleston, S.C.) News and Courier, May 30, 1960, p. 8A.
46. *Ibid.*; So. School News, June 1960, p. 10.
47. See ch. 6, pp. 91-92, *infra*.
48. Va. Acts 1960, ch. 461, p. 721.
49. Va. Acts 1960, ch. 191, p. 202.
50. Va. Acts 1960, ch. 448, p. 703.
51. *Calhoun v. Latimer*, Civ. No. 6298, N.D. Ga., June 16, 1959, 4 *Race Rel. L. Rep.* 576 (1959); *Bush v. Orleans Parish School Board*, Civ. No. 3630, E.D. La., July 15, 1959, 4 *Race Rel. L. Rep.* 581 (1959).
52. Committee on Schools of the General Assembly of Georgia, *Report of Majority*, 5 *Race Rel. L. Rep.* 509, 511 (1960).
53. *Id.* at 514. [All italicized in original.]
54. *Bush v. Orleans Parish School Board*, Civ. No. 3630, E.D. La., May 16, 1960, 5 *Race Rel. L. Rep.* 378 (1960).
55. Subcommittee on Education, Report of the Louisiana State Advisory Committee, *The New Orleans School Crisis* (1961).
56. La. Acts 1960, No. 492, p. 939.

57. *Bush v. Orleans Parish School Board, Williams v. Davis*, 187 F. Supp. 42 (E.D. La. 1960).
58. La. Acts 1960, 1st Ex. Sess., Nos. 3-9.
59. La. Acts 1960, 1st Ex. Sess., No. 10, permitting the Governor to close schools in case of disorder, riots or violence; No. 11, permitting the Governor to close any public schools under court order to carry out a program inconsistent with the constitution and laws of the State; No. 12, permitting the Governor to close all public schools whenever a school board under court order should place into operation a plan inconsistent with the constitution and laws of the State; No. 13, ordering the withholding of State aid from any school ordered to operate under a plan inconsistent with the constitution and laws of the State; No. 14, requiring all schools to be operated in accordance with the laws and constitution of the State and prohibiting the State board of education from accrediting any school which violated the act, and prohibiting any State university from recognizing diplomas from such schools; No. 17, partially reenacting Act 319 of 1956 repealed by Act 3 of the same session withdrawing and suspending all powers and duties of the Orleans Parish School Board except certain powers related to financial management of school property and vesting the legislature of the State with all of the other powers.
60. La. Acts 1960, 1st Ex. Sess., No. 2.
61. La. Act 1960, 1st Ex. Sess., No. 16.
62. La. Acts 1960, 1st Ex. Sess., No. 25.
63. La. Acts 1960, 1st Ex. Sess., Nos. 20-23.
64. La. Acts 1960, 1st Ex. Sess., Nos. 24 and 26.
65. La. Acts 1960, 1st Ex. Sess., H. Con. Res. No. 10.
66. La. Acts 1960, 1st Ex. Sess., H. Con. Res. No. 18.
67. La. Acts 1960, 1st Ex. Sess., H. Con. Res. No. 19.
68. La. Acts 1960, 1st Ex. Sess., H. Con. Res. No. 23.
69. La. Acts 1960, 2d Ex. Sess., H. Con. Res. Nos. 3, 5, 6, 20, 21, 26.
70. La. Acts 1960, 2d Ex. Sess., No. 5.
71. La. Acts 1960, 2d Ex. Sess., H. Con. Res. Nos. 2, 7, 23, 27, 28, 34.
72. La. Acts 1960, 2d Ex. Sess., No. 3.
73. La. Acts 1960, 2d Ex. Sess., No. 7.
74. La. Acts 1960, 2d Ex. Sess., No. 6.
75. La. Acts 1960, 3d Ex. Sess., No. 3, providing that usurpation of public office be considered a misdemeanor, and its complementary S. Con. Res. No. 7, which had addressed out of office the New Orleans superintendent.
76. La. Acts 1961, 2d Ex. Sess., No. 3, making it a misdemeanor subject to fine to bribe parents to send their children to desegregated

schools; No. 5, providing that any act of intimidation or interference in the orderly function of the public schools would be a misdemeanor subject to fine. Both acts provided that the fine be paid to the informers.

77. La. Acts 1961, 2d Ex. Sess., No. 2.
78. La. Acts 1961, 2d Ex. Sess., No. 7.
79. La. Acts 1961, 2d Ex. Sess., No. 10.
80. La. Acts 1961, 2d Ex. Sess., No. 11.
81. Ark. Acts 1961, S.J. Res. No. 1.
82. Shreveport (La.) Times, May 26, 1961, p. 4A. The amendment was denounced as an unconstitutional measure by the S.O.S. (Save Our Schools) organization of New Orleans. (New Orleans) Times-Picayune, June 1, 1961, p. 17, sec. 3.
83. H.B. 1620 approved Apr. 14, 1961 as to Dorchester County involves both the sending and the receiving schools and includes withholding of State aid for teachers' salaries; H.B. 1828 approved May 23, 1961 applies to Clarendon County.
84. See *1959 Report* 238.
85. Christian Science Monitor, June 2, 1960, p. 4.
86. *Ibid.*
87. *Williamsburg Transcript* 44.
88. *Report of the Georgia State Advisory Committee* 16-20 (1961).
89. Ga. Laws 1961, S. Bill No. 48. This law also repealed previous statutes of 1959 and 1960 placing limitations on the power of levying ad valorem taxes of independent school systems in case of desegregation of schools.
90. Ga. Laws 1961, H. Bill No. 174.
91. Ga. Laws 1961, S.B. No. 49.
92. Ga. Laws 1961, H. Res. No. 69-174.
93. Ga. Laws 1961, H. Res. No. 225.
94. Ga. Laws 1961, S. Res. No. 51.

NOTES: EDUCATION, Chapter 6

1. *Brown v. Bd. of Education*, 347 U.S. 483, 493 (1954).
2. *Id.* at 493. [Emphasis added.]
3. 132 F. Supp. 776 (E.D.S.C. 1955).
4. *Id.* at 777. [Emphasis added.]
5. Tennessee only amended its compulsory attendance law by making local school boards responsible for its enforcement. See ch. 5 at 68, *supra*.
6. Miss. Const. art. VIII, sec. 213b.
7. Miss. Acts 1958, ch. 311, p. 527.
8. 358 U.S. 1 (1958), where the Supreme Court stated "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Id.*, at 18.
9. Ark. Acts 1959, 2d Ex. Sess. (1958), No. 4, p. 2000.
10. 323 S.W. 2d 877 (Ark. 1959).
11. *Id.* at 880-881.
12. *Aaron v. McKinley*, 173 F. Supp. 944, 950 (E.D. Ark. 1959), *aff'd*, 361 U.S. 197 (1959).
13. Va. Acts 1956, Ex. Sess., ch. 68, p. 69.
14. Va. Acts 1958, ch. 41, p. 26.
15. Va. Acts 1958, ch. 319, p. 367.
16. *James v. Almond*, 170 F. Supp. 331 (E.D. Va. 1959), *appeal dismissed by stipulation*, 359 U.S. 1006 (1959); *Harrison v. Day*, 106 S.E. 2d 636 (Va. 1959).
17. *Id.*, *Harrison v. Day* at 646.
18. *James v. Almond*, *supra*, note 16.
19. *Id.* at 337, 339 (emphasis supplied).
20. *Id.* at 338.
21. La. Acts 1958, No. 256, p. 831.
22. La. Acts 1960, No. 495, p. 946.
23. La. Acts 1960, No. 542, p. 1004.
24. *Bush v. Orleans Parish School Board*, 187 F. Supp. 42 (E.D. La. 1960).
25. *Id.* at 45.
26. La. Acts 1960, 1st Ex. Sess., Nos. 10, 11, 12.
27. *Bush v. Orleans Parish School Board*, 188 F. Supp. 916, 927 (E.D. La. 1960), *aff'd per curiam*, 29 U.S.L. Week 3274 (U.S. Mar. 21, 1961).
28. Fla. Acts 1957, Ex. Sess., ch. 1975, p. 10.
29. Tex. Act 1957, 2d Ex. Sess., ch. 7, p. 161.
30. Ga. Acts 1956, Act No. 11, p. 6.
31. Ga. Acts 1955, Act No. 82, p. 174; Ga. Acts 1956, H.R. No. 243, 1 *Race Rel. L. Rep.* 421 (1956).

32. Ga. Acts 1957, No. 60, p. 44.
33. S.C. Acts 1957, No. 349, p. 521.
34. Veto message of June 6, 1957, by Governor Collins of Fla., 2 *Rel. L. Rep.* 843, 844 (1957).
35. Ga. Acts 1959, No. 7, p. 15.
36. Ala. Acts 1957, No. 528, p. 723.
37. Miss. Acts 1960, ch. 316, p. 462.
38. N.C. Acts 1956, Ex. Sess., ch. 1, p. 1, amending art. IX of the N.C. Constitution ratified by voters in Sept. 1956.
39. N.C. Acts 1956, Ex. Sess., ch. 4, sec. 1, p. 9. [Emphasis added.]
40. Ga. Acts 1961, H. Bill No. 174; La. Acts 1961, 2d Ex. Sess. No. 2.
41. *Hall v. St. Helena Parish School Board*, Civ. No. 1068, E.D. La. 1960. The court held the statute a "transparent artifice" designed to deny plaintiffs their constitutional right to attend desegregated public schools and also discriminatory in application against all parish residents, irrespective of race, in that the State would provide public schools elsewhere in the State while closing those in the parish. The court said that the requirement of a referendum added nothing: "One of the purposes of the Constitution . . . was to protect minorities from the occasional tyranny of majorities. No plebiscite can legalize an unjust discrimination."
42. See ch. 5 at 66, *supra*.
43. *Cooper v. Aaron*, *supra*, note 8; *Bush v. Orleans Parish School Board*, *supra*, note 24.
44. See note 16, *supra*.
45. 358 U.S. 1, 16-17 (1958). The resisting States, fully aware of the constitutional implications of delegated State powers at the local level, enacted statutes withdrawing such delegation and reserving the powers to the chief executive or the legislature. Thus, in 1956 Virginia attempted unsuccessfully to divest school boards which desegregated voluntarily or under compulsion of court order of all authority, power and control over public schools and to vest such powers in the Governor. Va. Acts 1956, Ex. Sess., ch. 68, p. 69. In 1959 Georgia withdrew the delegated power to levy ad valorem taxes for the support of desegregated schools from cities or counties with an independent school system. Ga. Acts 1959, No. 212, p. 157. (This law, never tested in the courts, was repealed in 1961.) On four occasions Louisiana sought unsuccessfully to deprive the elected Orleans Parish School Board of the delegated power to administer its schools and vest such power in the legislature or in one of its committees. La. Acts 1960, 1st Ex. Sess., H.C.R. Nos. 10, 17-18, and Act 26. These failures indicate that local

- option may be only another illusory means of escape from the desegregation rulings.
- Allen v. Prince Edward County School Board*, Civ. No. 1333, E.D. Va., 1960.
- Twenty-eight States filed briefs, 17 denouncing the local option law as invalid and 11 (all Southern States except Utah and North Dakota) upholding the State's right not to provide public education. *Baltimore Sun*, Aug. 4, 1961, p. 6.
- 47a. See note 41, *supra*.
 48. Ga. Acts 1955, No. 82, p. 174.
 49. S.C. Acts 1955, No. 234, Part II, sec. 2, p. 433.
 50. S.C. Acts 1956, No. 813, p. 1841; S.C. Acts 1960, No. 802, sec. 90, p. 1779.
 51. Ga. Acts 1961, S. Bill No. 48.
 52. Va. Acts 1956, ch. 71, p. 77.
 53. Va. Acts 1959, ch. 3, p. 4.
 54. Tex. Acts 1957, ch. 283, p. 671.
 55. Tex. Atty. Gen. Op. 1960, No. WW-931, 5 *Race Rel. L. Rep.* 711 (1960).
 56. 170 F. Supp. 342 (E.D. Va. 1959).
 57. S.C. Acts 1955, No. 57, p. 85.
 58. N.C. Acts 1956, Ex. Sess., ch. 5, p. 13.
 59. Miss. Acts 1956, ch. 288, p. 366.
 60. Ark. Acts 1957, No. 84, p. 280.
 61. Ga. Acts 1957, No. 139, p. 168. However, efforts to repeal the compulsory school attendance law failed at the close of the 1961 session of the Georgia General Assembly. Report of the Georgia State Advisory Committee, Apr. 1, 1961, p. 9.
 62. Va. Acts 1959, Ex. Sess., ch. 72, p. 170. In October 1959, the Virginia Parent-Teachers Association adopted a resolution calling for a statewide compulsory school attendance law. (Norfolk, Va.) *Journal and Guide*, Oct. 10, 1959, p. 1.
 63. Tenn. Public Acts 1959, ch. 289, p. 894.
 64. La. Acts 1956, No. 28, p. 68; La. Acts 1960, 1st Ex. Sess., No. 27.
 65. State Legislation on School Attendance, Jan. 1, 1959, Cir. No. 573. U.S. Dept. of Health, Education, and Welfare; Office of Education, p. 13.
 66. *Id.* at 1.
 67. *Id.* at 13.
 68. *Ibid.*
 69. *State v. Bailey*, 61 N.E. 730 (Ind. 1901); *State v. Jackson*, 53 A. 1021 (N.H. 1902); *Parr v. State*, 157 N.E. 555 (Ohio 1927).
 70. See *supra*, note 65, at 4.

71. Washington (D.C.) Post, Jan. 1, 1961, p. 2E.
72. U.S. Bureau of the Census, *U.S. Census of Population: 1960, General Population Characteristics*, Va. PC (1)-48B (1961) (Ages 7-16.)
- 72a. (Washington, D.C.) Evening Star, July 28, 1961, p. 2B.
73. See note 71, *supra*.
74. See note 72, *supra*.
75. Ga. Acts 1956, No. 11, p. 6; N.C. Acts 1956, Ex. Sess., No. 2, p. 4; La. Acts 1958, No. 258, p. 850; Ark. Acts 1959, No. 46, p. 164; No. 151, p. 936; No. 236, p. 1197.
76. Ala. Acts 1956, 1st Ex. Sess., No. 82, p. 119 (approved in referendum, in August 1956).
77. Va. Acts 1956, Ex. Sess., ch. 70, p. 74, as amended by Va. Acts 1958, ch. 500, p. 638, as amended by Va. Acts Ex. Sess. 1959, ch. 71, p. 165.
78. Va. Acts 1959, Ex. Sess., ch. 53, p. 131; Va. Acts 1960, ch. 448, p. 703.
79. Ga. Acts 1961, H.B. No. 174; H.B. No. 48.
80. Ga. Acts 1959, No. 3, p. 7; Va. Acts 1960, ch. 191, p. 202.
81. Va. Acts 1956, Ex. Sess., ch. 64, p. 63; Ga. Acts 1956, No. 15, p. 12; Ga. Acts 1957, No. 7, p. 8; Ala. Acts 1957, No. 532, p. 747; Ark. Acts 1959, No. 55, p. 173.
82. Va. Acts 1959, Ex. Sess., ch. 49, p. 127.
83. Va. Acts 1959, Ex. Sess., ch. 50, p. 128.
84. When the Little Rock high schools were closed, Arkansas had no tuition grant statute.
85. In Georgia funds will not be available for tuition grants until July 1, 1961, when the appropriation act for fiscal 1962 becomes effective. It is, however, reported that the Atlanta and Fulton County school systems have already received requests for tuition grants. So. School News, Mar. 1961, p. 2.
86. So. School News, June 1961, p. 9.
87. The legality of this appropriation may be questioned in that part of the welfare funds comes from the Federal Government. See S.O.S. Inc., *Tuition Grants for Louisiana*, Apr. 1961, p. 4.
88. This was necessary because the Sup. Ct. of Appeals of Va. had held that a provision of the appropriation act of 1954 which authorized tuition grant payments for the education of war orphans attending private sectarian schools violated that constitutional provision. *Almond v. Day*, 89 S.E. 2d 851 (Va. 1955).
89. One statute appropriated to public boards of education the equivalent of funds which might have been withheld from such boards because of school desegregation, making such funds available for

tuition grants for students attending nonsectarian private schools. Va. Acts 1956, Ex. Sess., ch. 56, p. 56. Another statute authorized local authorities to levy and collect educational taxes where no such tax levies were otherwise provided or to appropriate tax moneys for the support of public schools or for educational expense grants. Va. Acts 1956, Ex. Sess., ch. 57, p. 57. Another act authorized grants to pupils for education in private nonsectarian schools whenever their parents objected to their assignment at a school enrolling both races. The amount of the grant was fixed as the tuition at a private school or the per pupil cost of the local public schools, whichever was less. Va. acts 1956, Ex. Sess., ch. 58, p. 59, ch. 59, p. 61. Another statute authorized local school boards to transfer school funds out of their authorized budget (even without the consent of the tax levying body), to pay tuition grants. Va. Acts 1956, Ex. Sess., ch. 62, p. 62. Still another provided specifically for educational expense grants to pupils affected by the closing of schools. Va. Acts 1956, Ex. Sess., ch. 68, p. 69.

90. Thus in the fall of 1959, 67 of the 130 school districts had elected to make school appropriations on a monthly basis. So. School News, Oct. 1959, p. 15.
91. *Williamsburg Transcript* 122 (testimony of Mr. Edwin Lamberth, Superintendent of Schools, Norfolk, Va.).
92. *Ibid.* Mr. Lamberth stated that in 1960-61 the academy's enrollment was between 175 and 200 pupils, and that only 1 or 2 public school teachers had ever taught there.
93. *Id.* at 123. Mr. Lamberth testified:

In the school session 1959-60, . . . our school board approved 1,212 applications for total State and local funds of \$276,515. In the school session 1960-61 . . . we have up to date approved 1,516 applications and disbursed \$182,628, and it would appear from that we will spend somewhere in the neighborhood of \$365,000 of State and local funds for tuition grants this year.
94. *Gatlinburg Transcript* 103. The tuition charge at the private schools is reported to be \$250, which would indicate that the parents have been required to pay \$16 per year from their own pockets. The local governing body is said to have appropriated nonschool funds to make up this difference in the 1960-61 school year.
95. *Id.* at 107.
96. *Williamsburg Transcript* 107, 108 (testimony of Mr. Q. D. Gasque, Superintendent of Schools of Warren County, Va.).
97. *Id.* at 108.
98. *Id.* at 109.

99. Individual members of Local 371 of the Textile Workers Union employed at the American Viscose Corporation plant in Front Royal made regular weekly contributions to the Mosby Academy during its first year of existence totaling about \$50,000 during the year. So. School News, Sept. 1959, p. 9. When contributions were being solicited for the erection of a permanent building the Local voted to purchase \$8,000 worth of the Academy's bonds with union funds. This action as well as the voting of an annual scholarship of \$500 for the College education of a graduate of the Academy, was denounced by the executive committee of the international union as a violation of the national rules and policies. (Washington D.C.) Evening Star, June 20, 1960, p. 24A. The dispute was referred to a board of arbitrators which sustained the ruling of the executive committee, and held that union funds cannot be used to support a school open only to white students nor to grant scholarships to its graduates when such a scholarship is not offered to the graduates of other community high schools. The union, of course, complied with the decision. Arbitration Board Decision, Oct. 13, 1960.
100. *Williamsburg Transcript* 115.
101. *Ibid.*
102. Washington (D.C.) Post, June 10, 1961, p. 1A.
103. During the first year of operation, according to the testimony of Mr. B. Blanton Hanbury, the foundation's president, at the Commission's Williamsburg conference, approximately \$285,000 was contributed for the construction of permanent buildings. *Williamsburg Transcript* 97.
104. *Id.* at 86.
105. Ordinance adopted on July 18, 1960, by the Board of Supervisors of Prince Edward County. The county treasurer of Prince Edward informed a representative of the Commission that in 1960-61, 1,614 affidavits were filed applying for tax credit for contributions totaling \$56,866.22. He estimated that about 250 people own more than one parcel, so that this represented 1,364 individuals—a number approximating the enrollment at the foundation's schools the same year. Since the county ordinance allows tax credits to persons making contribution only to private schools located within the county, the Prince Edward County Foundation, which is the only such private school, obviously was the recipient of all of these contributions.
106. Ordinance adopted in November 1960 by the Prince Edward County Board of Supervisors. On June 16, 1961, the county board of supervisors adopted a budget including \$285,000 for

- private school tuition grants and \$30,000 for transportation of students attending private nonsectarian schools in the county, the only ones in existence *in the county* being the Prince Edward Foundation schools. (Norfolk, Va.) Journal & Guide, June 17, 1961, p. 4.
107. Special Report of Commission Staff on Prince Edward County field survey, Apr. 7, 1961, p. 8.
108. *Williamsburg Transcript* 86 (testimony of Dr. W. Edward Smith, chairman of the School Board of Prince Edward County, Va.)
109. *Williamsburg Transcript* 94, 98.
110. See App. IV, table 3.
111. Va. Acts 1960, ch. 448, p. 703.
112. Va. Acts 1956, Ex. Sess., ch. 64, p. 63. Mr. J. B. Wall, Jr., counsel of the foundation, told the Commission at its Williamsburg conference that the teachers employed by the foundation, with a few exceptions, had elected to continue under the Virginia supplementary retirement act so that the foundation paid 4.5 percent of teachers' salaries into the State pension system. *Williamsburg Transcript* 100.
113. *Allen v. County School Board of Prince Edward County, Va.*, Civ. No. 1333, E.D. Va., 1960. On Aug. 23, 1961, the District Court deferred decision of the issue of the closing of the county public schools to avoid racial discrimination until the State courts passed upon the question. It found, however, that the appropriation of county tax funds, in the guise of tuition grants and tax credits circumvented the court's desegregation order. The county board of supervisors and other local officials and employees were, therefore, enjoined from paying out county funds under the "grant-in-aid" and "tax credit" ordinances and also from approving any applications for State tuition grants so long as the county public schools were closed. It was the court's opinion that the Virginia statute providing for "freedom of choice" between public and private schools could not apply in the absence of public schools so that State grants could not be made available to residents of counties where public schools had been abandoned.
114. 358 U.S. 1, 9 (1958).
115. *Pennsylvania v. Board of Directors of City Trusts*, 353 U.S. 230 (1957).
116. *In re Estate of Stephen Girard*, 138 A. 2d 844 (Pa. 1958), *cert. denied*, 357 U.S. 570 (1958).
117. 149 F. 2d 212 (4th Cir. 1945), *cert. denied*, 326 U.S. 721 (1945).
118. *Id.* at 219.
119. 78 F. Supp. 451 (D. Md. 1948).

120. By way of analogy to the tuition grant systems, it is interesting to note that in the *Enoch Pratt* case not only did the library receive direct financial aid from the city, but its employees were on the city pay scale, and belonged to the municipal retirement system. Additionally the city controlled the library's budget and owned the library plant valued at over \$4 million.
121. In another case decided in 1958 by the Court of Appeals for the 4th Circuit in *Eaton v. Board of Managers of the James Walker Memorial Hospital*, 164 F. Supp. 191 (1958), *aff'd*, 261 F. 2d 521 (4th Cir. 1958), *cert. denied*, 359 U.S. 984 (1959), the question was whether the plaintiffs, three Negro doctors, were denied equal protection by the defendant hospital by exclusion from staff privileges because of their race. The issue, in substance, was whether or not the hospital was an instrumentality of the State. It had been established in 1881 and supported and operated until 1901 by municipal authorities. The court had no hesitation in describing it as a State agency up to that date. In 1901, however, a private corporation was organized. The city and county of Wilmington, N.C., conveyed the land on which the old hospital stood to the new corporation. The latter erected a new building on the site with contributions from private donors. For 50 years thereafter the hospital received financial support from local appropriations in unspecified amounts with the approval of the State legislature. In 1951 the Supreme Court of North Carolina found such financing unconstitutional on the ground that the support of a hospital was not a necessary government expense. The local governments then entered into contract with the hospital for the care of indigent patients. The total payments received under the contract in 1957 when the suit was brought were about 5 percent of the hospital's gross income. The Federal district court dismissed the suit on the ground that the discrimination, if any, was by a private institution so that no 14th amendment question was involved. The court of appeals affirmed, finding insufficient financial support by local governments to constitute "State action." The only links between the State and the hospital were the payments under contract for the care of indigent patients and a right of reverter in one-half of the hospital's land if it ceased being used for hospital purposes.

As to the period 1901-1951 the Court of Appeals said:

In 1901 . . . a new building was erected on the site with funds provided by the benefactor. It would seem from the evidence that the hospital then ceased to be a public agency, although in the subsequent years until 1951 it received certain financial

support from the City and County, the amount of which the record before us does not reveal. Any doubt on this point vanished in 1952 and 1953, when annual appropriations came to an end as the result of the decision of the Supreme Court of the State, and patients sent to the hospital by the local governments were treated and paid for under contract on a per diem basis.

122. *Williamsburg Transcript* 115-16.

123. *Id.* at 109.

124. *Id.* at 74, 77, 78. [Emphasis added.]

125. *Id.* at 75. In the case of *Hall v. St. Helena Parish School Board*, *supra*, note 41, the court said: "Grants-in-aid, no matter how generous, are not an adequate substitute for public schools. If a private school system could be established . . . there would still be lacking the organizational and administrative advantages, as well as economies, of operating as a member of a state system."

126. *Id.* at 76.

127. *Id.* at 74.

128. *Id.* at 76.

129. *Id.* at 77.

130. *Gatlinburg Transcript* 78-80 (Testimony of J. Gaston Williamson from Little Rock, Ark., chairman, Arkansas State Advisory Committee.).

131. *1959 Report* 199.

132. *Williamsburg Transcript* 51-62 (Testimony of Mrs. N. H. Sand, president of Save Our Schools Inc., New Orleans, La.).

133. *Williamsburg Transcript* 42-50 (Testimony of Mrs. Mary Reese Green, member of Executive Committee of Help Our Public Education, Inc., Atlanta, Ga.).

134. See notes 91 to 94, *supra*, and app. IV, table 3.

135. *Williamsburg Transcript* 77 (Dr. Green's statement).

136. *Williamsburg Transcript* 113.

137. Washington (D.C.) Post, Feb. 26, 1961, p. 8A. Since the Virginia statute permits grants to parents of pupils who were already attending private schools, complaints are heard that the tuition grants are being used to help parents send their children to private schools without respect to the desegregation issue, and that this violates the spirit of the law. So. School News, Jan. 1961, p. 11.

138. Washington (D.C.) Post, Aug. 3, 1961, p. 11D.

138a. For decision on this issue see: *Hall v. St. Helena Parish School Board*, *supra*, note 41.

138b. For decision on this issue see: *Allen v. County School Board of Prince Edward County, Va.*, *supra*, note 113.

139. *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960).

1. See ch. 3, *supra*.
2. School systems in Arizona, Kansas, and New Mexico had segregated schools for Negroes under sanction of State law at the time of the Supreme Court decision in 1954. These States had statutes permitting segregation in varying degrees or under specified conditions. See *1959 Report* 158, 245-56.
3. In New Jersey, Ohio, and Pennsylvania there were instances of compulsory racial segregation without sanction of State law. See *1959 Report* 256-58.
4. See ch. 3, *supra*.
5. *1959 Report* 15.
6. U.S. Bureau of the Census, News Release, C.B. 61-16, Mar. 14, 1961, New York, N.Y., Chicago, Ill., Philadelphia, Pa., Detroit, Mich., and Los Angeles, Calif.
7. *Id.*, Baltimore, Md., Houston, Tex., Washington, D.C., St. Louis, Mo., Dallas, Tex., New Orleans, La., San Antonio, Tex., Memphis, Tenn., and Atlanta, Ga.
8. *Id.*, Washington, D.C., St. Louis, Mo., and Baltimore, Md. See *1959 Report* 174-79, 182-83.
9. N.Y. Times, May 11, 1961, p. 33.
10. Philadelphia Board of Public Education, *For Every Child, the Story of Integration in the Philadelphia Public Schools*, Oct. 1960 at 2.
11. City of Pittsburgh Commission on Human Relations, *The Status of Education of Negroes in Pittsburgh*, Apr. 1960 at 2.
12. *California Hearings* 76 (Report of the Education Committee of the Community Relations Conference of Southern California, prepared by Dr. Burton Henry).
13. *Id.* at 79.
14. *Id.* at 816 (Statement of Dr. Harold Spears, Superintendent of Schools, San Francisco, Calif.).
15. *Id.* at 855 (Statement of Hon. Redmond C. Staats, Jr., Judge, Berkeley, Albany Municipal Court).
16. *Detroit Hearings* 144 (Statement of Mr. Charles L. Wells, Vice President, Citizens Association for Better Schools).
17. Maslow, "De facto Public School Segregation," 6 *Vill. L. Rev.* 354-55 (1961).
18. Prior to the decisions of the Supreme Court in *Shelley v. Kraemer* [334 U.S. 1 (1948)] and *Hurd v. Hodge* [334 U.S. 24 (1948)] restrictive covenants were judicially enforced in most States and the District of Columbia. Federal policy with respect to restrictive covenants played an important role in limiting the residential housing available to Negroes, thus helping to create Negro "ghettos".

In its early days of existence the FHA encouraged racial discrimination by recommending the use of restrictive covenants. Its explanation for doing so was the widespread belief that property values for a residential neighborhood suffered when the residents were not of the same social, economic, and racial group. In its 1938 Underwriting Manual the FHA declared that if a neighborhood is to retain its stability it is necessary that properties shall continue to be occupied by the same social and racial groups. See pt. VI, chs. 2 and 3.

19. These terms were defined by the court in the case of *Taylor v. Board of Education of New Rochelle, New York*, 191 F. Supp. 181, 194 note 12 (S.D.N.Y. 1961): "If these terms must be used, 'de jure' should refer to segregation created or maintained by official act, regardless of its form. 'De facto' should be limited to segregation resulting from fortuitous residential patterns."
20. See ch. 6, *infra*.
21. 228 F. 2d 853 (6th Cir. 1956), *cert. denied*, 350 U.S. 1006 (1956).
22. 228 F. 2d at 859, *supra*, note 21.
23. 165 F. Supp. 87 (E.D. Mich. 1958).
24. *Id.* at 90. [Emphasis added.]
25. 191 F. Supp. 181 (S.D.N.Y. 1961). The board argued on appeal that if the lower court's ruling was upheld it "might release a flood of complaints from other minority groups, notably Jewish and Italian." The board has voted to request review by the Supreme Court. N.Y. Times, Aug. 6, 1961, p. 11.
26. *Id.* at 189.
27. *Id.* at 192-93.
28. *Id.* at 195.
29. *California Hearings* 76.
30. *Id.* at 68.
31. *Id.* at 68 (Statement of Dr. Paul F. Lawrence, Superintendent, Willowbrook School District, Representing the Community Relations Conference of Southern California).
32. *Detroit Hearings* 143-44.
33. *Detroit Hearings* 184.
34. *Id.* at 143.
35. *California Hearings* 92.
36. Philadelphia Board of Public Education, *supra*, note 10.
37. *Chisholm v. Board of Public Education, District of Philadelphia*, Civ. No. — E.D. Pa. (1961). In July 1961 the Pa. General Assembly enacted a Fair Education Opportunities Act. The new legislation (Pennsylvania's first) followed studies that showed some Pa. colleges were accepting minority group students on a quota basis.

The study also revealed that some vocational schools refused to accept minority group students on the ground that there would be no employment for them in their chosen fields. The new law prohibits such discrimination. N.Y. Times, July 18, 1961, p. 18.

38. N.Y. Times, Sept. 1, 1960, p. 15 and Sept. 21, 1960, p. 41. See also Statement by Charles H. Silver, President of the Board of Education, and Dr. John J. Theobald, Superintendent of Schools, 5 *Race Rel. L. Rep.* 911-13 (1960).
39. N.Y. Times, Sept. 22, 1960, p. 29.
40. N.Y. Times, Mar. 29, 1961, p. C-1.
41. *Ibid.*
42. Silver and Theobald, *supra*, note 38, at 912.
- 42a. Maslow, "De Facto Public School Segregation," 6 *Vill. L. Rev.* 370 (1961).
43. *Detroit Hearings* 146.
44. *Ibid.*
45. *Williamsburg Transcript* 33. Data submitted after the conference confirmed this statement. Letter From George B. Brain, Superintendent of Baltimore Public Schools, to the Commission, May 8, 1961.
46. *Williamsburg Transcript* 33.
47. *Ibid.*
48. *California Hearings* 885.
49. *Ibid.*
50. 159 F. Supp. 561 (1957), *aff'd*, 252 F. 2d 898 (3d Cir. 1957), *cert. denied*, 356 U.S. 975 (1958).
51. 252 F. 2d at 901, *supra*, note 50.

An additional observation tending to confirm the lack of intention to discriminate was made by the court:

One of the startling facts is that the meeting of September 11, 1952, of the Board, the meeting at which definitive action was taken determining the site for the future junior high school, all of the members of the Board present were Negroes.

52. *Henry v. Godsell*, *supra*, note 23, at 90.
53. See note 25, *supra*. It is reported that 350 Negro children will ask for transfers. N.Y. Times, June 8, 1961, p. 21.
54. Brief for the United States as *Amicus Curiae*, p. 5, the *New Rochelle case*. See also N.Y. Times, May 11, 1961, p. 36.
55. *Id.*, N.Y. Times.
56. *Ibid.*
57. N.Y. Times, May 16, 1961, p. 27.
58. Brief of United States, *supra*, note 54, at 9-11.
59. *Id.* at 12.

60. *Taylor v. Board of Education*, *supra*, note 25, at 190. The board has announced that building plans will be held in abeyance. N.Y. Times, July 4, 1961, p. 21.
61. *Id.* at 193. [Emphasis added.]
62. *Id.* at 197.
63. Recently a charge was made by a member of the Arlington County school board that a decision to enlarge an elementary school in the center of the Negro community, rather than build a new school on the periphery thereof, was based on "racial considerations—not education, costs, or site considerations." If established, such action would appear to fall within the rules above stated and constitute a denial of equal protection of the laws. Washington (D.C.) Post, Jan. 29, 1961, p. 1B.
64. *Plessy v. Ferguson*, 163 U.S. 537 (1896).
65. *In the Matter of Skipwith*, 180 N.Y.S. 2d 852 (Dom. Rel. Ct. N.Y.C. 1958).
66. *Id.* at 863.
67. *Id.* at 868.
68. *Id.* at 869.
69. 339 U.S. 629 (1950).
70. *In the Matter of Skipwith*, *supra*, note 65, at 871.
71. *Ibid.*
- 71a. *Cf. Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961) where the United States Supreme Court stated: "But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be."
72. 96 S.E. 2d 154 (Va. 1957).
73. *Detroit Hearings* 141-49.
74. *Id.* at 145.
75. *California Hearings* 94-95, 824, 858.
76. *Detroit Hearings* 161-64.
77. Philadelphia Board of Public Education, *For Every Child, the Story of Integration in the Philadelphia Public Schools*, October 1960 at 4.
78. *Id.* at 2.
79. *Chisholm v. Board of Public Education*, *supra*, note 37.
- 79a. The Ill. Senate in the 1961 session rejected an appropriation for \$15,000 for a State administrator to investigate charges of unfair education practices. The measure was aimed primarily at racial gerrymandering of school district boundaries. *From the State Capitals*, July 11, 1961, p. 1.
80. "De Facto Segregation in the Chicago Public Schools," *The Crisis*, February 1958 at 89-90. The Commission's Illinois State Ad-

visory Committee confirmed the fact that the predominantly Negro schools suffer by reason of the size of the school population and size of the classes. Of 22 schools, each enrolling over 2,000 pupils (the medium school size being 820.5), 18 are all or predominantly Negro, and almost all of the 22 have double-shift classes. The committee suggested that redistricting, construction of new schools in appropriate locations or transport of students to less crowded schools was needed to relieve this problem.

81. *Id.*, *The Crisis*, 89.

82. *Ibid.*

83. *Id.* at 90.

84. *Ibid.* (Similar complaints, school board inaction to relieve overcrowding, substandard teachers, transfers, etc., have been received by the Commission from Newark, N.J.)

85. *Ibid.*

NOTES: EDUCATION, Chapter 8

1. *Nashville Transcript* 60 (statement of Dr. Carl F. Hansen, Supt. Schools, Washington, D.C.); 98 (statement of Dr. Jack F. Parker, principal, Webster Jr. High School, Oklahoma City, Okla.); 119-20 (statement of Dr. Rex M. Smith, Assistant State Supt. Schools, W. Va.); 149 (statement of Dr. John H. Fischer, Supt. Schools, Baltimore, Md.); 155-56 (statement of Dr. Omer Carmichael, Supt. Schools, Louisville, Ky.). For general discussion, see 1959 *Report* 272-75.
2. E.g., Wey and Corey, *Action Patterns in School Desegregation* 212-14 (1958); Virginia State Board of Education, *Summary, The Standardized Testing Program, Virginia Public Schools* 1959-60.
3. Civil Rights Act of 1957, sec. 104(b), 71 Stat. 635, 42 U.S.C. sec. 1975c(b) (1958).
4. See 1959 *Report* 177; *Nashville Transcript* 138-40.
5. See ch. 3 at 22-31, *supra*.
6. See *Nashville Transcript* 61. See also Wey and Corey, *op. cit.*, *supra*, note 2, at 220; Factual situation, *Norwood v. Tucker*, 287 F.2d 798, 807 (8th Cir. 1961).
7. *Nashville Transcript* 61, 64, 66. See also 1959 *Report* 177, 276-77; *Nashville Transcript* 74-75.
8. *Nashville Transcript* 57.
9. See Wey and Corey, *op. cit.*, *supra*, note 2, at 219-22, 229-32.
10. E.g., *Nashville Transcript* 25.
11. E.g., Letter From Ford Foundation (concerning Chicago's Greater Cities' Project) to the Commission, Mar. 16, 1961.
12. E.g., *id.*, (concerning Milwaukee's Greater Cities Program).
13. See 1959 *Report* 275-79.
14. *Gatlinburg Transcript* 183.
15. *Nashville Transcript* 43-44.
16. *California Hearings* 57.
17. *Id.* at 62.
18. *Gatlinburg Transcript* 126.
19. *Williamsburg Transcript* 180.
20. *Id.* at 181-82.
21. *Id.* at 182.
22. *Ibid.*
23. *Gatlinburg Transcript* 186, 191.
24. *Id.* at 191.
25. *Id.* at 186.
26. Letter From Secretary of "Careers Unlimited" to the Commission, Mar. 15, 1961.
27. *Ibid.*

28. Brown, *Ladders to Improvement* (Report of a Project for the Improvement of Instruction in Secondary Schools), 18 (1960).
29. *Williamsburg Transcript* 185, 192.
30. Brown, *op cit.*, *supra*, note 28, at 5.
31. *Williamsburg Transcript* 185, 192.
32. *Id.* at 192-93.
33. *Id.* at 193.
34. *Id.* at 194.
35. *Ibid.*
36. *Ibid.*
37. *Id.* at 195.
38. *Id.* at 213.
39. *Id.* at 218.
40. *Id.* at 214.
41. *Id.* at 223.
42. *Id.* at 219.
43. *Id.* at 220-21.
44. *Id.* at 221-22.
45. *Id.* at 215-16.
46. *Id.* at 222.
47. *Gatlinburg Transcript* 230.
48. *Williamsburg Transcript* 224.
49. Board of Education of the City of New York, *Demonstration Guidance Project, Fourth Annual Progress Report 1959-60*, at 2.
50. *Williamsburg Transcript* 223.
51. *Id.* at 223-24.
52. *Id.* at 234.
53. *Gatlinburg Transcript* 232.
54. *Id.* at 242.
55. *Id.* at 241-42.
56. *Id.* at 235.
57. *Id.* at 234.
58. *Id.* at 246.
59. *Id.* at 245.
60. *Ibid.*
61. *Id.* at 238.
62. *Id.* at 246.
63. Board of Education of the City of New York, *Higher Horizons Program First Annual Progress Report, 1959-60*, at 4; *Williamsburg Transcript* 224, 225, 235.
64. *Williamsburg Transcript* 224.
65. *Id.* at 225, 235.
66. *Higher Horizons Program*, *supra*, note 63, at 28.

67. *Williamsburg Transcript* 226.
68. *Id.* at 240.
69. *Higher Horizons Program, supra*, note 63, at 44.
70. *Williamsburg Transcript* 227; *Higher Horizons Program, supra*, note 63, at 46.
71. 72 Stat. 1592 (1958), 20 U.S.C. sec. 484(a) (1958); *Gatlinburg Transcript* 238-39.
72. Letter From Ford Foundation to the Commission, Mar. 16, 1961.
73. *Id.*, Buffalo, N.Y., Chicago, Ill., Cleveland, Ohio, Detroit, Mich., Milwaukee, Wis., Pittsburgh, Pa., Philadelphia, Pa., San Francisco, Calif., St. Louis, Mo., Washington, D.C.
74. Letter From Chicago's project director (in response to an inquiry by the Commission), Apr. 5, 1961: ". . . We do not have records of the ethnic background of pupils."
75. Project directors indicated that other minority groups participated in the program although in all cities that answered, Negro pupils represented the great majority of participants.
76. Letter, *supra*, note 72: Cleveland and Milwaukee.
77. *Id.*, Chicago, Cleveland, and Philadelphia.
78. *Id.*, Buffalo.
79. First project in New York City, *Gatlinburg Transcript* 230-46.
80. Letter, *supra*, note 72: Philadelphia, San Francisco, and Washington, D.C.
81. *California Hearings*, 86-87, 838, 873.
82. Letter, *supra*, note 72, Pittsburgh and San Francisco.
83. *Id.*, Chicago.
84. *Id.*, St. Louis.
85. *Id.*, Cleveland, St. Louis, and Milwaukee.
86. *California Hearings* 835; Detroit Hearings 181-82.
87. *California Hearings* 838.
88. *Id.* at 873.
89. *Williamsburg Transcript* 136.
90. *Id.* at 137.
91. *Id.* at 136.
92. *Id.* at 147.
93. *Id.* at 140.
94. *Id.* at 136.
95. *Id.* at 153.
96. *Id.* at 137.
97. *Id.* at 137-38.
98. *Id.* at 138.
99. Letter From Dr. Arthur G. Parkllan, President, Bd. of Education, Oak Park Dist. Schools, Oak Park, Mich., to the Commission, Feb. 14, 1961.

100. *Williamsburg Transcript* 159.
101. *Id.* at 152.
102. *Id.* at 153.
103. *Id.* at 196.
104. *Ibid.*
105. *Id.* at 204-205.
106. *Id.* at 196-97.
107. *Id.* at 197.
108. *Id.* at 199.
109. *Id.* at 202.
110. *Id.* at 197.
111. *Id.* at 200-201.
112. *Id.* at 231.

1. *Kerr v. Enoch Pratt Free Library of Baltimore City*, 54 F. Supp. 514 (D.C. Md. 1944), *rev'd*, 149 F. 2d 212, 217 (4th Cir. 1945).
2. 70 Stat. 293, as amended, 20 U.S.C. secs. 351-58 (1958).
3. Gardiner, "National Library Week—For All?", 105 *America* 150 (1961).
4. 85 *Library Journal* 4418-21 (1960).
5. Gardiner, *op. cit. supra*, note 3, at 152.
6. *Id.* at 150.
7. Dykeman and Stokley, "New Southerner: The Middle Class Negro," *N. Y. Times Magazine*, Aug. 9, 1959, p. 54.
8. *Turner v. Randolph*, Civ. No. 3525, W.D. Tenn., 1958.
9. *Williams v. Mingledorf*, Civ. No. 1160, S.D. Ga., May 23, 1960.
- 9a. *Nashville Tennessean*, July 23, 1961, p. 10A.
10. (Washington D.C.) *Evening Star*, Mar. 22, 1960, p. 3 A.
11. *Washington (D.C.) Post*, Apr. 5, 1960, p. 11 A.
12. *Time*, Apr. 7, 1961, p. 45.
13. *Washington (D.C.) Post*, Apr. 5, 1960, p. 11 A.
14. *Id.*, May 7, 1960, p. 6D.
15. *Richmond (Va.) News Leader*, May 31, 1960, p. 10. (All italicized in original.)
16. *Id.*, June 15, 1960, p. 4.
17. (Washington, D.C.) *Evening Star*, June 15, 1960, p. 3 B.
18. *Washington (D.C.) Post*, June 16, 1960, p. 2B.
19. *N.Y. Times*, Sept. 18, 1960, p. 72.
20. *Washington (D.C.) Post*, Sept. 15, 1960, p. 3 B.
21. *Los Angeles Examiner*, Sept. 25, 1960, p. 18 (quoting *Danville (Va.) Commercial-Appeal*).
22. 85 *Library Journal* 3942 (1960).
23. *Id.* at 3943.
24. *N.Y. Times*, Dec. 2, 1960, p. 22.
25. *Richmond News Leader*, June 8, 1961, p. 4.
26. *Washington (D.C.) Post*, May 30, 1960, p. 1B.
27. *Id.*, Apr. 4, 1960, p. 3A.
28. *Id.*, Mar. 15, 1960, p. 17A.
29. (Louisville, Ky.) *Courier Journal*, June 19, 1960, p. 2, sec. 1; *Washington (D.C.) Post*, Apr. 5, 1960, p. 1A.
30. *Washington (D.C.) Post*, July 8, 1960, p. 2B.
31. *Baltimore Afro-American*, Nov. 8, 1960, p. 12.
32. (Washington, D.C.) *Evening Star*, Mar. 23, 1960, p. A17.
33. See pt. III, ch. 4 at 176-77 *supra*.
34. *Id.* at 176.
35. *Ibid.*
36. See p. 147-48 *infra*.

37. See note 56 *infra*.
38. See note 2 *supra*.
39. 20 U.S.C. sec. 352 (1958).
40. 20 U.S.C. sec. 354(a)(5) (1958).
41. 20 U.S.C. secs. 351(b), 354(c) (1958).
42. 20 U.S.C. sec. 356 (1958).
43. 20 U.S.C. sec. 356 (1958).
44. 20 U.S.C. sec. 358(c) (1958). (Emphasis added.)
45. 21 Fed. Reg. 9651 (1956). (Emphasis added.)
46. *Id.* at 9652.
47. *Ibid.*
48. *Ibid.*
49. U.S. Department of Health, Education, and Welfare, *Federal Funds for Education, 1956-57 and 1957-58* at 40 (1959).
50. N.Y. Times, Feb. 12, 1960 (editorial: "For Rural Libraries").
51. See app. IV, table 5.
52. *Id.*, and see note 49, *supra*.
53. See app. IV, table 5.
54. The questionnaire is reproduced in app. IV, Exhibit 1.
55. Ala., Ark., Ga., Ky., Md., Mo., N.C., Okla., S.C., Tenn. and W. Va.
56. Mississippi librarians refused to complete and return questionnaires on the ground of specific instructions received to that effect from the State attorney general and the State Library Commission.
57. Ala., Ark., Ga., N.C., S.C., and Tenn.

1. U.S. Const. art. II, sec. 3.
2. *In re Neagle*, 135 U.S. 1, 59 (1890).
3. *Williamsburg Transcript* 5.
4. Washington (D.C.) Post, Jan. 13, 1961, p. 1B.
5. 347 U.S. 483 (1954).
6. 135 F. Supp. 296 (E.D. Ark. 1955); 137 F. Supp. 364 (E.D. Ark. 1956), *aff'd*, 238 F. 2d 91 (8th Cir. 1956).
7. Brief of the United States as *amicus curiae*, p. 1, *Brewer v. Hoxie School District No. 46*, Civ. No. 15510, 8th Cir. 1956.
8. *Id.* at 3. "The United States also filed a Brief as *amicus curiae* in the *School Segregation Cases*. Its interest in doing so as set forth therein applies with equal force here. Our concern common to both cases is with 'the affirmative government obligation to insure respect for fundamentally human rights'—regardless of whether such rights are threatened as here by action against those duly constituted officials who are responsible for their being protected and secured, or by action against those individuals for whose benefit they exist." *Ibid.*
9. *Brewer v. Hoxie School District*, 238 F. 2d 91, 99 (8th Cir. 1956).
10. *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 581 (1946).
11. *Kasper v. Brittain* 245 F. 2d 92 (6th Cir. 1957), *cert. denied*, 355 U.S. 834 (1957). Further obstruction of court orders by Kasper and associates were the object of separate criminal contempt proceedings initiated by the U.S. Attorney in December 1956 and concluded with a conviction in *United States v. Bullock* and *United States v. Kasper*, Civ. No. 1555, E.D. Tenn. July 23, 1957, 2 *Race Rel. L. Rep.* 796 (1957), *aff'd*, 265 F. 2d 683 (6th Cir. 1959), *cert. denied*, 360 U.S. 909 (1959).
12. The Little Rock School Board had adopted a desegregation plan for its high schools on May 24, 1955; the district court upheld the school board's plan in *Aaron v. Cooper*, 143 F. Supp. 855 (E.D. Ark. 1956), and the Court of Appeals affirmed the decision, 243 F. 2d 361 (8th Cir. 1957).
13. 2 *Race Rel. L. Rep.* 937-8 (1957). The proclamation stated that troops were dispatched "to accomplish the mission of maintaining or restoring law and order and to preserve the peace, health, safety, and security of the citizens."
14. *Aaron v. Cooper*, 156 F. Supp. 220, 225 (E.D. Ark. 1957), *aff'd sub nom.*, *Faubus v. United States*, 254 F. 2d 797 (8th Cir. 1958), *cert. denied*, 358 U.S. 829 (1958).
15. 254 F. 2d 797 (8th Cir. 1958).

16. *United States v. Faubus*, Civ. No. 3113, E.D. Ark., Sept. 20, 1957, 2 *Race Rel. L. Rep.* 958 (1957).
17. Presidential Proclamation No. 3204, 22 Fed. Reg. 7628 (1957).
18. Executive Order No. 10730, 22 Fed. Reg. 7628 (1957).
19. See *Standard Computing Scale Co. v. Farrill*, 249 U.S. 571, 577 (1919); *In re Neagle*, supra, note 2. *American Federation of Labor v. Watson*, 327 U.S. 582, 592 (1946).
20. 5 U.S.C. sec. 306 (1958).
21. Brief of the United States as *amicus curiae*, p. 41, *Faubus v. United States*, Civ. No. 15904, 8th Cir. (1958).
22. *Faubus v. United States*, 254 F. 2d 797, 804-05 (8th Cir. 1958).
23. *Aaron v. Cooper*, 163 F. Supp. 13 (E.D. Ark. 1957), *rev'd*, 257 F. 2d 33 (8th Cir. 1958), *aff'd*, 358 U.S. 1 (1958).
24. *Aaron v. Cooper*, 261 F. 2d 97 (8th Cir. 1958).
25. 173 F. Supp. 944 (E.D. Ark. 1959).
26. *Id.* at 952.
27. *Faubus v. Aaron*, 361 U.S. 197 (1959).
28. La. Acts 1960, 1st Ex. Sess. No. 2. See ch. 5 at 73, *supra*.
29. Civ. No. 10566 E.D. La. 1960, (later consolidated with *Bush v. Orleans Parish School Board*).
30. Brief for United States in *United States v. State of Louisiana*, Civ. No. 10566, E.D. La. 1960, p. 12, citing in support *Mayo v. United States*, 319 U.S. 441 (1943); *Hunt v. United States*, 278 U.S. 96, 100 (1928); *United States v. Owlett*, 15 F. Supp. 736, 741, 743 (M.D. Pa. 1936).
31. *Id.* at 13.
32. *Id.* at 31.
33. *United States v. Louisiana*, 188 F. Supp. 916 (E.D. La. 1960).
34. *Bush v. Orleans Parish School Board*, Civ. No. 3630, E.D. La., Nov. 25, 1960, 5 *Race Rel. L. Rep.* 1007 (1960).
35. *Ibid.*
36. *Louisiana v. United States*, 364 U.S. 500 (1960). On Mar. 20, 1961, the Supreme Court affirmed the ruling of the district court in *United States v. Louisiana*, supra, note 33. 29 *U.S.L. Week* 3275 (Mar. 20, 1961).
37. Brief for the United States, *amicus curiae*, in support of its motion for preliminary injunction, p. 3, *Bush v. Orleans Parish School Board*, Civ. No. 3630, E.D. La. Dec. 4, 1960.
38. *Bush v. Orleans Parish School Board*, 190 F. Supp. 861, 866 n. 9 (E.D. La. 1960), *aff'd per curiam*, May 8, 1961, 29 *U.S.L. Week* 3334 (May 8, 1961).

39. *United States v. Louisiana*, Civ. No. 10566; *Bush v. Orleans Parish School Board*, Civ. No. 3630, E.D. La., February 16, 1961.
40. *Bush v. Orleans Parish School Board*, 191 F. Supp. 871 (E.D. La. 1961).
41. *Id.* at 875-76.
42. *Id.* at 877 n. 12 referred to statements by Senator Hill, 103 *Cong. Rec.* 10227 (1957). See also Senator Ellender, 103 *Cong. Rec.* 10454 (1957).
43. *Id.* at 877.
44. *Id.* at 877-78.
45. *Bush v. Orleans Parish School Board*, Civ. No. 3630, E.D. La., Notice of Appeal to the Supreme Court of the United States by the Legislature of Louisiana, March 3, 1961, p. 3.
46. 29 *U.S.L. Week* 3381 (June 19, 1961).
47. 29 *U.S.L. Week* 2550 (May 4, 1961).
48. *Davis v. East Baton Rouge Parish School Board*, Civ. No. 1662, E.D. La.; May 24, 1960, *Hall v. St. Helena Parish School Board*, Civ. No. 1068, E.D. La., May 24, 1960.
49. *St. Helena Parish School Board v. Hall*, Civ. No. 18,523, 5th Cir. Feb. 1961. See So. School News, Mar. 1961, p. 8.
50. La. Acts 1961, 2d Extra Sess. No. 2.
51. N.Y. Times, Apr. 24, 1961, p. 22.
52. So. School News, May, 1961, p. 1.
53. *Ibid.*
54. *Ibid.*
55. *Ibid.*
56. See Part II, ch. 3 at 68, *supra*.
57. Brief for the United States as *amicus curiae*, pp. 1-2, *Hall v. St. Helena Parish School Board*, Civ. No. 1068, E.D. La., June 1961.
58. *Id.* at 2. See ch. 6, n. 47, *supra*.
59. Brief for the United States, *supra*, n. 57.
60. *Allen v. County School Board of Prince Edward County, Va.*, Civ. No. 1333, E.D. Va., motion filed by United States for intervention as a plaintiff April 27, 1961, p. 1.
61. *Id.*, memorandum in support of motion, p. 2.
62. *Ibid.*
63. *Id.* at 1.
64. 5 U.S.C. sec. 309 (1958).
65. *Allen v. County School Board of Prince Edward County, Va.*, Civ. No. 1333, E.D. Va., Brief of the United States, p. 20.
66. *Id.* at 40.
67. Washington (D.C.) Post, June 15, 1961, p. 1A.
68. *Ibid.* See p. 158, *supra*.

69. *Taylor v. Board of Education of the City School District of New Rochelle, N.Y.*, Civ. No. 60-4098, S.D. N.Y. 1960.
70. See N.Y. Times, Sept. 16, 1960, p. 33, and Oct. 21, 1960, p. 35.
71. *Id.*, May 11, 1961, p. 36.
72. *Id.*, May 16, 1961, p. 27.
73. *Taylor v. Board of Education of the City School District of New Rochelle, N.Y.*, Civ. No. 60-4098. Brief of the United States as *amicus curiae*, filed May 24, 1961, p. 9.
74. (Washington, D.C.) Evening Star, May 31, 1961, p. 4. The decision has been appealed by the New Rochelle School Board. N.Y. Times, June 1, 1961, p. 23.
75. N.Y. Times, Aug. 3, 1961, p. 25.

1. *Higher Education Report*.
2. *Holmes v. Danner*, 191 F. Supp. 385 (M.D. Ga. 1961).
3. *Holmes v. Danner*, 191 F. Supp. 394, 402 (M.D. Ga., 1961).
4. *Holmes v. Danner*, *supra*, note 2, at 392.
5. *Holmes v. Danner*, *supra*, note 3, at 397.
6. *Ibid*.
7. *Id.* at 410.
8. Ga. Acts 1956, No. 11, p. 6. See also Ga. Laws 1957, p. 56.
9. *Holmes v. Danner*, *supra*, note 3, at 412.
10. *Id.* at 411.
11. *Holmes v. Danner*, — F. 2d — (5th Cir. 1961). Atlanta Constitution, Jan. 11, 1961, p. 1. The Supreme Court of the United States unanimously denied the university's request for a delay in the admission of Miss Hunter and Mr. Holmes.
12. So. School News, Feb. 1961, p. 8; Atlanta Constitution, Jan. 12, 1961, p. 1. See also N.Y. Times, Jan. 12, 1961, p. 20.
13. See ch. 5, at 71-72, *supra*.
14. *Holmes v. Danner*, *supra*, note 3, at 416-17.
15. *Id.* at 417 (Temporary Injunction, Jan. 13, 1961).
16. *Holmes v. Danner*, Civ. No. 450, M.D. Ga., Mar. 1961. See So. School News, Apr. 1961, p. 16.
17. Atlanta Constitution, May 4, 1961, p. 14.
18. So. School News, June 1961, p. 8. See also Atlanta Constitution, May 12, 1961, p. 4.
19. *Ibid*. Nine Negroes rejected for fall admission have taken the first step in administrative appeal. Atlanta Constitution, June 21, 1961, p. 6.
20. So. School News, *supra*, note 18.
21. Atlanta Constitution, *supra*, note 18.
22. Atlanta Constitution, May 16, 1961, p. 17. *But see* So. School News and Atlanta Constitution, *supra*, note 18.
23. Durham Morning Herald, Feb. 22, 1961, p. 10A. See also So. School News, May 1961, p. 9.
24. *Wynn v. Trustees of the Charlotte Community College System*, Civ. No. —, filed May 15, 1961. See, So. School News, June 1961, p. 5; (Charleston, S.C.) News and Courier, May 16, 1961, p. 7A.
25. Durham (N.C.) Morning Herald, June 1, 1961, p. 5A.
26. N.Y. Times, June 1, 1961, p. 22; (Jackson, Miss.) Clarion-Ledger, June 1, 1961, p. 1A.
27. *Ibid*. Mr. Meridith filed character references with the university from five Negroes, none of whom had attended the University of Mississippi.
28. N.Y. Times, *supra*, note 26.
29. *Ibid*.
30. (Jackson, Miss.) Clarion-Ledger, *supra*, note 26.

31. So. School News, June 1961, p. 4.
32. So. School News, April 1961, p. 15, and June 1961, p. 15. See also (Charleston, S.C.) News and Courier, May 19, 1961, p. 4C; N.Y. Times, June 25, 1961, p. 53.
33. *Id.*, N.Y. Times.
34. S.C. Acts 1956, No. 813, p. 1841, See *Higher Education Report* 82-83.
35. N.Y. Times, Jan. 2, 1961, p. 14, and Jan. 4, 1961, p. 19. The University of Tennessee's branch in Martin has accepted two Negro undergraduate students to mark the first school desegregation in West Tennessee outside of Memphis. N.Y. Times, June 17, 1961, p. 10. See also Nashville Tennessean, June 16, 1961, p. 2.
36. *Higher Education Report* 63.
37. N.Y. Times, *supra*, note 35.
38. *Higher Education Report* 35-36.
39. U.S. Department of Health, Education, and Welfare, *Public Health Service Grants and Awards, Fiscal Year 1960, Part I* (Extramural Research Grants Program). Miami University received \$1,034,453, the second largest amount received by a grantee institution of the State's 21 recipients. *Id.* at 400. Tulane University received \$1,593,302, the largest amount received by a grantee institution of the State's 14 recipients. *Id.* at 406. Duke University received \$1,934,646 and Wake Forest College \$409,686, the largest and third largest (respectively) amount received by grantee institution out of the State's 13 recipients. *Id.* at 422.
40. Atlanta Constitution, Feb. 1, 1961, p. 2. See also Washington (D.C.) Post, Feb. 1, 1961, p. 7A. See also N.Y. Times, Feb. 1, 1961, p. 28. The university accepted about 25 Negro students for its summer session. So. School News, July 1961, p. 16.
41. So. School News, May 1961, p. 8.

A judicial determination must be made relative to the provisions of grants made to the university by Paul Tulane. The original and additional grants from Mr. Tulane were to promote and encourage "intellectual, moral, and industrial education among young white persons in New Orleans." Subsequently, Mrs. Josephine L. Newcomb established the Sophie Newcomb College, now attached to Tulane, and provided grants "for the higher education of white girls and women." *Ibid.*
42. *Id.*, Apr. 1961, p. 14. See also Durham (N.C.) Morning Herald, Mar. 9, 1961, p. 1A, and Mar. 18, 1961, p. 2A.

Duke University has accepted three Negro graduate students for the September 1961 term. Detroit News, June 15, 1961, p. 7A.
43. Durham (N.C.) Morning Herald, Apr. 29, 1961, p. 1A.
44. *Id.*, June 6, 1961, p. 8A.

1. Jones, Howard Mumford, "The Tradition of American Public Education," pp. 12-13, appendix to Brief *amicus curiae* of the Attorney General of Massachusetts in *Hall v. St. Helena Parish School Board*, Civ. No. 10620, E.D. La., June 1961.

Appendix IV.—LIST OF TABLES AND EXHIBITS IN APPENDIX

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APPENDIX IV

TABLE 1.—*Progress in desegregation of school districts, 1959-61*¹

	<i>Total school districts, 1960-61</i>	<i>Number with white and Negro pupils, 1960-61</i>	<i>Desegregated, May 1959</i>	<i>School districts</i>		<i>Desegregated by court order, 1959-61</i>	<i>Desegregated, May 1961</i>	<i>Segregated, May 1961</i>
				<i>1959-60</i>	<i>1960-61</i>			
Alabama.....	114	114	0	0	0	0	0	114
Arkansas.....	422	228	² 8	1	1	0	10	218
Delaware.....	93	51	³ 13	7	5	3	⁴ 24	26
District of Columbia.....	1	1	1	0	0	0	1	0
Florida.....	67	67	0	1	0	0	1	66
Georgia.....	198	196	0	0	0	0	0	196
Kentucky.....	211	171	⁵ 123	6	0	⁶ 0	⁴ 128	42
Louisiana.....	67	67	0	0	1	1	1	66
Maryland.....	24	23	23	0	0	0	⁷ 23	0
Mississippi.....	151	151	0	0	0	0	0	151
Missouri.....	1, 889	214	⁸ 200	.....	.....	0	200	14
North Carolina.....	173	173	4	3	3	1	10	163
Oklahoma.....	1, 276	241	⁸ 187	0	2	0	189	52
South Carolina.....	108	108	0	0	0	0	0	108
Tennessee.....	154	143	3	1	2	3	⁹ 6	137
Texas.....	1, 531	720	124	3	1	1	128	592
Virginia.....	130	128	4	2	5	4	11	117
West Virginia.....	55	43	43	0	0	0	43	0
Total.....	6, 664	¹⁰ 2, 839	733	24	20	¹¹ 13	775	2, 062
Percent.....	.....	.....	25. 8	.....	.....	29. 5	27. 3	72. 7

The figures for total number of school districts and number having both white and Negro pupils were taken from Southern Educational Reporting Service, *Status of School Segregation-Desegregation in the Southern and Border States*, November 1960. Number of school districts desegregating each of the years involved are generally from Southern Educational Reporting Service and various issues of So. School News, for Delaware, Kentucky, and Maryland, data came from Commission conferences and official State reports. Due to consolidation, the total number of school districts in Delaware, Georgia, Kentucky, Missouri, Oklahoma, and Texas has diminished, causing a reduction in the number of biracial districts, and in the case of Missouri and Oklahoma, a reduction in the total number of districts reported desegregated. An increase in the number of districts in Alabama, North Carolina, South Carolina, and Tennessee has caused an increase in biracial districts.

² One district, Ozark, that desegregated in 1957 has reverted to segregation and is therefore omitted.

³ One district, Mount Pleasant, that declared a policy of accepting students without regard to race, has had no Negro pupils. It is no longer counted as a desegregated district by the State. (Letter From State department of education to U.S. Commission on Civil Rights, Apr. 11, 1961.)

⁴ Two previously desegregated districts reported by the State department of education to have merged.

⁵ Of this number, 23 districts have formally adopted a desegregation policy but have no biracial schools. (Commonwealth of Kentucky, *Sup. Educational Bull.*, October 1960, p. 3.)

⁶ Desegregation in 1 district extended by court order to include elementary schools.

⁷ Nine county school districts adopted a desegregation policy but have no biracial schools.

⁸ The number desegregated has been adjusted to reflect consolidation of school districts.

⁹ Three school districts, Knox County, Kingsport, and Johnson City, have announced a policy of accepting pupils without regard to race, but had no biracial schools 1960-61.

¹⁰ As of May 1961 the number is 2,837 due to consolidation of school districts during the year.

¹¹ Delaware: *Evans v. Buchanan*, 173 F. Supp. 891 (D. Del. 1959).

Louisiana: *Bush v. Orleans Parish School Board*, Civ. No. 3630, E. D. La. May 16, 1960, 5 *Race Rel. L. Rep.* 378 (1960).

North Carolina: *Griffith v. Board of Education of Yancey County*, 186 F. Supp. 511 (W.D.N.C. 1960).

Tennessee: *Goss v. Board of Education of the City of Knoxville*, 186 F. Supp. 559 (E.D. Tenn. 1960); *Maxwell v. County Board of Education of Davidson County*, Civ. No. 2956, M.D. Tenn., Nov. 23, 1960, 5 *Race Rel. L. Rep.* 1040 (1960).

Texas: *Ross v. Peterson*, Civ. No. 10444, S.D. Tex., Aug. 3, 1960, 5 *Race Rel. L. Rep.* 703 (1960).

Virginia: *Allen v. School Board of the City of Charlottesville*, Civ. No. 51, W.D. Va., Mar. 30, 1959, Sept. 5, 1959, 4 *Race Rel. L. Rep.* 881 (1959); *Walker v. Floyd County School Board*, Civ. No. 1012, W.D. Va., Sept. 8, 1960, 5 *Race Rel. L. Rep.* 714 (1960); *Goins v. County School Board of Grayson County*, 186 F. Supp. 753 (W.D. Va. 1960); *Crisp v. Pulaski County School Board*, Civ. No. 1052, W.D. Va., Apr. 26, 1960, 5 *Race Rel. L. Rep.* 721 (1960).

TABLE 2.—*Status of segregation-desegregation, 1960-61, in 17 States and District of Columbia*

	Enrollment ¹			Negroes enrolled ² in desegregated schools	Negro percent of en- rollment
	Total	White	Negro		
Alabama.....	787, 269	516, 135	271, 134	0	0. 0
Arkansas.....	422, 183	317, 053	105, 130	113	. 1
Delaware.....	81, 603	66, 630	14, 973	6, 783	45. 3
District of Colum- bia.....	121, 448	24, 697	96, 751	81, 392	84. 1
Florida.....	1, 019, 792	807, 512	212, 280	³ 27	. 01
Georgia.....	921, 632	626, 377	295, 255	0	. 0
Kentucky.....	635, 432	593, 494	41, 938	16, 329	38. 9
Louisiana.....	693, 202	422, 181	271, 021	⁴ 1	(7)
Maryland.....	598, 088	461, 206	136, 882	⁵ 45, 943	33. 6
Mississippi.....	566, 421	287, 781	278, 640	0	. 0
Missouri.....	842, 000	758, 000	84, 000	35, 000	41. 7
North Carolina....	1, 140, 000	832, 200	307, 800	82	. 02
Oklahoma.....	545, 000	504, 125	40, 875	⁶ 9, 806	24. 0
South Carolina....	612, 894	354, 227	258, 667	0	. 0
Tennessee.....	828, 000	675, 648	152, 352	376	. 2
Texas.....	2, 129, 540	1, 840, 987	288, 553	3, 500	1. 2
Virginia.....	879, 500	668, 500	211, 000	208	. 09
West Virginia.....	437, 656	416, 646	21, 010	14, 000	66. 6

¹ Source: Figures from So. School News, June 1961, p. 1.

² *Id.*, unless otherwise indicated.

³ So. School News, October 1960, p. 8, March 1961, at p. 14. See also ch. 4, at 41 *supra*.

⁴ Although 4 Negro pupils attended formerly white schools, only 1 school had white pupils attending with 1 Negro pupil.

⁵ Baltimore figures from *Gallinburg Transcript*. Figures for remainder of State from Report of Maryland State Department of Education, Division of Administration, Finance and Research, February 1960, revised February 1961.

⁶ Questionnaire of Oklahoma State Department of Education.

⁷ The 1 Negro pupil in the total did not reflect any percentage.

TABLE 3.—*Financing of Prince Edward Foundation, 1960-61* ¹

	<i>Elementary school</i>	<i>Per- cent</i>	<i>High school</i>	<i>Percent</i>	<i>Total</i>	<i>Percent</i>
Enrollment	901	100	475	100	1, 376	100
Pupils receiving tuition grants	856	95	469	98. 7	1, 325	96. 3
Pupils not receiving tuition grants	45	5	6	1. 3	51	3. 7
Fee charged per student	\$240	...	\$265	.....	.....	.....
Tuition grant per student	225	...	250	.....	.....	.....
Not covered by grant	15	...	15	.....	.....	.....
Total charges . . .	\$216, 240	...	\$125, 875	.....	\$342, 115	100
Total tuition grants . . .	\$192, 600	...	\$117, 250	.....	\$309, 850	90. 6
Not covered by grants	23, 640	...	8, 625	.....	32, 265	9. 4
Private contributions to foundation credited against county taxes ² . . . . .	.....	...	.....	.....	\$56, 866.22	.....

¹ Source: *Williamsburg Transcript* 101.² The Foundation president testified that "for deserving and needy students, a scholarship fund has been set up from contributions made by individuals for this purpose." This amount would seem to cover the portion of tuition not paid by the grants.

TABLE 4.—*Comparison of State controls and support in the Enoch Pratt, Prince Edward, Maryland Institute, and James Walker Hospital cases*

	<i>Enoch Pratt Library</i>	<i>Prince Edward Foundation</i>	<i>Maryland Institute</i>	<i>James Walker Hospital</i>
Value of plant:				
Owned by institution.....	None.....	\$285,000 ¹	\$500,000.....	\$756,000.
Owned publicly but used by institution.	\$4,000,000.....	None.....	\$11,500 per year rental. ⁵	\$54,000. ⁶
Annual income:				
Other than public sources.....	\$6,000—\$8,000....	\$32,315 ²	\$184,000.....	\$1,412,509.56. ⁷
Public sources.....	\$800,000.....	\$366,716 ³	\$42,500.....	\$60,271.05. ⁸
Proportion of public funds to total annual income, percent.	99.....	92.....	23.....	4.6.
Transportation allowance for students from public funds.	None.....	\$29,258 ⁴	None.....	None.
Status of employees.....	In municipal retirement system.	Most in State retirement system.	Private.....	Private.
Services to corporation accepted in satisfaction of debt to State.	No.....	Yes.....	No.....	No.

¹ Amount contributed by individuals in 1959–60, made possible in part by \$2 reduction in tax rate.

² Tuition of students not receiving tuition grants.

³ Tuition grants, \$309,850. Contributions on which tax credit received, \$56,866.

⁴ Total payments for school year 1960–61 to Apr. 4, 1961.

⁵ Leased building having rental value of \$12,000 per year for \$500.

⁶ Land value. City and county had reverter interest in property if abandoned as hospital.

⁷ As of 1957.

⁸ As of 1957, under contract for services to indigents.

TABLE 5.—*Federal funds allotted to Southern States under Library Services Act of 1956*

Comparative figures for 1957-58 and 1960-61

	<i>Rural popu- lation ¹ Percent</i>	<i>Negro popu- lation ² Percent</i>	<i>1957-58 Federal funds allotted ³</i>	<i>1960-61 Federal funds allotted ⁴</i>
Alabama.....	54.7	30.1	\$130,565	\$207,576
Arkansas.....	70.4	21.8	107,309	164,544
Delaware.....	40.3	13.6	46,261	51,585
Florida.....	35.5	17.8	90,388	133,235
Georgia.....	54.8	28.4	139,213	223,578
Kentucky.....	63.7	7.1	137,929	221,203
Louisiana.....	46.5	31.9	103,777	158,010
Maryland.....	30.9	16.7	78,267	110,806
Mississippi.....	73.6	42.0	122,720	193,061
Missouri.....	41.8	9.0	120,099	188,210
North Carolina.....	69.4	24.5	181,775	302,331
Oklahoma.....	49.0	6.6	97,570	146,523
South Carolina.....	70.6	34.8	110,476	170,405
Tennessee.....	56.0	16.5	136,791	219,097
Texas.....	34.5	12.4	191,212	319,792
Virginia.....	50.0	20.6	132,552	211,253
West Virginia.....	70.3	4.8	109,000	167,674
Total allotment to Southern States.....			2,035,904	3,188,883
Total allotment to other States and terri- tories.....			2,964,096	4,311,117

¹ Source: U.S. Bureau of the Census, U.S. Census of Population: 1960, *Advance Reports: Gen. Pop. Char. PC (A-2)* (1961), including in term "rural" also communities of population under 10,000.

² Source: *Ibid.*

³ Source: U.S. Department of Health, Education, and Welfare, Office of Education, *Federal Funds for Education 1956-57 and 1957-58*, p. 42.

⁴ Source: Letter From Department of Health, Education, and Welfare, to U.S. Commission on Civil Rights, May 10, 1961, and attachments.

EXHIBIT 1

Bureau of the Budget
 No. 115-6001
 Approval expires 9-9-61

SURVEY

Libraries Receiving Federal Funds Under the Library Services Act, 1956

State of _____

_____ Public Library

Actual location of library _____

Description of total area served (town, county or other geographical area):
 _____*Type of and Availability of Facilities*

(1) Type of service (check one):

- ☐ single fixed location serving all races
☐ single fixed location serving whites only
☐ single fixed location serving Negroes only
☐ single fixed location serving whites on certain days or during certain hours and serving Negroes on other days or at other hours
☐ separate libraries or branches for whites and Negroes
☐ one of the above (check which), plus bookmobile service
☐ bookmobile service only

(2) If service is from a single fixed location serving all races, check any of the facilities below that are *not* open to Negroes during same hours as whites:

- ☐ main reading room
☐ main reference library (books not circulated)
☐ main circulating library
☐ restrooms

(3) If any of the facilities in question (2) above have been checked, check below any facilities that have been made available to Negroes on a separate or segregated basis within the library building, or at different hours:

	<i>Separate place</i>	<i>Different hours</i>
Reading room	_____	_____
Reference library	_____	_____
Circulating library	_____	_____
Restrooms	_____	_____

- (4) If service is from one location for whites and a separate location for Negroes:

(a) Supply the following information for each:

Approximate number of—	<i>White branch</i>	<i>Negro branch</i>
Registered borrowers.	_____	_____
Reference books.	_____	_____
Circulating books.	_____	_____
Trained librarians.	_____	_____
Hours per week open.	_____	_____

- (b) Are the books at the Negro branch generally castoffs of the white library? Yes ____ No ____

- (5) If bookmobile service is provided, check all items below descriptive of such service:

- ____ service provided to both Negroes and whites at all locations
____ service provided at some locations to whites; at others to Negroes
____ separate bookmobiles serve whites and Negroes
____ no service to Negroes

Library Employment

- (1) What is the source of recruitment for library personnel? (check applicable source):

- ____ State civil service
____ State library board
____ Local civil service
____ Local governing authority
____ Local library board
____ Other (specify) _____

- (2) Are any library positions filled by means of written competitive examination?

Yes ____ No ____

- (a) If "yes," indicate below which positions are filled by means of a written competitive examination and how many of such positions there are.

- (b) If "no," what criteria are used in selecting library employees?

- (3) Fill in blanks under columns that are applicable to the type of service provided:

<i>Number of employees</i>	<i>Main library</i>		<i>Negro branch</i>		<i>Bookmobile</i>	
	<i>White</i>	<i>Negro</i>	<i>White</i>	<i>Negro</i>	<i>White</i>	<i>Negro</i>
Chief librarian . . .	_____	_____	_____	_____	_____	_____
Asst. librarian	_____	_____	_____	_____	_____	_____
Clerks	_____	_____	_____	_____	_____	_____
Other (specify) . . .	_____	_____	_____	_____	_____	_____

- (4) If Negroes have applied for library positions and been rejected, indicate in the space below the type of positions applied for and reasons for rejection of the applications:

- (5) In the columns applicable to the type of service provided, check the blanks to indicate any library positions for which Negroes would *not* be favorably considered for employment:

	<i>Main library</i>	<i>Negro branch</i>	<i>Bookmobile</i>
Chief librarian	_____	_____	_____
Asst. librarian	_____	_____	_____
Clerks	_____	_____	_____
Other (specify)	_____	_____	_____

Sources of information:

- _____ Chief librarian
- _____ Personal observation
- _____ State library extension agency
- _____ White library patron
- _____ Negro library patron
- _____ Other (specify) _____

(Signed) _____

(Person completing form)

(Title)

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