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1963 STAFF REPORT

PUBLIC EDUCATION



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Submitted to the
UNITED STATES COMMISSION ON CIVIL RIGHTS



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Submitted to the
UNITED STATES COMMISSION ON CIVIL RIGHTS
DECEMBER 1963

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Recommendation 4: That the Congress remove from the urban renewal law the requirement that a community facility (such as a school) shall benefit the renewal area to an extent of at least 80 percent in order for the municipality to receive full credit for the cost of the facility against its share of the total cost, where such restriction works as a Federal impediment to voluntary local action aimed at eliminating or reducing racial imbalance in schools in or near the renewal area; and further, that the President direct the Administrator of the Housing and Home Finance Agency to consider the probable effect of urban renewal plans submitted for his approval upon the racial composition of schools, to the end that Federal funds for urban renewal shall not be used in a manner to promote racial segregation in the public schools.

The report that follows was prepared by the staff and submitted to the Commission for its consideration in the formulation of the Commission's 1963 Report and recommendations in the field of public education.

2. The most acute problems of de facto segregation in the public schools of the North and West are in the large cities. The schools in these areas are the oldest and are properly considered part of the slum blight which urban renewal was designed to help eliminate through Federal assistance. The Federal urban renewal law requires a city to pay part of the cost of each renewal project. The city may earn credit toward its obligation by constructing new public facilities, such as schools. But if these facilities derive more than 20 percent of their use from people living outside of the renewal area, the city loses part of the credit toward its obligation. This discourages any local policy to locate and district a school to promote a racially heterogeneous school population, if, to achieve this objective, more than 20 percent of the pupils would have to live outside of the renewed area and be included in the school's attendance area.

It has also been found in earlier reports that urban renewal projects (and Federal highway construction projects) have, by design or accident, become natural barriers between neighborhoods, thus rendering school desegregation impracticable. See U.S. Commission on Civil Rights, Civil Rights U.S.A., Southern Schools 1962 at 183-84 (1962).

Preface

In its 1963 Report to the President and to the Congress, the United States Commission on Civil Rights made the following recommendations concerning public education:¹

Recommendation 1: That the Congress enact legislation requiring every local school board which maintains any public school to which pupils are assigned, reassigned or transferred on the basis of race, to adopt and publish within 90 days after the enactment of such legislation a plan for prompt compliance with the constitutional duty to provide nonsegregated public education for all school-aged children within its jurisdiction. The Congress should authorize the Attorney General, in the event the Board fails to adopt or to implement a plan, to institute legal action to require the adoption or implementation of such a plan or any other plan the court finds more appropriate and consistent with the equal protection clause of the 14th amendment.

Recommendation 2: That the Congress authorize the Commission on Civil Rights to provide technical and financial assistance to those school districts in all parts of the country which are attempting to meet problems resulting from school segregation or desegregation. Such technical assistance should include the results of long range research on the development of methods and techniques to meet the educational needs of all underprivileged public school pupils. This would include the development of appropriate classroom materials and curricula to meet the needs of minority groups. As a part of such a program the Federal Government should sponsor teacher training to develop understanding of the problems of underprivileged pupils.

Recommendation 3: That the President call a White House Conference of distinguished educators and experts in civil rights in the field of education to discuss how the Federal Government can assist State and local school boards in solving the problem of how to give all American children an equal opportunity for an education.

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1. Civil Rights '63, 1963 Report of the Commission on Civil Rights 69-70. This Report is available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402. Price \$1.

Staff principally responsible for the preparation of this report to the Commission included Mrs. Elizabeth R. Cole, Chief, Education Section, and Laurence W. Knowles, Staff Attorney.

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Introduction

The closer one gets to a goal, the greater the impatience to attain it. Negroes are feeling the urgency more, and they are stepping up the tempo.¹

—Gertrude Samuels

The years between the seventh and ninth anniversaries of the Supreme Court's decision in the School Segregation Cases² on May 17, 1954, are characterized by an increasingly urgent demand by Negro Americans in all parts of the Nation for a nonsegregated education for their children without further delay. These citizens are no longer concentrated in large numbers only in the Southern States.³ The migration of the Negro population from the South, particularly from the former Confederate States,⁴ to the large cities of the North and West which began during World War II has continued and has been reflected in the racial composition of public schools.

1. "Even More Crucial Than in the South," N.Y. Times, June 30, 1963 (Magazine), p. 30.
2. Brown v. Board of Education, 347 U.S. 483 (1954).
3. The term "Southern States" as used in this report refers to the 17 States requiring separate schools for white and Negro pupils at the time of the Supreme Court decision in 1954. These States are Ala., Ark., Del., Fla., Ga., Ky., La., Md., Miss., Mo., N.C., Okla., S.C., Tenn., Va., and W. Va.
4. Net migration of nonwhites in the decade 1950-60 is estimated by the Bureau of Census as 1,099,000 to the North and 332,000 to the West. States having a net out-migration of more than 100,000 are: Mississippi 323,000, Alabama 224,000, South Carolina 218,000, North Carolina 207,000, Georgia 204,000, and Arkansas 150,000. U.S. Department of Commerce, Census, Press Release, Dec. 27, 1961.

In the school year 1953-54, more than twice as many Negro public school children were enrolled in the region maintaining completely segregated schools for whites and Negroes as in all the remaining 31 States.⁵ The 1960 census showed a marked change. Instead of more than two Negro pupils in the southern public schools to every one in the North and West, the ratio had changed to approximately three in the South to two in the North.⁶

In the 1950-60 decade the increase in the nonwhite population of 14 large cities in the North and West⁷ ranged from 22.6 percent in Pittsburgh to 147 percent in Milwaukee. This increase in numbers also brought a proportionate increase in the nonwhite population. The rise in the percentage of nonwhites in the cities was due in part to the flight of white citizens to the surrounding suburbs in numbers causing an overall decrease in the population of 12 of the 14 cities, Los Angeles and Milwaukee being the exceptions to the general trend. In many of these cities residential

5. Report of the U.S. Commission on Civil Rights 1959 at 167 (hereinafter cited as 1959 Report).

6. See app. B, table 1, for 1960 census data.

7. The 14 cities (listed in order of the proportion of non-white population) are Washington, D.C., Baltimore, Detroit, Cleveland, St. Louis, Philadelphia, Chicago, New York, Pittsburgh, Los Angeles, Buffalo, San Francisco, Boston, and Milwaukee. The nonwhite population as a percentage of the total population in 1960 and 1950 and the percent increase is given in app. B, table 2. The 14 largest cities in the North and West would include Seattle instead of Milwaukee. Seattle was excluded because it has not been a center for Negro migration.

Baltimore, Md., Kansas City and St. Louis, Mo., and Wilmington, Del., as well as Washington, D.C., are considered by the Commission to be northern cities (although other parts of the States in which the first four are located are treated as southern) both because of their prompt and complete desegregation of schools in 1954 and 1955 (see 1959 Report 173-85), and because, like other cities in the North and West, they have been a Mecca for the migrating southern Negro. They are, however, included in the South in app. B, table 1, since they were so classified in the comparative figure in the 1959 Report. In June 1963 the NAACP announced that it classifies Baltimore and St. Louis as northern cities. See Memorandum From June Shagaloff, special assistant for education, NAACP, to the Commission on Civil Rights, June 21, 1963.

patterns plus the imposition of geographic zoning for school assignment have resulted in some schools enrolling only white (or almost all white) pupils, in some enrolling only Negro (or almost all Negro) pupils, and in others enrolling both white and Negro pupils in more than minimal numbers.⁸

No constitutional scholar of standing questions that the Supreme Court decision in the School Segregation Cases invalidated school assignment by race as it existed in the Southern States and the District of Columbia in May 1954. In the North and the West, however, where with rare exceptions,⁹ separate schools for whites and Negroes did not have explicit legal sanction, and indeed were expressly prohibited by law in many States,¹⁰ the application of the principles enunciated by the Supreme Court in the School Segregation Cases to segregation existing in fact is less clear. If it could be shown to be the result of purposeful official action of any kind, the principles seem clearly applicable.¹¹ The years 1954-61 brought sporadic and sometimes successful challenge of school segregation in Northern and Western States. Victory in the case of Taylor v. Board of Education¹² (New Rochelle) in 1961, however, triggered a stepped-up effort by the NAACP to investigate, protest, and eliminate segregation in the public schools of the North and West, as well as the South, whether such segregation was the result of purposeful official action or entirely fortuitous.¹³

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8. It is not assumed that the neighborhood school policy is necessarily the only cause of uniraical schools in the North and West. For contributing causes, see ch. 3 infra, "Does Segregation in the Public Schools of the North and West Violate the 14th Amendment?"
 9. 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.
 10. See 1959 Report 150-51.
 11. See 2 1961 U.S. Commission on Civil Rights Report, Education 99-115 (hereinafter cited as 1961 Education Report) and ch. 3 infra.
 12. 191 F. Supp. 181 (S.D.N.Y. 1961), aff'd, 294 F.2d 36 (2d Cir. 1961), cert. denied, 368 U.S. 940 (1961).
 13. The unlawful segregation for which relief was ordered in the New Rochelle case was found to be the result of school board action.

As of June 1963 the NAACP reported active investigation and protest of racial segregation in the public schools of 64 school districts in 18 States¹⁴ of the North and West. In 11 of these school districts relief was being sought in the courts,¹⁵ and in seven, administrative appeals had been taken under State law.¹⁶

14. Memorandum from June Shagaloff, supra note 7. The 18 States were: Ariz., Calif., Colo., Conn., Ill., Ind., Iowa, Kans., Md., Mich., Minn., Mo., N.J., N.Y., Ohio, Oreg., Pa., and Wash.
15. Id. The 11 school districts were: Pasadena and San Francisco, Calif., Centerville, Ill., Gary, Ind., Kansas City, Kans., Amityville, Hempstead, Manhasset, Rochester, and Westbury, N.Y., and Philadelphia, Pa. Since the Memorandum was written the California Supreme Court has handed down a decision in the Pasadena case in favor of the Negro appellants (Jackson v. Pasadena City School District, 382 P. 2d 878 (Calif. 1963)), and the Federal district court in Downs v. Board of Education (Kansas City) No. KC-1443, D. Kans., July 9, 1963, has held against the Negro plaintiffs on alleged gerrymander but overturned the school board's minority transfer rule on the authority of the U.S. Supreme Court's decision in Goss v. Board of Education (Knoxville), 373 U.S. 683 (1963). The trial of the Manhasset case, Blocker v. Board of Education, Civ. No. 62 C285, E.D.N.Y., has been completed, but a decision has not been rendered. See ch. 3, text at note 38. Two other suits, not sponsored by the NAACP, are also pending. The 7th Circuit Court of Appeals reversed the dismissal of Webb v. Board of Education (Chicago) by the district court for failure first to exhaust State administrative remedies on authority of the Supreme Court's decision in McNeese v. Board of Education (Cahokia), 372 U.S. 938 (1963) and the district court set the case for trial on Sept. 9, 1963. (Letter From Paul B. Zuber to this Commission, June 20, 1963.) Another suit against the Detroit Board of Education, Sherrill School Parents Committee v. Board of Education of the City of Detroit, Civ. No. 22092, U.S.D.C. E.D. Mich., is also pending. Letter From Clerk, Mar. 4, 1963.
16. Id. The seven school districts appealing were: Bridgeton, Englewood, Franklin Township, Orange, and Plainfield, N.J., Glen Cove, and Malverne, N.Y. An appeal by citizens of Chicago's Woodlawn area to the Illinois State Superintendent of Public Instruction, not sponsored by the NAACP, was heard in Dec. 1962 and Jan. 1963 but no decision has been handed down. The N.J. Commissioner of Education has handed down decisions in the Englewood, Orange, and Plainfield appeals and the N.Y. Commissioner of Education has issued a decision and order on Malverne since the NAACP count was made. In each case the Negro plaintiffs were granted relief.

In prior reports the Commission recounted the progress of desegregation in public schools of the Southern States¹⁷ and the law of desegregation as developed by court decisions.¹⁸ Segregation in the North and West has been touched upon in prior reports¹⁹ and in 1962 the Commission published a staff report containing studies of five public school systems in the North and West.²⁰ The material covered in previous publications will not be repeated except as required for an understanding of new developments.

This staff report again presents events in the 17 Southern States separately from the rest of the Nation because of the basically different nature of the constitutional questions concerning school segregation presented in the two areas.

The southern section gives an overview of the progress of desegregation in the period June 1961 to August 1, 1963, State by State.²¹ Additionally, refinements in the law of desegregation developed by court decisions in the same period are covered.

The northern section of the report presents first the question: Does segregation in the public schools of the North and West violate the 14th amendment? The present protests concerning segregation of minority group pupils, principally Negroes except in New York City where officially Puerto Ricans and Negroes are grouped together as equally disadvantaged,²² require some explanation of the present status of the constitutional issues being raised.

17. 1959 Report 173-233; 1961 Education Report; and Civil Rights U.S.A. Public Schools Southern States 1962 (hereinafter cited as Southern States Report).

18. 1961 Education Report 15-37; Southern States Report 2-18.

19. 1959 Report 245-64; 1961 Education Report 99-116.

20. Civil Rights U.S.A. Public Schools North and West 1962 (hereinafter cited as North and West Report).

21. The States enumerated supra note 3 are included in this section omitting therefrom the cities of Baltimore, Md., Kansas City and St. Louis, Mo., and Wilmington, Del., for reasons stated in note 7 supra.

22. Segregation of American Indians and Mexican Americans is an issue in some parts of the country. Data on these minority groups is not included in this Report.

This report takes no position and makes no prediction as to the ultimate decision. An account of the disputes which have been decided administratively or judicially prior to August 1, 1963, are included in this discussion. After this introduction to the problem the report presents the dimensions of school segregation in selected cities which have a large Negro population. Protests in an active stage and those that have brought changes in school assignment policies to lessen segregation in the schools are next discussed. Finally, programs designed to alleviate problems from segregation in or desegregation of public schools are described briefly.

1. Desegregation in the South

THE REGION

There are 6,196 school districts in the 17 Southern and Border States. Of these 3,052 have both Negro and white students and 979 (32.1 percent) of these biracial districts have policies or practices permitting the admission of Negroes to formerly all-white schools.

In the fall of 1962,¹ 52 districts desegregated, by policy or practice, for the first time, as compared with 31 the previous year.² Thirteen of the newly desegregated districts acted under court order, although in many of the others legal action was pending or threatened.

The Border States (Delaware, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia) and the District of Columbia account for the bulk of desegregation to date. Of the 979 desegregated school districts, 702 lie in the border areas. Similarly, over 251,000 (94.7 percent) of the approximately 265,000 Negro students who attend school with whites in the South, do so in the border areas. The Negro students attending schools with whites constitute about 8 percent of

1. All figures in this chapter, unless otherwise specified, are taken from Southern Education Reporting Service, Statistical Summary of School Segregation-Desegregation in the Southern and Border States, Nov. 1962, as revised for Commission on Civil Rights, Aug. 1963, by Southern Education Reporting Service.
2. The problems of definition are replete here. For the purposes of this exposition, a school district is defined as segregated if it (1) has Negro children of school age living within its jurisdiction, and (2) requires all of them to attend all-Negro schools because of their race. A school district is desegregated by policy if there is (1) an expressed official policy that Negroes are eligible to attend all-white schools, but (2) no Negro has in fact done so. School districts desegregated in practice are those which actually have some Negroes attending schools with white pupils. These classifications of desegregation do not imply that all districts so classified have fulfilled their constitutional duties under the School Segregation Cases.

the total Negro school population in the South. South Carolina, Alabama, and Mississippi have no Negroes attending school with white students³ below the college level. A total of 113 school districts were reported to be desegregating for the first time in the fall of 1963, 61 more than in September 1962.⁴

THE INDIVIDUAL STATES

Alabama

The public schools of Alabama are completely segregated. The official position of the State's highest official was expressed at his inauguration, January 14, 1963. Governor George C. Wallace stated:⁵

I draw the line in the dust and toss the gauntlet before the feet of tyranny and I say segregation now, segregation tomorrow, segregation forever.

Several suits pending tended to belie this prediction. Indeed, by order of the Court of Appeals for the Fifth Circuit both Mobile and Birmingham were to start desegregation in September 1963.⁶ The order was subsequently modified as to Mobile to require a plan submitted by August 19 to be brought for a hearing on November 14, 1963.⁷ The Birmingham suit had been pending since June 17, 1960.⁸ No date was set for trial until 2 years later when another suit was filed to desegregate the Birmingham schools. The plaintiffs in the second case, after being denied relief because the first case was pending, petitioned the Court of Appeals for the Fifth Circuit to order the lower court to consider their case.⁹

3. App. A, tables 1 and 2, give a detailed statistical analysis of the current status of desegregation of the region.

4. So. School News, Aug. 1963, p. 1.

5. Id., Feb. 1963, p. 10.

6. Davis v. Board of School Commissioners (Mobile Co.), Civ. No. 20657, 5th Cir., July 9, 1963, and Armstrong v. Board of Education (Birmingham), Civ. No. 20595, 5th Cir., July 12, 1963.

7. Davis v. Board of School Commissioners (Mobile) Civ. No. 20657, 5th Cir., July 18, 1963.

8. Armstrong v. Board of Education, Civ. No. 9678.

9. Nelson v. Grooms, 307 F. 2d 76 (5th Cir. 1962).

The Court of Appeals, assured by the lower court that the earlier case would be tried in the near future, declined to order the lower court to consider the later case.¹⁰ However, Judge John R. Brown, in a special concurring opinion, castigated the delay:¹¹

Here it is 1962. This is eight years after the warning to commence with deliberate speed. More than that, the case about to be heard to consider non-existent defenses will not take place until October /1962/. That means that for yet another year Birmingham has put off the "evil" day, for by the time the case is heard, argued, briefed and submitted the opening of the Fall term will have passed and it will be too late administratively to accommodate the school system to the Constitution.¹²

Subsequent events proved Judge Brown's comment to be an understatement; for on May 28, 1963, almost 3 years after the suit had been filed, the case was finally decided in favor of the school board owing to the failure of plaintiffs to exhaust administrative remedies provided by Alabama law.¹³ The Court of Appeals for the Fifth Circuit reversed this decision and directed the lower court to enter an order requiring the school board to prepare a desegregation plan for court approval on August 19, such plan to be effective September 1963. A petition for rehearing was denied on July 22.¹⁴

10. Ibid.

11. Id. at 79.

12. For a diametrically opposed view of the meaning of "all deliberate speed," see Davis v. East Baton Rouge Parish School Board, 214 F. Supp. 624 (1963).

13. Armstrong v. Board of Education (Birmingham) Civ. No. 9678, N.D. Ala., May 28, 1963.

14. N.Y. Times, July 23, 1963, p. 15C. The request for rehearing which was denied challenged the method by which the three-judge court was selected. (Montgomery (Ala.) Advertiser, July 17, 1963, p. 5.) Subsequently Judge Ben Cameron of Meridian, Miss., filed a minority opinion on the three-judge ruling also challenging the selection of judges. (Washington (D.C.) Evening Star, July 31, 1963, p. 6A.) Legislation to require segregation by sex in counties of not less than 600,000 population is being proposed to the legislature to meet the Birmingham "crisis." (Birmingham News, July 17, 1963, p. 1A)

In another pending case, Negro plaintiffs asked the district court to end the assignment of pupils, teachers, and principals on the basis of race in Macon County (Tuskegee). The court asked the United States Attorney General to join the suit to give the court the benefit of his views.¹⁵

Efforts have been made in the last few years to improve the school facilities serving Alabama's 280,212 Negro pupils.¹⁶ However, the average pupil-teacher ratio is higher in the Negro system,¹⁷ and only 46 of Alabama's 212 Negro high schools are approved by the Southern Association of Colleges and Secondary Schools.¹⁸ In fact, only 82 are accredited by the State.¹⁹

Arkansas

The population of Arkansas at the beginning of this decade was 1,786,272 of which 21.8 percent was Negro.²⁰ The Negro school population was 26.1 percent of a total enrollment of 448,616 pupils. In the 1962-63 school year 247 Negroes or 0.2 percent of the Negro school population, attended bi-racial schools.

The pace of desegregation in Arkansas is a measured one. The State has had a disproportionate share of community disturbances²¹ and United States Supreme Court litigation.²² Desegregation in the State over the last 2 years has been limited to the cautious, voluntary desegregation in two school districts having very few Negro students.

15. Montgomery (Ala.) Advertiser, July 16, 1963, p. 2, Id., July 17, 1963, p. 11.

16. Id., Mar. 28, 1963, p. 4A.

17. Ibid.

18. Birmingham (Ala.) News, Dec. 23, 1962, p. 2B.

19. Ibid.

20. U.S. Bureau of Census, U.S. Census of Population, 1960, PC (1) 1B, table 15, (hereinafter cited as 1960 Census.)

21. Hoxie in 1955, see Hoxie School District No. 46 of Lawrence County v. Brewer, 137 F. Supp. 364 (E.D. Ark. 1956); Little Rock in 1957-59, 1959 Report 95-201 and 1961 Education Report 44-45; Pine Bluff in 1963, see Arkansas Gazette, Jan. 31, 1963, p. 1B.

22. Cooper v. Aaron, 358 U.S. 1 (1958); Bates v. Little Rock, 361 U.S. 516 (1960).

One of the newly desegregated districts, Mansfield, absorbed all 14 of its Negro school children into formerly all-white schools. The district had previously bused them 80 miles per day to schools in another district.²³ The other district, Gosnell, admitted 12 of its 60 Negro students to one formerly all-white school. There were 1,400 white students in the system.²⁴

School desegregation at Little Rock has progressed as inauspiciously as it began. In the 1962-63 school year there were 78 Negro pupils in the five grade levels desegregated.²⁵ They comprised 1 percent of the 6,478 Negro pupils in the system. The Negroes in the biracial schools were not allowed to participate in sports until the school year 1962-63. Even then, the participation was made contingent upon the permission of the host team.²⁶ The Little Rock School Board has assigned eight Negroes to the 1st and 4th grades effective September 1963 and presumably the desegregation of the junior high school's grade 9, will at least be completed by the promotion of Negro 8th grade pupils already enrolled in predominantly white schools. The total new assignments were reported to raise the number of Negroes assigned to formerly white schools to 118, or 1.8 percent, for 1963-64.²⁷ The attorney for the Negro plaintiffs announced that the court order under which the board was acting required complete desegregation in 1963-64 and that he would advise his clients that the addition of grades 1 and 4 in the fall of 1963 was not sufficient.²⁸

23. Arkansas Gazette, Aug. 30, 1962, p. 6A.

24. Statistical Summary, supra note 1.

25. Grades 7, 8, 10-12, supra note 23.

26. Arkansas Gazette, Dec. 5, 1962, p. 4B. Regarding Negro participation in other nonacademic activities, one observer asserts:

. . . Negroes have been "counseled against" joining the school bands, which sometimes travel to communities that are not integrated. Whites, including many teachers, fear and discourage "social" relationships. No Negro senior, apparently by tacit agreement, attended either the graduating class banquets or the school proms.

Time Magazine, June 2, 1963, pp. 13, 58.

27. N.Y. Times, July 19, 1963, p. 9.

28. Arkansas Gazette, June 23, 1963, p. 1A.

There are several other desegregated Arkansas school systems, which, like Little Rock, enroll a substantial number of Negro pupils, but mostly in segregated schools. Their desegregation pace has been as slow as that of Little Rock. Indeed, in Hot Springs, desegregation started and stopped with high school classes in auto mechanics and practical nurse's training.²⁹ Since 1956 an average of four Negro students a year has enrolled in these classes. Pulaski County and Fort Smith are little different, each birolling less than 3 percent of their Negro students in biracial schools.

In the Dollarway School District in Pine Bluff, dissatisfaction with the pace of desegregation precipitated court action. The court granted relief to the Negro plaintiffs, ordering the admission of their daughter to the previously segregated high school.³⁰ This pupil was the fifth Negro pupil to attend a formerly all-white school in Dollarway since desegregation began in 1960. Even so, several instances of harassment and one act of violence led to the withdrawal of the girl from school for several days.³¹

The Pine Bluff School Board announced plans to desegregate grades one and two in September 1963. The plan called for progressive steps at the rate of two each year. School preference questionnaires were mailed to parents of all first and second grade children. Those who did not respond were to be assigned to the school for members of their own race which they attended the previous year or at which they registered in May. The plan did not say whether all Negroes expressing a preference for a white school were to be transferred.³²

The future of school desegregation in Arkansas is dim. Although some of the larger school systems have desegregated some schools, the dual structures of Negro schools with Negro teachers and white schools with white teachers still operate. In fact, Little Rock is building a new junior high school in a Negro neighborhood, and naming it after a prominent Negro attorney.³³ On the other hand, Negro leadership in Arkansas has not been militant in demanding school desegregation. There have been no new lawsuits filed for several years.

29. Id., Aug. 30, 1962, p. 6A. See also 1959 Report 195.

30. Dove v. Parham, Civ. No. 3680, E.D. Ark., Aug. 30 and Oct. 25, 1962, 7 Race Rel. L. Rep. 1047 (1962).

31. Arkansas Gazette, Jan. 3, 1963, p. 4A; id., Jan. 25, p. 1B; id., Jan. 26, p. 3A; id., Jan. 31, p. 1B.

32. Atlanta Daily World, July 14, 1963, p. 1B.

33. Arkansas Gazette, Dec. 28, 1962, p. 3A.

Delaware

The 1960 census reported Delaware's population to be 446,292 and its nonwhite population as 13.9 percent of the total.³⁴ Negroes comprise 18.7 percent of the school enrollment of 90,761 students.

In 1959 all school districts in the State which had made no move to desegregate were ordered to do so by a Federal court.³⁵ But desegregation is still far from complete. Well over 40 percent of Delaware's Negro school children attend all-Negro schools.

The existing school segregation is abetted by the peculiar structure of the Delaware system of public education. The State operates 34 school districts for Negroes as State Board Unit Schools. These are denominated as school "districts," but are really one unitary system. The State supplies all the building and operating expenses of these schools. Although the schools have their own boards of trustees, the Negro electorate in the geographical area served have no taxing power for support of education. The attendance areas of these Negro school districts often overlap the attendance areas of special school districts (white or biracial) in the vicinity.

The special school districts operate quite differently from the Negro system. These districts are autonomous. They may levy taxes for education, and bear a substantial portion of both the operating and building expenses of the school system.³⁶

Since 1954 there has been a noticeable breakdown of this bifurcated system. In the portion of the State north of the Chesapeake and Delaware Canal, the dual system has virtually disappeared. Only three State-operated Negro districts remain in Northern Delaware, and the State authorities plan to dissolve two of these by 1964.³⁷ The schools will be turned over to the control of the special districts in which they lie or which they abut. Of course, there will be little change in the racial complexion of these schools

34. 1960 Census, PC (1) 9B, table 15.

35. Evans v. Buchanan, 173 F. Supp. 891 (D. Del. 1959).

36. See Shagaloff, "Public School Desegregation in Delaware," 25 J. Negro Ed. 221, 235 (1956); Conference at Nashville, Tenn., Before the U.S. Commission on Civil Rights, Education 160 (1959), and Conference at Gatlinburg, Tenn., Before the U.S. Commission on Civil Rights 168 (1960) (hereinafter cited as Nashville Conference and Gatlinburg Conference).

37. Wilmington (Del.) Morning News, Jan. 1, 1963, p. 1.

because they are located in Negro residential areas. But at least different treatment under law on racial grounds will be abandoned.

South of the Chesapeake and Delaware Canal the pre-1954 dual school system is retained. Even where the State board has relinquished control of a Negro school to the local, formerly all-white system, the school remains all-Negro. Indeed, every Negro child of school age in southern Delaware resides in an attendance zone of a Negro school.

Yet there is some desegregation. It comes about because Delaware's court approved desegregation plan allows any child to elect to attend the nearest formerly all-white school or the nearest all-Negro school.³⁸ In 19 of the 36 formerly independent districts in southern Delaware there has been some desegregation by transfer.³⁹ The extent of this desegregation is small. Negroes in attendance in many of the formerly all-white districts number less than 10.⁴⁰

The reasons behind the reluctance of Negroes to transfer to white schools are manifold. There is a fear of economic reprisal on the part of Negro parents, e.g., loss of job or credit suspension.⁴¹ Exposing a child to a hostile atmosphere, whether real or presumed, also persuades parents to preserve the status quo.⁴²

Not all the pressures come from the white community. One survey of about 24 Negro teachers revealed a uniform opinion that "many Negro teachers oppose desegregation because they fear they will lose their jobs and status."⁴³

Delaware's peculiar school system dampens Negro enthusiasm for desegregation in another way; the all-Negro school districts have no taxing power for construction or operation of the schools. The all-Negro schools are supported by the State. On the other hand, the special districts must support 40 percent of school costs by taxation. When four Negro children applied for enrollment in an all-white

38. Evans v. Buchanan, 195 F. Supp. 321 (D. Del. 1961).

39. Wilmington (Del.) Morning News, Jan. 1, 1963, p. 1.

40. Ibid.

41. Id., Jan. 2, 1963, p. 1.

42. Ibid.

43. Ibid.

district in southern Delaware they were accepted; but at the same time it was announced that Negro families would be required for the first time to pay the district's \$5 capitation tax and the school tax of 61 cents per \$100 assessed real estate.⁴⁴ The president of the school board was reported as saying that this would increase the taxes in the Negro community about two and one-half times.⁴⁵

The prospects for further desegregation in Delaware are good. A Federal court in 1962 decreed that a school attended solely by Negroes, and administered solely by Negroes would be presumed to be an unconstitutionally segregated school.⁴⁶ Consequently, the burden is upon the school authorities to prove that the facility is an adventitious result of legitimate educational considerations. In the instant case, the State board of education voted to dissolve the all-Negro school district.⁴⁷ As a result of this decision many of the State-operated Negro schools cannot withstand legal attack. Moreover, the building or consolidation of all-Negro schools in the future is threatened. Indeed, last year a plan to consolidate four Negro elementary schools was dropped when suit was filed.⁴⁸

Florida

In 1960 the population of Florida was 4,951,560; the Negro population was 880,186, or 17.8 percent of the total.⁴⁹ The State school system is on a county basis, of which there are 67. All public schools in cities and towns are administered by the superintendent of schools of the county in which they are located.

44. Id., May 18, 1963, p. 1. Under the old dual system Negro residents of special districts were not taxed for support of the schools they could not attend. The Del. Atty. Gen. ruled on April 18, 1957, with regard to another district that they were subject to local taxes in support of public schools.

45. Ibid.

46. Evans v. Buchanan, 207 F. Supp. 820 (D. Del. 1962).

47. Wilmington (Del.) Morning News, Oct. 19, 1962, p. 3.

48. Id., Feb. 7, 1963, p. 1.

49. 1960 Census, PC (1) 11B, table 15.

In 1961 only Dade County had desegregated and only in token numbers.⁵⁰ By 1963 10 districts had desegregated, and Negro children attending biracial schools numbered 1,551. Dade County has experienced by far the most desegregation, with 722 Negro students in biracial schools in the 1962-63 school year.⁵¹ Moreover, Dade County has made more extensive plans for the 1963-64 school year. Fourteen more schools will be desegregated for the first time, bringing the total to 32.⁵² More than 2,500 Negro children will experience biracial education.⁵³ The system will discontinue its practice of busing children from small Negro residential areas to distant all-Negro schools; the children will be assigned to the formerly all-white schools nearest their home.⁵⁴

The most significant step Dade County has taken is the announcement of a nondiscriminatory policy in the hiring and placement of teachers and other school personnel. The statement of the school board reads in part:⁵⁵

We do not believe we can teach democracy in our schools without demonstrating our belief in democracy in the way the schools are operated.

All employees are hereby notified that they are expected to teach or work with other employees to teach pupils, and to supervise or be supervised in their work by other employees without regard for the creed or color of any individual.

The announced policy of the board, if implemented, will bring about the first faculty desegregation in Florida, which, in a sense, has already been done by the recent appointment of a white principal to head an all-Negro school.⁵⁶

50. Twenty-five Negro children were placed in 3 formerly all-white schools in Miami. So. School News, Oct. 1960, p. 8; *id.*, Mar. 1961, p. 14.

51. Statistical Summary of School Segregation-Desegregation in Southern and Border States, Nov. 1962, p. 14, as revised for Commission on Civil Rights, Aug. 1963, by Southern Education Reporting Service.

52. Florida State Advisory Committee to the U.S. Commission on Civil Rights, Report on Florida 15 (Aug. 1963).

53. *Ibid.*

54. *Ibid.*

55. *Ibid.*

56. Atlanta (Ga.) Daily World, Apr. 19, 1963, p. 8.

Dade County's nondiscriminatory employment policy and abandonment of busing to maintain segregation are significant in a larger sense. These actions were voluntary and, as such, were the first volitional desegregation steps taken by a Florida school district.⁵⁷

Dade County's desegregation overshadows the small steps taken by other Florida districts. Indeed, these counties have placed an average of slightly more than 1 percent of their Negro pupils in biracial schools. September 1963 promised some significant advances in Florida school desegregation. Two counties, Leon and Duval, were under court order to desegregate in September 1963.⁵⁸ Additionally, Bay, Okaloosa, and Santa Rosa Counties assured the U.S. Department of Health, Education, and Welfare and the Department of Justice that beginning in September 1963 race would not be used as the criterion for pupil assignment.⁵⁹ Palm Beach County first admitted Negro pupils to its white schools in September 1961 under court order but these did not include the two sons of the attorney who handled the suit. By an additional court order he secured their admission in September 1963.⁶⁰ However, the actual number of Negro children in biracial schools in Florida in September 1963 still is expected to be less than 1 percent of the total Negro enrollment in public schools.

Georgia

Atlanta is the only desegregated school system⁶¹ in Georgia.⁶² Under court order to desegregate since 1960,⁶³ Atlanta has placed 53 of its 46,400 Negro school children in

57. No Florida school district had desegregated prior to the filing of a lawsuit. Statistical Summary, supra note 51.

58. Information compiled by the U.S. Department of Justice, Civil Rights Division, July 31, 1963. Steele v. Board of Public Instruction (Leon County) No. 854, N.D. Fla., Apr. 27, 1963; Braxton v. Board of Public Instruction (Duval Co.) Civ. No. 4598, S.D. Fla., May 8, 1963.

59. Ibid.

60. Baltimore Afro-American, July 6, 1963, p. 18.

61. Georgia has 198 school districts, and of these 182 enroll both white and Negro students.

62. The 1960 Census PC (1) 12B, table 15, gives Georgia's population as 3,943,116. Of this number 1,112,596 or 28.5 percent are Negro.

63. Calhoun v. Latimer, Civ. No. 6298, N.D. Ga., Sept. 13, 1960, 5 Race Rel. L. Rep. 650 (1960).

biracial schools. This gradualism is not owing to a lack of Negro applicants. In the first year of desegregation, 10 of 134 Negro applicants were granted transfers to the 11th and 12th grades in formerly all-white schools. In 1962, Negro applicants totaled 301, and 44 were admitted to the upper three grades. The number of 1963 applicants is only 188.⁶⁴

A legal action was brought in 1962 to accelerate the pace of school desegregation in Atlanta. The Federal court refused to take any action, stressing the fact that the plaintiffs did not appeal when the court first approved the plan.⁶⁵ The court commented:⁶⁶

The Plan heretofore approved by this Court and now under attack, has been administered fairly and in good faith by defendant Atlanta Board of Education. . . . This Court feels that the public interests demand that the Plan now in operation be continued according to its terms. . . .

If the Atlanta plan continues at its current average pace, its final year (1971) will see only 0.57 percent of Atlanta's Negro school children in biracial schools. Moreover, Atlanta is constructing a \$1,200,000 high school in the heart of its Negro community, which will further preserve the uniracial character of the schools.⁶⁷

In the State as a whole, because of the many rural areas with small high schools, the prospects of "separate but equal" educational opportunities for Negroes are dim, not to mention desegregation prospects. For example, there are less than 100 Negro pupils a year graduated from 145 of the State's 182 biracial school districts; and less than 100 white pupils per year graduated from 105 Georgia school districts.⁶⁸ Dr. James B. Conant has observed:⁶⁹

64. Atlanta (Ga.) Constitution, May 16, 1963, p. 22; Macon (Ga.) Telegraph, May 17, 1963, p. 2.

65. Calhoun v. Latimer, 217 F. Supp. 614 (N.D. Ga. 1962).

66. Id. at 1056, Cf. Dove v. Parham, Civ. No. 3680, E.D. Ark., Oct 24, 1962, 7 Race Rel. L. Rep. 1047 (1962).

67. Atlanta (Ga.) Journal, Dec. 11, 1962, p. 2A.

68. Atlanta (Ga.) Constitution, July 5, 1962, p. 26.

69. Conant, The American High School Today 77 (1959).

The prevalence of such high schools--those with graduating classes of less than one hundred students--constitutes one of the serious obstacles to good secondary education throughout most of the United States. I believe such schools are not in a position to provide a satisfactory education for any group of their students--the academically talented, the vocationally oriented, or the slow reader.

Consolidation of the dual educational facilities in many Georgia school districts would result in consolidated high schools with well over the minimum 100 graduates per year posited by Dr. Conant. So long as two sets of schools are operated by these school districts, Negro students are denied their constitutional rights, and all students both Negro and white, are denied a better education.

Aside from curricular inequities, Negro schools often have secondrate facilities. There are two trade schools operated by the State for white students, but no State-operated trade schools for Negroes.⁷⁰ In Greene County the Negro high school has no gymnasium, and recent efforts to get one have failed.⁷¹

There are 16 school systems in the State that do not operate schools for Negroes, either because there are no school-age Negro children, or so few that they are sent to another system by agreement with the local board.⁷² This practice was recognized as unconstitutional even under the separate but equal doctrine.

In September 1963 a second Georgia school district will desegregate as a result of a unique sequence of legal maneuvers. The lawsuit began simply enough when the parents of several Negro children filed suit against the Savannah-Chatham County Board of Education to desegregate the schools. Thereafter a group of white parents were allowed to intervene in the suit to challenge the factual and legal bases of the Supreme Court's decision in the School Segregation Cases. The Federal district court agreed with the intervenors, and refused to order the schools to desegregate.⁷³

70. Atlanta (Ga.) Daily World, Dec. 19, 1962, p. 1.

71. Atlanta (Ga.) Constitution, Jan. 24, 1963, p. 8. The State Board of Education announced it would cut off State funds from Bleckley County until Negro educational facilities were improved. The county operates four Negro elementary schools that "are regarded as grossly inadequate and have long been condemned." Macon (Ga.) Telegraph, June 1, 1963, p. 1.

72. Atlanta Constitution, June 25, 1963, p. 14.

73. Stell v. Savannah-Chatham County Board of Education Civ. No. 1316, S.D. Ga., 31 U.S. L. Week 2577, May 13, 1963.

The ink was hardly dry on the opinion of the lower court before it was reversed.⁷⁴ The Court of Appeals for the Fifth Circuit (invoking a statute "meant to be used only in the exceptional case where there is a clear abuse of discretion or usurpation of judicial power")⁷⁵ reversed the lower court decision 11 days after it was announced. The Court of Appeals then ordered the board of education to desegregate at least one grade in 1963, and at least a grade a year thereafter. The board submitted a plan for desegregation of the 12th grade,⁷⁶ which is being protested by the Negro plaintiffs as insufficient.⁷⁷

The Muscogee County School Board, which includes Columbus, agreed unanimously (while Negro pickets marched outside) to desegregate its public schools and libraries. However, since the committee appointed to make plans does not report until after the opening of school, actual desegregation is not expected until September 1964.⁷⁸

The Dougherty County School Board was ordered on July 13, 1963, to submit a desegregation plan within 30 days.⁷⁹ The principal city in this county is Albany.

Kentucky

Since 1956 there has been steady, although deliberate progress in the desegregation of Kentucky schools.⁸⁰ In September 1962 there were biracial schools in 136 of Kentucky's 169 school districts, which have both white and Negro students.⁸¹ These schools enrolled about one-half of Kentucky's 53,894 Negro pupils.⁸²

74. Stell v. Savannah-Chatham County Board of Education, 318 F. 2d 425 (5th Cir. 1963).

75. Ibid.

76. Atlanta Constitution, June 30, 1963, p. 7.

77. Id., July 2, 1963, p. 25.

78. N.Y. Times, July 18, 1963, p. 10.

79. Anderson v. Dougherty Co. Board of Education, Civ. No. _____ N.D. Ga., Macon (Ga.) Telegraph, July 14, 1963, p. 1A.

80. See generally Southern States Report 25-26.

81. In Sept. 1962 Kentucky had a total of 206 school districts, 37 of which had no Negro children of school age.

82. State Department of Education, Integration in the Public Schools of Kentucky (1962). Unless otherwise specified, all Kentucky figures are taken from this report.

The remainder of Kentucky's Negro school children attend all-Negro schools. The reasons for this are varied. In Louisville, residential patterns account for school segregation even though the formal policies of the system are nondiscriminatory.⁸³

Twenty-one Kentucky school districts, which have formal policies permitting Negro children to transfer to white schools, have had no applicants. In fact, in one instance Negro citizens requested that a 10-student, one-teacher Negro school be retained. The school board, which had previously voted to close the school, acceded to the request.⁸⁴

Other school districts have desegregated their high schools while retaining segregation in elementary schools. These districts have recently become the targets of several lawsuits,⁸⁵ as have the wholly segregated districts.⁸⁶

The prospects for further school desegregation in Kentucky are good. The State Department of Education has observed:⁸⁷

[T]here is very definite evidence that changing positive attitudes are taking place. Both races are growing in maturity, in education, in human development and relations.

83. Louisville's school system is experiencing a transformation in both the size and the racial composition of its school system. In the past decade the white school population has fallen from 52,555 to 47,456 and the Negro school population has risen from 10,397 to 19,618. In fact, 35 percent of the State's Negro children are enrolled in Louisville schools. Louisville (Ky.) Courier-Journal, May 21, 1963, p. 8.

84. Birmingham (Ala.) News, Aug. 19, 1962, p. 1B.

85. Mack v. Frankfort, Kentucky Board of Education, Civ. No. 216, E. D. Ky.; Walker v. Board of Education (Richmond); Civ. No. 241, E.D. Ky; Louisville (Ky.) Courier-Journal, Sept. 18, 1962, sec. 2, p. 1 (Mayfield Independent School District); Cunningham v. Board of Education (Madison County), Civ. No. 242, E. D. Ky., Aug. 30, 1962.

86. Mason v. Jessamine County, Civ. No. 1496, E. D. Ky., Jan. 20, 1963, 8 Race Rel. L. Rep. 75 (1963); Lawrence v. Bowling Green, Civ. No. 819, W.D. Ky., Apr. 11, 1963, 8 Race Rel. L. Rep. 74 (1963).

87. See State Department of Education, supra note 82.

The State Department of Education has actively encouraged desegregation of schools.⁸⁸ On June 26, 1963, in a progress report to the State Board of Education, the assistant director of instructional services announced that only 5 of the 21 school districts maintaining segregation in 1962-63 did not have plans to desegregate in September 1963.⁸⁹ In other words, 16 school districts will initiate desegregation in the fall of 1963. The five holdouts are Fulton, Graves, Muhlenberg, Hickman, and Todd Counties.⁹⁰

Another official body, the Kentucky Commission on Human Rights, has conducted and published several studies of equal rights in public education.⁹¹ The State attorney general has consistently upheld minority group rights.⁹²

Overall, the governmental hierarchy in Kentucky has become increasingly concerned with existing violations of the constitutional rights of Negroes. This concern has spurred further action to the point that Kentucky is on the road to equal access to educational facilities without regard to race.

Louisiana

Orleans Parish (New Orleans) is the only desegregated school system in Louisiana.⁹³ In the 1962-63 school year, there were 38,538 white children, and 59,009 Negro children enrolled in New Orleans public schools.⁹⁴ Negro students in biracial schools totaled 107.⁹⁵

88. Louisville (Ky.) Courier-Journal, Sept. 20, 1962, sec. 2, p. 1.

89. Id., June 27, 1963, sec. 1, p. 1.

90. Ibid.

91. See So. School News, Feb. 1962, p. 13; id., Mar. 1962, p. 3; id., Apr. 1962, p. 7; and id., Dec. 1962, p. 6.

92. E.g., Ops. Ky. Atty. Gen. 62-759; 62-855, 7 Race Rel. L. Rep. 1303-4 (1962).

93 The Lake Charles school system, under a court order to desegregate, accepted 2 of 45 Negro applicants to a formerly all-white vocational school, but they did not enroll. Baton Rouge (La.) State Times, Feb. 2, 1963, p. 3A.

94. Bush v. Orleans Parish School Board, Civ. No. 3630, E.D. La., May 17, 1963, Statistical Summary, supra note 51.

95. New Orleans (La.) Times Picayune, Sept. 8, 1962, p. 12, sec. 1. The Catholic schools in New Orleans enrolled 190 Negro students in the 1962-63 school year. N.Y. Times, Nov. 18, 1962, sec. 1, p. 63.

The New Orleans school desegregation case has been in the courts since 1956.⁹⁶ Moreover, the concluding chapter is yet to be written. The latest court decision in May 1963, approved the desegregation of grades 1 and 2 (by a single set of attendance zones).⁹⁷ However, the court refused to decide what further steps should be taken in 1964-65, pending a report of the 1963-64 experience. Moreover, the court set aside the issue of teacher desegregation, commenting:⁹⁸

Operation of public schools, the record demonstrates, is inevitably a year-by-year operation when it comes to desegregation. This Court will confirm a long-range plan but additions are always a possibility as the Board and the community adjust to the new realities. Administratively the plaintiff's petition /for teacher desegregation/ is premature. It will not be denied but pretermitted until the Board overcomes some of the many serious problems involved in the conversion to a single-zone system.

The residual issue is this: Has New Orleans abolished white and Negro schools for grades 1 and 2 if every school is staffed by an all-white or an all-Negro faculty? Similarly, in the light of the community temperaments, does a white child or a Negro child have a "free choice" of schools, or is his choice loaded according to the complexion of the faculties in the schools? Nevertheless, New Orleans is expected to have about 300 Negro children in classes with white children in public schools in September 1963 and another 200 in formerly all-white parochial schools.⁹⁹

96. The first opinion was handed down in Bush v. Orleans Parish School Board, 138 F. Supp. 336 (E.D. La. 1956).

97. See Bush v. Orleans Parish School Board, supra note 94. The court also provided for (1) free transfer for all Negro children whose application for admission to white schools had been refused by the school authorities under the previous desegregation plan, and (2) nondiscriminatory enrollment policies for a high school for especially gifted children. The New Orleans school board also is considering the segregation of students by sex. So. School News, Mar. 1963, p. 1. Of course, this would double the size of the attendance areas, and in many cases, result in a more racially mixed student body.

98. Id., Bush v. Orleans Parish School Board, supra note 97.

99. N.Y. Times, July 13, 1963, p. 7.

A special study of dropouts by the Orleans Parish school authorities reports that two-thirds of the dropouts are Negroes, and recommended more money for guidance counselors and visiting teachers, and a restoration of the compulsory attendance law which was modified by a series of acts beginning in 1956. Twenty-one percent of the dropouts were less than 15 years of age. The study noted that although 47 percent of the dropouts were known to be below average in intelligence, 37 percent were known to be average or above average in aptitude.¹⁰⁰

In the remainder of the State, the prospects of desegregation are dim. St. Helena, under a court order to desegregate since May 1960,¹⁰¹ has not enrolled a single Negro child in a school with white children. East Baton Rouge, like St. Helena, has been under court order to desegregate since 1960.¹⁰² However, in 1963 the Baton Rouge Negro plaintiffs petitioned the court to require the school authorities to submit a positive plan for desegregation. This the court did, commenting:¹⁰³

The fact that forced desegregation of the public schools of this Parish has been delayed for many months . . . is to the everlasting credit of the local Negro leaders of this community. They have exercised restraint despite the proddings and agitations of outside elements. The resort to reason, common sense, and restraint by the people of this Parish, both white and colored, during these trying times, has benefited, and will in the future continue to benefit, all concerned.

The school board's plan which calls for desegregation of grade 12 in September 1964 has been approved by the court, but is ordered to be effective September 1963, rather than 1964. In considering requests for transfer the court gave

100. New Orleans (La.) Picayune, July 16, 1963, p. 7B.

101. Hall v. St. Helena Parish School Board, Civ. No. 1068, E. D. La., May 24, 1960, 5 Race Rel. L. Rep. 654 (1960).

102. Davis v. East Baton Rouge Parish School Board, Civ. No. 1662, E.D. La. May 25, 1960, 5 Race Rel. L. Rep. 653, (1960).

103. Davis v. East Baton Rouge Parish School Board, 214 F. Supp. 624, 626 (E.D. La. 1963).

the board eight criteria that include scholastic record, ability and aptitude of the pupil "and his compatibility or reasonably expected compatibility," and the availability of space in the school to which a transfer is requested.¹⁰⁴ The Catholic parochial school will desegregate junior and senior high school classes in September 1964.¹⁰⁵

The pace of desegregation in Louisiana suggests that for years to come school policy will be much the same as it was a decade ago.

Maryland

Maryland has 24 school districts, 23 of which enroll both white and Negro students. All of the State's school districts adopted a desegregation policy 5 years or more ago. However, as late as 1960-61, only 15 of these school districts actually operated any biracial schools.¹⁰⁶ By 1962-63 the number had increased to 20, with the remaining three districts reporting that no Negro students had applied for transfer to all-white schools.¹⁰⁷ Additionally, the proportion of the State's total Negro students enrolled in biracial schools increased from 34 to 45.1 percent in the past 2 years.

The above figures do not portray an accurate picture of the State's desegregation, however. Actually, as in 1961, Baltimore City and County and five Western Maryland county school districts account for about 97 percent of the school desegregation in Maryland. Indeed, the five school districts which transferred Negro pupils to white schools for the first time in September 1962 account for a total of only seven Negro pupils.

104. Davis v. East Baton Rouge Parish School Board, 219 F. Supp. 876 (E.D. La. 1963).

105. N.Y. Times, July 29, 1963, p. 9C.

106. Report, Maryland State Department of Education, Division of Administration, Finance and Research, Mar. 1962.

107. Washington (D.C.) Post, Sept. 5, 1962, p. 64. Original assignment to schools on a racial basis has been held unconstitutional by Federal courts, even though Negro students may subsequently transfer to biracial schools. See Dodson v. School Board (Charlottesville) 289 F. 2d 439 (4th Cir. 1961) and Bradley v. School Board (Richmond), 317 F. 2d 429 (4th Cir. 1963).

In January 1962 the State Board of Education, which under the State law has authority to determine educational policies for the State,¹⁰⁸ adopted a policy statement with regard to desegregation which in effect converted the judicial requirements governing desegregation of schools into State educational policy.¹⁰⁹ One of the duties of the State superintendent of schools and of local school boards and superintendents under Maryland school law is to carry out the educational policies determined by the State board.¹¹⁰ The detailed policy statement, among other things, called upon local boards to "guarantee that procedures respecting transfer, bus transportation and assignment of pupils shall apply without regard to race."¹¹¹ The State board by its action not only assumed leadership in seeking uniform compliance with the law of the land throughout the State but also gave itself jurisdiction to hear complaints of non-compliance.¹¹² To date, however, its action has had little apparent effect on local policies of Eastern Shore and southern Maryland counties which still assign all Negro

108. Md. Code Ann., art. 77, sec. 21.

109. Policy of the State Board of Maryland Respecting Desegregation in the Maryland Public Schools, Jan. 30, 1962.

110. Md. Code Ann., art. 77, secs. 39 and 54.

111. See policy of the State Board, supra note 109.

112. The State board does not have authority over purely legal as distinct from administrative matters. Board of School Commissioners v. Henkel, 83 Atl. 89 (Md. 1912). In Robinson v. Board of Education (St. Marys Co.), 143 F. Supp. 481 (D. Md. 1956) the Federal district court held the question of whether the school board was proceeding to desegregate with all deliberate speed a mixed administrative and legal question and required the plaintiffs to exhaust their State administrative remedies before seeking relief in the Federal court. Subsequently, in another case, the same court rebuked the State board for refusing to decide an appeal on the ground that the issue was one of law. Pettit v. Board of Education (Harford) Civ. No. 11,955, D. Md., May 25, 1960, 5 Racc Rel. L. Rep. 379-85 (1960).

pupils to Negro schools and white pupils to white schools.¹¹³ The Negro parents in the five counties mentioned above who applied for transfer of their children to white schools in September 1962 may have found the State policy supportive enough to give them the courage to face local resistant attitudes.

The only new desegregation announced for September 1963 is in Princess Anne, Somerset County.¹¹⁴ The settlement reached between local and State officials and the Cambridge civil rights demonstrators on July 23, 1963, included "firm assurances . . . that desegregation of the first four grades in the Dorchester County school system will be accomplished by the opening of the school year, September 1963."¹¹⁵ The grade-a-year desegregation plan of the county from grade 12 downward included grades 5-12 in September 1963. Initial assignment is still made by race and an application for transfer is still required.

Mississippi

The population of Mississippi in 1960 was 2,178,141 of which 42.3 percent were nonwhite.¹¹⁶ The total enrollment in public elementary and secondary schools in 1961-62 was

113. In Wicomico County, in Sept. 1962, 37 Negro children in grades 1-6 were voluntarily admitted to three white schools in Salisbury. The mayor of Salisbury, testifying before the U.S. Senate Commerce Committee in favor of a Federal public accommodations law, placed the number of desegregated elementary schools at five out of seven in 1962-63 and stated that additional schools and grades will open their doors to Negro pupils in Sept. 1963. N.Y. Times, July 12, 1963, p. 10C. The State board now has a petition from the Cambridge (Md.) Non-Violent Action Committee under active consideration. Since the committee had made no demands on the local board, the State board arranged such a meeting for discussions on the question of local adherence to State policy. Letter From Thomas G. Pullen, State Superintendent of Schools to this Commission, July 12, 1963, and copy of Statement of the Maryland State Board of Education, July 2, 1963.

114. Washington (D.C.) Post, June 27, 1963, p. 6A.

115. N.Y. Times, July 24, 1963, p. 16C.

116. 1960 Census, PC (1) 26B, table 15.

585,508 of whom 288,089, or 49 percent, were Negroes.¹¹⁷ All school children in Mississippi attended segregated schools.¹¹⁸

Several suits to force desegregation in the public schools have been brought against the school authorities of Jackson and Leake Counties by Negro plaintiffs and by the Attorney General on behalf of Negro children of armed forces personnel in Gulfport and Biloxi. All have been dismissed by Federal District Judge S. C. Mize.¹¹⁹ The Jackson case, which included among the plaintiffs two children of Medgar Evers who was assassinated on June 12, 1963, is pending in the Court of Appeals for the Fifth Circuit.¹²⁰

Missouri

Missouri has a population of 4,319,813, including 390,853 (9 percent) Negroes.¹²¹ Yet only about 213 of the State's 1,607 school districts enroll both races. The State education authorities do not keep records by race, but officials estimate that all but 11 of Missouri's biracial school districts are desegregated in some degree.

The segregated school systems in Missouri are concentrated in the part of the State which abuts the Arkansas and Kentucky borders, principally in the "boothel." The area is a rural, cotton-growing section, of southern ways and mores. A successful lawsuit will bring an end to segregation in all 12 grades of the Charleston, Mo., school district in September 1963.¹²² Suit has been filed contesting segregation in a school district in Pemiscot County, also in

117. Statistical Summary, supra note 51.

118. Suits to desegregate the schools of the city of Jackson and Leake County have been filed. Evers v. Jackson, Civ. No. 20824, S.D. Miss., filed Mar. 8, 1963; Hudson v. Leake County School Board, Civ. No. 20825, S.D. Miss., filed Mar. 7, 1963.

119. U.S. v. Gulfport Municipal Separate School District, 219 F. Supp. 691 (S.D. Miss. 1963); U.S. v. Biloxi Municipal School District, 219 F. Supp. 691 (S.D. Miss. 1963).

120. Evers v. Jackson supra note 118, see also Daily News, July 17, 1963, p. 1.

121. 1960 Census PC(1) 27B, table 15.

122. Davis v. Board of Education, Civ. No. S62C51, E.D. Mo., Apr. 11, 1963.

southeast Missouri.¹²³ A third school district, in west central Missouri will allow its students in its all-Negro high school to take courses in the biracial high school.¹²⁴ The schools will have only one athletic team between them.

In the remainder of the State, the schools are for the most part desegregated. Indeed, the problems of Negro education in St. Louis are northern-style; all vestiges of segregation by policy are gone.¹²⁵

North Carolina

In 1962 the author of a staff report to the Commission concluded that "a totally desegregated State-wide public school system is not likely in North Carolina in the foreseeable future, unless forced by court decrees."¹²⁶ The basis for this prediction was the history of the North Carolina Pupil Assignment Act,¹²⁷ which until then, had presented an "insurmountable barrier to anything more than token desegregation."¹²⁸

The law gave the State's 173 school districts the right to assign any pupil to any school, such assignment to be in accord with several general criteria (e.g., the best interests of the child; the health, safety, and general welfare of the students). The statutes further provided for requests for reassignment and for administrative and judicial appeals by individual applicants whose reassignment requests were denied. The North Carolina school system used the law to assign all children according to race. Since 155 of the State's school districts were completely segregated at the close of the 1962-63 school year, it would appear that if the criteria in the act were used at all, they were used to determine which Negro school a Negro child should attend and which white school a white child should attend. The law's real value as a segregative device lay in its administrative processes. The Court of Appeals for the

123. St. Louis (Mo.) Post Dispatch, May 7, 1963, p. 14.

124. So. School News, May 1963, p. 16.

125. North and West Report 249-99.

126. See Southern States Report 102; generally 57-105.

127. N.C.G.S. secs. 115-176 through 115-179 (1955, ch. 366, secs. 1-3; amended, 1956, Ex. Sess. ch. 7, secs. 1-3).

128. Southern States Report 102.

Fourth Circuit required every Negro child who objected to segregation to follow all the State administrative procedures before applying to a Federal court for relief.¹²⁹ At that, the Federal court would grant relief only to those Negro children who did in fact exhaust their administrative remedies; other segregated Negro children in the school systems remained unaffected.¹³⁰

On October 12, 1962, the Court of Appeals for the Fourth Circuit abandoned its former position in reversing two lower court decisions; the court adopted the rule that, once it was established that a school system was using the placement act to maintain segregation, a Negro student did not have to submit to futile administrative procedures.¹³¹ Moreover, one plaintiff could sue for all the Negro children in the system. These decisions should prove to be the most significant developments in the legal aspects of North Carolina school desegregation. However, they were handed down too late to affect segregation in the 1962-63 school year, except for the school districts in the suits themselves which were Durham and Caswell County.

In the 1962-63 school year 7 more school systems joined the 11 communities which already had some school desegregation. However, only about 0.25 percent of North Carolina's Negro pupils attended biracial schools, and 155 of the State's 173 school districts still operated on a completely segregated basis.

Even in the desegregated systems, the manifest official attitude was one of containment and tokenism. Only Yancey County enrolled a large fraction of its 28 Negro pupils in biracial schools.¹³² In other desegregated communities the percentage of Negro pupils in biracial schools ranged from 0.02 percent to 3.42 percent.

129. Carson v. Warlick (Old Fort), 238 F. 2d 724 (4th Cir. 1956); Covington v. Edwards (Montgomery County), 264 F. 2d 780 (4th Cir. 1959); Holt v. Raleigh City Board of Education, 265 F. 2d 95 (4th Cir. 1959).

130. McCoy v. Greensboro City Board of Education, 283 F. 2d 667 (4th Cir. 1960).

131. Wheeler v. Durham City Board of Education, 309 F. 2d 630 (4th Cir. 1962); Jeffers v. Whitley (Caswell County), 309 F. 2d 621 (4th Cir. 1962).

132. A Federal court enjoined the school board from refusing to admit Negro pupils to the county high school. Negro high school students previously had to travel 80 miles daily to attend an Asheville all Negro high school. Griffith v. Board of Education (Yancey Co.) 186 F. Supp. 511 (W.D.N.C. 1960). The court order also required the school board to consider the proper utilization of the Negro and white elementary schools using the criteria of the pupil placement law, which excludes race.

On July 11, 1963, the Federal district court rejected the Durham school board's plan for gradual merger of the dual system and ordered the board to give all Negro elementary and junior high school pupils "the absolute right to attend the school of their choice" in September 1963. The court also ordered the board to submit by May 1, 1964, "a plan for total and complete desegregation of the city school system for the 1964-65 school year and for subsequent years."¹³³ The free choice granted Negro pupils for September 1963 is similar to the Caswell County procedure approved by the Court of Appeals for the Fourth Circuit in Jeffers v. Whitley.¹³⁴

Five school districts have approved Negro pupils' applications for transfer to white schools for the term opening in the fall of 1963. They are Buncombe County (12 pupils),¹³⁵ Burlington (seven pupils),¹³⁶ Guilford County (six pupils),¹³⁷ Rocky Mount (15 pupils),¹³⁸ and Wake County (six pupils).¹³⁹ Six additional districts have received applications for the first time,¹⁴⁰ but in only one has the board's action been announced, and in that case the applications were denied.

Whether the total number of newly desegregated districts in 1963 finally is 5 to 10 or any number in between does not make material difference in the statewide picture. Out of a total of 173 school districts, all of which enroll both white and Negro pupils, (23 or possibly 28) will have a few Negro pupils attending schools with whites.

133. N.Y. Times, July 12, 1963, p. 9C.

134. See Wheeler v. Durham City Board of Education, supra note 131.

135. Winston-Salem (N.C.) Journal, July 16, 1963, p. 6.

136. Baltimore Afro-American, July 6, 1963, p. 11.

137. Charlotte (N.C.) Observer, June 30, 1963, p. 1D.

138. Raleigh (N.C.) News and Observer, June 29, 1963, p. 3.

139. Greensboro (N.C.) Daily News, July 3, 1963, p. 6A.

140. Edenton (Norfolk, Va.) Virginian-Pilot, July 13, 1963, p. 15; Henderson (Raleigh, N.C.) News and Observer, June 28, 1963, p. 17; Rowan County (Greensboro, N.C.) Daily News, July 2, 1963; Surry County (Winston-Salem, N.C.) Journal, July 6, 1963, p. 10; Thomasville, id., June 27, 1963, p. 5B.

141. Harnett County (Greensboro, N.C.) Daily News, July 3, 1963, p. 6A.

Oklahoma

The Oklahoma experience is similar to that of Kentucky and Delaware in that the State runs the gamut between wholly desegregated districts and wholly segregated districts. It differs from these States in that the process of desegregation has lost momentum, and has all but halted.

The last official survey of the status of desegregation of Oklahoma schools was made in October 1961. At that time there were 29 all-Negro high schools, 10 all-Negro junior high schools, and 127 all-Negro elementary schools.¹⁴² There is an identifiable pattern of educational segregation, uncovered in a survey conducted by the Oklahoma State Advisory Committee to the U.S. Commission on Civil Rights. In a pamphlet published in June 1963, the committee observed:¹⁴³

The school districts which are totally segregated typically comprise small cities or rural areas and have large Negro populations in comparison to communities of size in Oklahoma. Most of the totally segregated districts are in the Southeastern part of the State, which has long been known as "Little Dixie." The districts which are totally desegregated typically also comprise small cities and rural areas but have average or less than average numbers of Negro residents within their boundaries. The 1960 census gives Oklahoma's Negro population as 6.6 percent. PC(1)-LB, table 56.⁷ The districts which continue segregation of elementary schools with desegregated junior and senior high schools typically are small-and-medium-sized cities with larger-than-average Negro population. The mixed type of district some schools biracial, some all-white, and some all-Negro, at each level¹ is found in the metropolitan and near-metropolitan areas of the State.

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142. State Department of Public Instruction, Summary, Integration Questionnaire, Sept. 27, 1961. Although there were 166 Negro schools still operating in the State, 66 all-Negro high schools, and 132 all-Negro elementary schools had been abolished.
143. Oklahoma State Advisory Committee to the U.S. Commission on Civil Rights, The Extent and Patterns of Segregation in Oklahoma's Public Schools 2-3 (1963).

A decision in the case of Dowell v. Oklahoma City School Board¹⁴⁴ was handed down on July 11, 1963.¹⁴⁵ Oklahoma City revised attendance areas for all its public schools into a single rather than dual system in 1955. Pupils were assigned to school by residence, but a pupil assigned to a school that was predominantly of the other race was permitted to transfer to a school where his race was in the majority. A representative of the superintendent of Oklahoma City schools told the Commission at its Nashville Conference that all transfer requests have been honored. As a result of these policies, in the school year 1958-59, only 8 of the city's 91 schools were attended by both races.¹⁴⁶ In 1962-63 only 14 out of 101 school plants enrolled pupils of both races.¹⁴⁷

In addition to considering the rights of the individual plaintiffs, the court held the minority transfer policy of the board unconstitutional, void, and unenforceable, and permanently restrained its further use. The court then ordered the board to file a complete and comprehensive plan for desegregation of the Oklahoma City school system, both as to the student body and teaching and supervisory personnel within 90 days.¹⁴⁸

The findings and conclusions of the court strongly condemned the school authorities:¹⁴⁹

The school children and personnel have in the main from all of the evidence been completely segregated as much as possible under the circumstances, rather than integrated as much as possible. Inasmuch as the Superintendent of Schools has established the proof necessary that Negro teachers are equal in quality to white teachers, it seems only reasonable and fair that in all schools, mixed or otherwise, the School Board would and should make a good faith effort to integrate the faculty, in order that both white and Negro students would feel that their color was represented upon an equal level and that their people were sharing the responsibility of high-level teaching.

144. 219 F. Supp. 427 (W.D. Okla. 1963).

145. N.Y. Times, July 12, 1963, p. 9C.

146. 1959 Report 215.

147. Dowell v. School Board, supra note 144 (in transcript p. 38).

148. Id. pp. 40-42.

149. Id. pp. 33-34, 39.

From a study of the evidence in this case, the Court concludes that the Oklahoma City School Board has followed a course of integration as slowly as possible. Our Negro people, business, religious and educational leaders have so far as this record is concerned been completely ignored, and it is their rights that are at long last before this Court.

One of the basic foundations of America's strength, and one of the keys to its greatness, is the right to have equal public schools for all our children. The right of each American child is to enjoy free, equal schools. If any white child were denied such right all would be indignant; why not let it be so with our Negro children.

A large number of Negro teachers in Oklahoma have lost their jobs as a result of desegregation. The State department of education survey of 1961 revealed that 394 Negro teachers had been released.¹⁵⁰ Job opportunities for Negro teachers in Oklahoma appear to be limited to (1) still segregated districts,¹⁵¹ or (2) the metropolitan areas. Official State sources give the following figures:¹⁵²

Number of Negroes Teaching in Oklahoma

	<u>1954-55</u>	<u>1962-63</u>
Total for State	1,622	1,381
Total for Oklahoma City	156	341
Total for Tulsa	129	236
Total for Lawton	50	57

South Carolina

The population of South Carolina in 1960 was 2,382,594 of which 34.9 percent were nonwhite.¹⁵³ The total number of pupils enrolled in public elementary and secondary schools

150. See State Department of Public Instruction, supra note 142.

151. Oklahoma State Advisory Committee to the U.S. Commission on Civil Rights, supra note 143 at 5.

152. Letter From Oliver Hodge, State Superintendent of Education to this Commission, June 12, 1963.

153. 1960 Census, PC (1) 42B, table 13.

in the 1962-63 school year was 630,628 of whom 265,288 or 42.0 percent were Negro. The public schools of South Carolina were still completely segregated in the 1962-63 school year.¹⁵⁴

One of the original School Segregation Cases involved a school district in Clarendon County, S.C. The case is still in the courts.¹⁵⁵

Tennessee

In 1960 Tennessee had a total population of 3,567,089 of which 586,876 (16.5 percent) were Negroes.¹⁵⁶ Negroes constituted about 19 percent of the State's public school population in 1962-63. However, less than 2 in every 100 Negro pupils attended biracial schools in that year.

In 1960-61, only 9 of the State's 143 biracial school districts were desegregated in fact or by policy.¹⁵⁷ In 1961-62 the number rose to 17, and in 1962-63 a total of 26 districts had some form of desegregation policy, albeit in some cases unimplemented.¹⁵⁸

Tennessee breaks down into several distinct areas with indigenous desegregation problems. The southern orientation of western Tennessee, coupled with a large Negro population, calls into play different considerations than east Tennessee or even middle Tennessee. On the other hand, both Memphis in west Tennessee and Chattanooga in the eastern section are infused with the racial attitudes of Mississippi and Georgia.¹⁵⁹ All in all, the State has desegregated

154. The State (Columbia, S.C.), June 27, 1963, p. 6B.

155. The latest decision is Brunson v. Board of Trustees, 311 F. 2d 107 (4th Cir. 1962). The original plaintiffs have graduated from the all-Negro school they sought to escape. Two suits are pending. Brown v. Charleston, S.C., School District No. 20, Civ. No. 7747 E.D.S.C., and Stanley v. Darlington County School District, Civ. No. 7749, E.D.S.C.

156. 1960 Census, PC (1) 44B, table 15.

157. 1961 Education Report, app. IV.

158. Putnam County, not originally listed in the Statistical Summary, supra note 51, was added by SERS in Aug. 1963 as desegregated in 1962-63. Three districts had no Negro students enrolled in formerly all-white schools in 1962-63. They were Watertown, Elizabethton, and Bristol.

159. Southern Report 112-13.

grudgingly, and in token numbers. For the most part, legal action has been necessary to accomplish, or precipitate, the small degree of desegregation which does exist.¹⁶⁰

One phenomenon appears in Tennessee more than any other Southern State. It is the concurrent desegregation of city and county systems. Desegregation of a complete metropolitan area, as distinct from a city or a county system, was judicially inspired by a suit involving Davidson County, wherein Nashville is located.¹⁶¹ Nashville has desegregated one grade a year for several years and had reached the fourth grade. The county proposed desegregating only the first grade, and one grade a year thereafter. The court ordered that the county catch up with the city the first year.

Following this example, Hamilton County, in which Chattanooga lies, voluntarily enrolled Negro pupils in grades 1-3 in 1962, to catch up with the city.¹⁶² Again, Knox County, which contains Knoxville, enrolled Negro pupils in grades 1-4 in 1962-63, matching the desegregation pace of the city.¹⁶³

Only three school districts are expected to initiate desegregation in the fall of 1963. Shelby County school district, which surrounds Memphis, has decided to desegregate one school attended by the children of military personnel.¹⁶⁴ Suit was filed in the Federal district court on June 13, 1963, to require the desegregation of the entire school system.¹⁶⁵ The schools of Madison County will desegregate grades 1-3 in September 1963 under a court-approved plan calling for complete desegregation by 1969.¹⁶⁶ Sevier County school board will desegregate its high schools in 1963-64 and its elementary schools 2 years later.¹⁶⁷

160. See generally Southern Report 105-54.

161. Maxwell v. Board of Education, 301 F. 2d 828 (6th Cir. 1962). See also, Vick v. Board of Education (Obion County), 205 F. Supp. 436 (W.D. Tenn. 1962).

162. Chattanooga (Tenn.) Times, Aug. 31, 1962, p. 1.

163. Knoxville (Tenn.) News-Sentinel, Sept. 4, 1962, p. 1.

164. See Information compiled, supra note 58.

165. Memphis Commercial Appeal, July 4, 1963, p. 41.

166. Id., July 16, 1963, p. 8.

167. See Information compiled, supra note 58.

The Federal district court has approved Memphis' grade-a-year plan, after amendment of the minority transfer rule to allow parents of both white and Negro pupils in racially mixed schools to apply for transfer to any other school where space is available.¹⁶⁸ Negro plaintiffs have appealed to the Court of Appeals for the Sixth Circuit.¹⁶⁹

Texas

In 1960, the population of Texas was 9,519,677. Negroes comprised about 12.4 percent of this figure, or 1,187,125.¹⁷⁰ The estimated total student enrollment for the State in 1962-63 was 2,555,593, of which 1,951,613 were white; the Negro enrollment constituted 11.8 percent of the total.¹⁷¹

At the close of the 1962-63 school year, 177 of the State's 919 biracial school districts had some form of desegregation.¹⁷² Nevertheless, only 2.3 percent of the State's Negro students actually attended school with white children.

Most of the desegregated districts are located in the western and southern parts of the State, where the Negro population is small, and, as a consequence, community resistance to desegregation has been minimal. On the other hand, 90 percent of the Negro population of Texas lives in east Texas. Indeed, Negroes comprise more than 30 percent of the population of 20 counties in the area, and more than 50 percent in 3 counties.¹⁷³ The traditions in this part of the State, which includes the Texas cotton belt, are predominantly southern, and are reflected in an almost completely segregated school pattern.¹⁷⁴

168. Memphis Commercial Appeal, June 29, 1963, p. 1.

169. Nashville Tennessean, July 17, 1963, p. 56.

170. 1960 Census, PC (1) 45B, table 15.

171. See So. School News, June 1963, p. 1.

172. Id., Dec. 1962, p. 1; id. Feb. 1963, p. 3; id. Mar. p. 2; id. May p. 13.

173. 1960 Census, PC (1) 45C, table 82.

174. Dallas, the largest urban area in the section, is in the process of desegregation (28 Negro children in biracial schools). However, its satellite school districts, with one exception, have no plans to desegregate. Dallas (Tex.) Morning News, Sept. 6, 1962, sec. 4, p. 1; id., Mar. 22, 1963, sec. 4, p. 1.

The future of Texas school desegregation looks brighter than its past, owing to several factors. The principal factor is the recent demise of the referendum law, which prohibited local school boards from abolishing segregated schools without the prior approval of the voters of the district.¹⁷⁵ Elections could be held only upon request of at least 20 percent of the electorate. The penalties were loss of State funds to the district and a fine of \$100-\$1,000 on the individuals responsible for the violation.

The referendum law was a success. Whereas well over 100 school districts had voluntarily desegregated before its passage, only 12 school districts voted to abolish segregation between 1957 and September 1962.¹⁷⁶ The main thrust of the law is obvious: Before school authorities were able quietly to establish desegregation, it became necessary to publicize the move, and give the opposition a chance to form. Moreover, the threat of fine added to the deterrence.

In a series of tangential attacks, the referendum law lost its force. In September 1960, after Houston was ordered by a Federal court to desegregate,¹⁷⁷ the State attorney general ruled that the referendum statute did not apply to districts acting under court orders.¹⁷⁸ Following this decision, a number of seemingly friendly suits arose, in which the school boards would appear at the trial and admit the plaintiffs' allegations of segregation, and consent to a desegregation order.¹⁷⁹ This strategem avoided the referendum law, and resulted in desegregation at minimum expense and publicity. Finally, in the last 30 days of his term of office as Attorney General, Will Wilson was asked to rule squarely on the constitutionality of the referendum

175. Tex. Civ. Stat. art. 2900A (Vernon Supp. 1958).

176. Dallas (Tex.) Morning News, Sept. 1, 1962, sec. 1, p. 5.

177. Houston Independent School District v. Ross, 282, F. 2d 95 (5th Cir. 1960).

178. Op. Tex. Att. Gen. No. WW-931, Sept. 6, 1960, 5 Race Rel. L. Rep. 711-13 (1960).

179. Eastland v. Northeast Houston Independent School District, Civ. No. 13,330, S.D. Tex., Oct. 23, 1962; Washington v. A. & M. Independent Consolidated School District, Civ. No. 13,816, S.D. Tex., Aug. 17, 1962; Evans v. Brooks, Civ. No. 2803, S.D. Tex. Apr. 10, 1962, 7 Race Rel. L. Rep. 396 (1962).

law. He issued an opinion holding the referendum law unconstitutional.¹⁸⁰ With the end of the referendum law as a deterrent to desegregation, an increase in voluntary desegregation of Texas school districts may be expected. In fact, about 25 were expected to do so in September 1963.¹⁸¹

Another factor contributing to the prospects of increasing desegregation in Texas is the militancy of Negro leadership. Although the only district under court order to desegregate in the 1962-63 school year was in south Texas, a number of other suits filed in 1961 and 1962 were approaching conclusions. Six districts were under court order to desegregate in September 1963.¹⁸² Moreover, suits were pending in six other districts, including three districts in Texas cotton country.¹⁸³

A third factor encouraging Texas school desegregation was a decision by the Texas Court of Civil Appeals enjoining the expenditure of public funds to construct a segregated Negro school.¹⁸⁴ This decision, if upheld, would certainly prevent segregation beyond the life of existing Negro school buildings in small school districts, and might well affect larger districts.¹⁸⁵

180. Op. Tex. Att. Gen. No. WW-1490, Dec. 10, 1962, 7 Race Rel. L. Rep. 1306-8 (1962). The new attorney general quickly announced that he endorsed the ruling of his predecessor. So. School News, Jan. 1963, p. 4.

181. Dallas Morning News, July 7, 1963, p. 24, and information compiled by the U.S. Department of Justice, Civil Rights Division, July 31, 1963. Two of these districts had no Negro pupils in 1962-63 and two others had no Negroes living in the district.

182. Texas City (Galveston County), Northeast Houston (Harris County), Carrollton (Dallas County), Gatesville (Coryell County), and A. & M. Independent Consolidated School District (Brazos County), Fort Worth (Tarrant County). Information compiled, id.

183. Georgetown (Williamson County), Waco (McLennan County), Hamshire-Fannett and Beaumont (Jefferson County), Longview (Upshur County), and Bryan (Brazos County). Statistical Summary of School Segregation-Desegregation in Southern and Border States, Nov. 1962, as revised for Commission on Civil Rights, Aug. 1963, by Southern Education Reporting Service.

184. Kreger v. Board of Trustees of Georgetown Independent School District, No. 11,099, Tex. Civ. App. 3d Dist., May 29, 1963.

185. E.g., Dallas opened the first of four new Negro high schools in Jan. 1963. Dallas (Tex.) Morning News, Jan. 24, 1963, sec. 1, p. 12.

In Texas, as in Florida, several school districts responded to Federal pressure to desegregate schools attended by dependents of military personnel.¹⁸⁶ Thus, in September 1963, 31 additional Texas school districts were to be desegregated, at least in policy.

Virginia

Virginia, like Texas and Tennessee, has many faces. Moreover, the polarities of Virginia's sentiments and sophistication exceed all of its southern neighbors. For example, Arlington County is among the Nation's leading communities in both income and education. In 1963 it decided to discontinue its only all-Negro high school.¹⁸⁷ Moreover, it adopted a nondiscriminatory hiring practice for teaching personnel, the first such move in Virginia.¹⁸⁸ However, the State also contains Prince Edward County which has kept its public schools closed for 4 years to prevent desegregation. Between these extremes Virginia has many gradations of segregation-desegregation.¹⁸⁹

In the State as a whole, Virginia had desegregated 32 of her 128 biracial school districts by the close of the 1962-63 school year. On the other hand, only 1,230 of Virginia's 229,105 Negro students were enrolled in biracial schools with white pupils--slightly more than 0.5 percent. More than 800 or two-thirds of the Negro students in school with whites were enrolled in the Washington, D.C., suburbs of northern Virginia,¹⁹⁰ and in the cities of Norfolk, Richmond, and Roanoke. The desegregation that obtained in the

186. Colorado Consolidated School District, Connolly, Mineral Wells, Potter County Consolidated School District No. 3. The school board of Shallowater ISD, which also serves federally connected children decided to desegregate in Sept. 1963 but is not listed as one having assured the U.S. Departments of Health, Education, and Welfare, and of Justice of its intentions, Information compiled, supra note 181.

187. Norfolk (Va.) Virginian Pilot, Apr. 5, 1963, p. 5.

188. Richmond (Va.) News Leader, June 7, 1963, p. 6.

189. For an intensive study of Virginia school desegregation, see Southern Report 155-217.

190. The cities of Alexandria and Falls Church, and the counties of Arlington and Fairfax comprise this group.

remainder of the State was taken at best, with 17 districts enrolling from 1 to 16 Negro pupils in their formerly all-white schools.¹⁹¹

Virginia has achieved some prominence as a showplace for segregation devices. It has closed schools, operated a tuition grant scheme, suspended compulsory attendance laws, and built private segregated schools. All of these devices have enjoyed some degree of success in Virginia. Consequently, as desegregation moves farther into the Deep South, Virginia's inventions may set a pattern for other States.

The tuition grant law¹⁹² in Virginia, recently amended to remove all outward appearances of segregative orientation, in the 1961-62 school year enabled 9,490 students to receive \$250-\$275 of public funds amounting to over \$2 million for private education.¹⁹³ Some localities have refused to participate in the grant program. One of these is Arlington. Nevertheless, the tuition grant scheme will probably remain in effect in Virginia for years to come, but it is conjectural whether its main thrust will be to help dissenters avoid desegregated schools, or merely to subsidize parents who would have sent their children to private schools anyway.¹⁹⁴

It has been over 4 years since the State legislature made compulsory school attendance laws a matter of local option.¹⁹⁵ By December 1962, 58 localities enacted their own law.¹⁹⁶ In Norfolk, the Mayor's Youth Commission recommended reinstatement of the State compulsory attendance law, observing that 290 pupils had dropped out of elementary

191. The districts and the number of Negroes enrolled in school with whites in 1962-63 are Amherst Co. 8; Augusta Co. 3; Chesterfield Co. 2; Floyd Co. 16; Fredericksburg 9; Hampton 1, Hopewell 2; King William Co. 8; Loudoun Co. 4; Lynchburg 16; Montgomery Co. 4; Portsmouth 14; Prince William Co. 10; Shenandoah Co. 3; Warren Co. 13; Winchester 12; and York Co. 1.

192. Va. Code, secs. 22-115.29--22-115.35 (Supp. 1962).

193. Richmond News Leader, June 28, 1963, p. 4. The State cost was \$1,255,000.

194. Before Fairfax or Stafford Counties desegregated, residents there used tuition grants to send their children to an integrated school in Arlington, Washington (D.C.) Post, Dec. 2, 1962, p. 6B.

195. Va. Code, sec. 22-275.24. (Supp. 1962).

196. Norfolk (Va.) Virginian-Pilot. Dec. 28, 1962, p. 4.

schools,¹⁹⁷ and that "gangs of boys like wild dogs" roamed the city's back streets.¹⁹⁸

The segregation-inspired academies in Virginia continued to operate. There were four diploma-granting institutions,¹⁹⁹ and a fifth was being completed in Powhatan County,²⁰⁰ recently an unsuccessful defendant in a desegregation suit.²⁰¹ All of these academies (except the Prince Edward Foundation) were almost totally dependent upon tuition grants for their operating expenses.²⁰² White residents in three other school districts where Negro pupils have been assigned to white schools by the State Pupil Placement Board were reported to be planning private schools for white children. Consequently, the future of the tuition grants program will determine the future of these schools.²⁰³

197. Virginia Education Summary, Sept. 12, 1962, p. 3.

198. Norfolk (Va.) Virginian-Pilot, Nov. 30, 1962, p. 4.

199. The Prince Edward County Foundation at Farmville; John S. Mosby Academy at Front Royal; Rock Hill Academy at Charlottesville; Tidewater Academy at Norfolk. See Southern Report 170, 179, 194-96.

200. Huguenot Academy. See Richmond (Va.) Times-Dispatch, Mar. 26, 1963, p. 2; id. Mar. 27, 1963, p. 2.

201. Bell v. School Board (Powhatan Co.) Civ. No. 8944, 4th Cir. June 29, 1963.

202. A Federal court has enjoined the payment of any tuition grant monies to the Prince Edward Foundation School so long as public schools in the county remained closed. Allen v. Prince Edward County, Civ. No. 1333, E.D. Va., Aug. 25, 1961, 6 Race Rel. L. Rep. 749 (1961). Consequently, private donations are the main source of income for this school. See Richmond (Va.) Times-Dispatch, Dec. 14, 1962. Powhatan County's board of supervisors cut the school board's budget for 1963-64, 43 percent before its adoption and increased funds for tuition grants more than three times. Richmond (Va.) News Leader, June 21, 1963, p. 1.

203. Chesterfield County (Richmond, Va.) News Leader, June 27, 1963, p. 30; Surry County (Richmond, Va.) News Leader, July 1, 1963, p. 25; Middlesex (Richmond, Va.) News Leader, July 6, 1963, p. 9.

The future of desegregation in Virginia is relatively good. In its June 1963 meetings the State Pupil Placement Board assigned 1,203 Negro pupils to all-white or predominantly white schools across Virginia. In 16 school districts Negro pupils were placed in white schools for the first time for September 1963.²⁰⁴ The recent relaxation of procedural stringencies in desegregation suits by the Court of Appeals for the Fourth Circuit adds much to prospects in the State.²⁰⁵ Again, tuition grant laws, private schools, and suspension of compulsory school attendance laws do not prevent desegregation, but only contain it.

West Virginia

West Virginia's Negro population is the smallest of the Southern and Border States, both in actual numbers and in percentage of total population. The 1960 census gives the State's total population as 1,860,421 of which 89,378 or 4.8 percent, are Negroes.²⁰⁶ All of its 43 biracial school districts have some desegregation and an estimated 60 percent of the State's Negro students actually attend school with white children. A survey 4 years ago found that 58 Negro teachers had been displaced by desegregation but some faculty desegregation was reported.²⁰⁷

All in all, West Virginia has reached the point where it no longer fits the southern school mold. The segregation which exists in West Virginia is more characteristic of northern-style segregation than southern.

204. The 16 districts are Danville, Martinsville, Staunton, and the counties of Albermarle, Charles City, Culpeper, Dinwiddie, Fauquier, Frederick, Greene, Hanover, Henrico, Middlesex, Powhatan, Spotsylvania, and Surry. (Richmond, Va.) News Leader, June 23, 1963, p. 4.

205. See text at note 131 supra.

206. 1960 Census, PC (1) 50B, table 15,

207. Statistical Summary, supra note 183.

2. The Law of Desegregation 1963

The previous chapter points up that comparatively little school desegregation occurred in the 9-plus years which followed the School Segregation Cases. In fact, as of the close of the 1962-63 school year, the former Confederate States had placed only 0.4 percent of their Negro children in biracial schools.¹ This fact leads to several questions: What factors were responsible for the snails-pace desegregation which characterized the past decade? Was there a lack of initiative on the part of Negroes to demand desegregation?² Was it fear of economic or physical reprisals

1. The Border States of Del., Ky., Md., Mo., Okla., W. Va., and D.C. account for 94.7 percent of the total number of Negro pupils attending school with white pupils in 1962-63. (See ch. 1 supra at 7-8.)
2. See Southern States Report 50-52. Several recent developments will probably widen the front of the attack on school segregation. The first boost came from the Supreme Court itself, when it forbade Virginia from applying certain barratry, and champerty and maintenance statutes to the activities of the NAACP in that State. The Court distinguished between the actions of the NAACP and traditionally illegal solicitation of legal business on the grounds that the motives and interests of the NAACP were not in private gain or benefit, but to secure people's constitutional rights. Additionally, the Court noted the very real problems of securing counsel for southern desegregation suits:

Lawsuits attacking racial discrimination, at least in Virginia, are neither very profitable nor very popular. They are not an object of general competition among Virginia lawyers; the problem is rather one of an apparent dearth of lawyers who are willing to undertake such litigation.

NAACP v. Button, 371 U.S. 415 (1963)

Another development, in the same genre as the preceding case, is a ruling of the Court of Appeals for the Fourth Circuit. The court, in a case involving a Virginia school district, awarded counsel fees to the attorneys of the Negro plaintiffs. A Federal court again recognized the onerous practical problems of parents seeking school desegregation. It commented:

Here we must take into account the long continued pattern of evasion and obstruction which included

which deterred many Negro parents from seeking their children's constitutional rights?³ The answer to the last two questions is--yes, to an indeterminable degree. They are not the sole factors however; the principal cause is the

not only the defendants' unyielding refusal to take any initiative, thus casting a heavy burden on the children and their parents, but their interposing a variety of administrative obstacles to thwart the valid wishes of the plaintiffs for a desegregated education. To put it plainly, such tactics would in any other context be instantly recognized as discreditable. The equitable remedy would be far from complete, and justice would not be attained, if reasonable counsel fees were not awarded in a case so extreme.

Bell v. School Board (Powhatan County),
Civ. No. 8944, 4th Cir., June 29, 1963.

Both foregoing cases reveal not only an aegis of Federal protection to individuals or groups spearheading desegregation, but positive aid in the form of counsel fees.

Another recent decision, coincidentally involving a third Virginia school district, may well prove to be the largest single step in school desegregation in the South. A Federal district court decided the United States Attorney General could bring suit to desegregate school systems receiving Federal aid under the Federal Impacted Areas Law. U.S. v. County School Board (Prince George County), 221 F. Supp. 93 (E.D. Va. 1963). Prior to this decision, lower Federal courts in Alabama and Mississippi had ruled that the United States could not represent the children of Negro servicemen attending segregated schools, U.S. v. Madison County Board of Education, 219 F. Supp. 60 (N.D. Ala. 1963); U.S. v. Biloxi Municipal School District and U.S. v. Gulfport Municipal Separate School District, 219 F. Supp. 691 (S.D. Miss. 1963). If on appeal these conflicting decisions are resolved in favor of the Government, then the resources of the United States will be available to press desegregation suits in the 242 school districts in the 17 Southern States receiving Federal aid. Hearings Before Subcommittee on Federally Assisted Public Education, House Committee on Education and Labor, 87th Congress, 2d sess., PP. 674-75.

3. Violence attended the desegregation of the Caswell County, N.C., and Pine Bluff, Ark., schools in the past 12 months. The Negro parent who filed suit to enroll his children in the white public schools of Jackson, Miss., was assassinated on June 12, 1963.

determination of most school boards in the South to maintain segregation as long as possible. In addition, the judicial process shares the responsibility for 9 years of token or no desegregation of southern school systems. Indeed, two of the original four School Segregation Cases were still in the courts, and the public schools in these districts were either closed, or as segregated as they had been for the past 100 years.⁴

The early days of desegregation were marked by massive resistance legislation, providing for withdrawal of State funds from desegregated school districts, the closing of desegregated schools, and related, obviously unconstitutional measures. Doomed from their beginnings, and more representative of political sentiment than of artful resistance, these statutes are no longer obstacles to school desegregation.⁵ The legislation and practices of the 1960's affect much more subtle segregation, and consequently, present much more difficult problems for Federal courts.

This chapter will survey 1962-63 developments in the law of desegregation.⁶

PUPIL PLACEMENT LAWS

Most southern school systems do not employ geographical attendance areas as the basis of assigning children to schools. Instead, pupil placement laws are the official vehicles for school assignment in all the former Confederate States.⁷ Most simply, these laws give either State or local

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4. The suits involved Clarendon County, S.C. (Briggs v. Elliott) and Prince Edward County, Va. (Davis v. Prince Edward County). See Brown v. Board of Education, 347 U.S. 483 (1954).
 5. The Texas referendum statutes were as successful as any laws of this era. See ch. 1, text at note 176.
 6. See Southern States Report 2-18, for an account of developments of 1961-62, and 1961 Education Report 15-37 for earlier developments.
 7. 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. 1959, ch. 71, p. 165.

officials the power to place children in certain schools according to certain specified criteria. Under the widely copied Alabama law,⁸ school officials are directed to consider many factors before placing a child in a particular school. The factors are, in general, (1) available facilities, including staff and transportation; (2) school curricula in relation to the academic preparation and abilities of the individual child; (3) the pupil's personal qualifications, such as health, morals, and home environment; and (4) the effect of the admission of the particular pupil on the other pupils and the community. The North Carolina Pupil Assignment Act,⁹ followed by some Southern States, has fewer, but similar, provisions. In both types of laws, if a student objects to his original assignment, he must follow an elaborate procedure in order to receive official reconsideration of his original assignment, or official consideration of a transfer request.

Although the laws do not mention race, they empower school authorities to assign certain children to schools. The experience has been that Negro children are assigned to Negro schools and white children are assigned to white schools. If the criteria set out in the laws, such as the safety of children, and available facilities, are considered at all, they appear to be used to determine which Negro school a particular Negro child should attend, and which white school a particular white child should attend. Moreover, if a Negro (or white) child objects to his assignment, he must go through a maze of administrative red tape in order to have the school authorities consider his objections.

The Powhatan County, Va., case¹⁰ is a striking example of official efforts, through use of a pupil placement act, to thwart the admission of Negro applicants to formerly all-white schools. The State Pupil Placement Board has promulgated a rule that all applications for placement or transfer to a school had to be filed before June 1 of the approaching school year. However, as late as May 29, there were no official forms available for some parents. When some Negro parents applied for transfer of their children

8. Alabama Acts 1955, vol. 7, No. 201, p. 492.

9. North Carolina Laws Ex. Sess. 1956, ch. 7, p. 14.

10. Bell v. School Board, Civ. No. 8944, 4th Cir., June 29, 1963. After the Federal order to desegregate the schools for Powhatan County became final, the county board of supervisors suggested a school budget which cut off 43 percent of the proposed costs for the 1963-64 school year. The segregation inspired private school, Huguenot Academy, planned to expand to a full 12-year program at the same time. Richmond News Leader, June 19, 1963, p. 25.

on their own forms, the board denied their applications because official forms were not used. Other applications were denied because the particular school desired had not been specified on the application form. In fact, the official forms carried no blanks for the inclusion of such information. Moreover, there were only two schools in the county, one traditionally for Negroes, the other for whites. Consequently, any application for transfer could only be to one specific school.

The real thrust of the pupil placement plans has been to provide an ostensibly constitutional facade for unconstitutional practices. After a Negro plaintiff proves this is the situation the residual issue becomes: What relief should the Federal court grant? There are several possibilities. The court can merely order nonracial treatment for the particular plaintiff in the suit, leaving the remainder of the school district's Negro children to fend for themselves. The court may enjoin the school authorities from assigning any Negro child in the district on the basis of race, but allow the pupil placement laws to remain the machinery for assignment of students or, the court can order the pupil placement laws suspended and order the school officials to prepare a plan for desegregation.

The experience of the past 9 years indicates that the most efficacious relief is to enjoin discriminatory practices and order the school authorities to produce a comprehensive plan for school desegregation. For example, in May 1960, the Federal district court in Louisiana ordered the East Baton Rouge Parish School Board to make arrangements for nondiscriminatory treatment of school children within their jurisdiction.¹¹ No desegregation of schools resulted. Finally, in 1963 the Negro plaintiffs petitioned the court to order the school officials to produce a desegregation plan for court approval. The court issued such an order.¹²

11. Davis v. East Baton Rouge Parish School Board, Civ. No. 1662, E.D. La., May 24, 1960, 5 Race Rel. L. Rep. 653 (1960).

12. Davis v. East Baton Rouge Parish School Board, 214 F. Supp. 624 (E.D. La., 1963). On June 28, 1963, the school board filed a plan proposing grade-a-year desegregation of the system starting with grade 12 in Sept. 1964. The plan was approved after advancing the starting date to Sept. 1963. Davis v. East Baton Rouge Parish School Board, 219 F. Supp. 876 (E.D. La. 1963).

In another case, involving the schools of Birmingham, Ala., the lower court approved the Alabama pupil placement law as a valid desegregation device. The court observed that, although the schools were completely segregated, no Negro child had attempted to use the official administrative procedures to transfer out of the Negro system. Consequently, the court said that the pupil placement law was untested as a desegregation plan, and should be given a chance.¹³ The Court of Appeals for the Fifth Circuit reversed the lower court, and instructed it to order the submission of a plan for starting desegregation in September 1963.¹⁴ A grade-a-year plan beginning in September 1963 has been approved by the court.¹⁵

Summarizing, it appears quite clear that pupil placement laws are unacceptable as desegregation plans. Their use to segregate students over the years has impeached their abilities to effect desegregation.

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13. Armstrong v. Board of Education (Birmingham), 220 F. Supp. 217 (N.D. Ala. 1963).
 14. Armstrong v. Board of Education (Birmingham), Civ. No. 20595, 5th Cir., July 12, 1963.

Another Federal district court within the Fifth Judicial Circuit dismissed suits against the Jackson, Miss., and Leake County, Miss., school authorities on the grounds that the Negro plaintiffs had never requested transfer to the white schools involved, and thus could show no damage. Evers v. Jackson, Civ. No. 20824, S.D. Miss., June 25, 1963; Hudson v. Leake County School Board, Civ. No. 20825, S.D. Miss., June 25, 1963; New Orleans Times-Picayune, June 26, 1963, p. 1.

15. N.Y. Times, July 18, 1963, p. 10; Washington (D.C.) Evening Star, July 18, 1963, p. 5A.

DESEGREGATION PLANS AND ALL DELIBERATE SPEED

The temporal dimensions of desegregation plans occupy much of the 1963 desegregation spotlight. Indeed, the Supreme Court observed this year:¹⁶

Given the extended time which had elapsed, it is far from clear that the mandate of the second Brown decision requiring that desegregation proceed with "all deliberate speed" would today be fully satisfied by types of plans or programs for desegregation of public educational facilities which eight years ago might have been deemed sufficient.

The highest Court, by the above statement, added its imprimatur to a recent current trend in desegregation law. It is increasingly the demand of Federal courts that an accelerated time schedule be adopted in new desegregation plans. In the past, the Nashville plan,¹⁷ providing for desegregation of one grade a year beginning with the first grade, had been a popular desegregation scheme. However, if such a plan were approved to begin in September 1963 it would mean that the last grade would be desegregated in 1975, over 21 years after the decision in the School Segregation Cases. Consequently, there has been an increasing hesitancy on the part of the Federal courts to approve a 12-year plan, and those which are approved stipulate "at least

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16. Watson v. City of Memphis, 373 U.S. 526, 528 (1963). The Federal judicial temper is not monolithic on this point. A contrasting view from the Federal bench follows:

The fact that forced desegregation of the public schools of this Parish has been delayed for many months following the stamp of finality placed by the Supreme Court of the United States upon the prior judgment in this case is to the everlasting credit of the local Negro leaders of this community. They have exercised restraint despite the proddings and agitations of outside elements. The resort to reason, common sense, and restraint by the people of this Parish, both white and colored, during these trying times, has benefited and will in the future continue to benefit all concerned.

Davis v. East Baton Rouge Parish School Board, 214 F. Supp. 624, 626 (E.D. La., 1963).

17. Kelley v. Board of Education (Nashville), 270 F. 2d 209 (6th Cir. 1959).

a grade a year."¹⁸ Recent cases approving a grade-a-year plan involved school systems in the Deep South, in the cities of Birmingham, Mobile, and Savannah.¹⁹ Cases arising in other areas have not approved grade-a-year plans. The Court of Appeals for the Sixth Circuit commented:²⁰

We do not think that the twelve-year plan of desegregation adopted at this late date meets either the spirit or specific requirements of the decisions of the Supreme Court.

The Court of Appeals for the Fourth Circuit refused to allow Lynchburg, Va., to take 12 years to desegregate its schools.²¹

The 12-year scheme of desegregation has obtained in one type of situation. It is in the consent decree suits which have recently characterized Texas desegregation.²² Apparently, part of the bargaining process has been a concession

18. Davis v. Board of School Commissioners (Mobile), 318 F. 2d 63 (5th Cir. 1963); Stell v. Savannah-Chatham County Board of Education, 318 F. 2d 425 (5th Cir., 1963); Armstrong v. Board of Education (Birmingham), Civ. No. 20595, 5th Cir., July 12, 1963.

19. Ibid.

20. Goss v. Board of Education (Knoxville), 301 F. 2d 164, 167 (6th Cir. 1962), rev'd as to other grounds, 373 U.S. 683 (1963).

21. Jackson v. School Board (Lynchburg), Civ. No. 8722, 4th Cir., June 29, 1963.

22. Washington v. A. M. Independent Consolidated School District, Civ. No. 13, 816, S.D. Texas, Aug. 17, 1962; Eastland v. Northeast Houston Independent School District, Civ. No. 13, 330, S.D. Tex., Oct. 23, 1962.

A recent Federal court decision in Texas expressed the view that grade-a-year plans would no longer be accepted judicially in Texas. Liase v. Longview Independent School District, Civ. No. _____, E.D. Tex., June 27, 1963; Dallas Morning News, June 28, 1963, sec. 1, p. 10. However, there is an identifiable trend to grade-a-year schemes by school districts which are desegregating voluntarily. Dallas Morning News, June 26, 1963, sec. 2, p. 6 (Sherman); id. June 27, 1963, sec. 4, p. 1 (Irving and Grand Prairie).

on the part of Negro plaintiffs to allow school authorities 12 years to complete desegregation. On the other hand, several decisions arising in the Border States have required immediate total desegregation of schools.²³

DESEGREGATION PLANS AND FULL COMPLIANCE

How long a school system may take to desegregate is one question. A larger, and quite different, question is the meaning of full compliance with the duty to desegregate. Must a formerly segregated school system actually place all of its white and Negro school children in school together? Some? Any? Or does a school system comply with the rule of the School Segregation Cases by simply removing all reference to race from its regulations and practices? Recent cases provide some answers.

There are basically two types of plans which have been consistently approved as desegregation plans; (1) geographical-zoning-of-attendance-areas plans, and (2) free-choice-of-schools plans. Geographical zoning plans must not be gerrymandered to contain Negro students in the formerly all-Negro schools.²⁴ The issue of burden of proof appears when the geographical zoning plans are submitted for judicial approval. It is simply: Must school officials justify their zone lines as drawn and submitted? If the lines are regular, is the burden upon the Negro plaintiffs to prove latent segregative motives and effects behind the apparently regular zones? Courts have decided both ways.

When a Missouri school system presented a geographical desegregation scheme, the Federal court refused to approve it, commenting:²⁵

On their face, the geographical attendance areas do not suggest on what basis they are drawn and we have not been informed as to the effect. It does not appear that the attendance areas are based on proximity to schools nor is the projected approximate number of white and Negro pupils from each attendance area shown so as to suggest that the areas were drawn for the purposes of limiting enrollment to physical capacities of the school.

23. Walker v. Richmond, Ky., Board of Education, Civ. No. 241, E.D. Ky., June 14, 1963; Davis v. Board of Education (Mississippi Co.), 216 F. Supp. 295 (E.D. Mo., 1963); Mason v. Jessamine County, Ky. Board of Education, Civ. No. 1496, E.D. Ky., Jan. 20, 1963, 8 Race Rel. L. Rep. 75 (1963).

24. Bush v. Orleans Parish School Board, Civ. No. 3630, E.D. La., May 17, 1963.

25. Davis v. Board of Education (Mississippi Co.), supra note 23 at 300.

A different view was taken by a Federal court in New Orleans. Although withholding final approval of the plan, the court held:²⁶

The presumption is that the Board will apply the attendance districts without regard to race. If after school registration . . . it appears that the Board has "gerrymandered" the attendance districts so as to continue segregated schooling, the time will be ripe for the court to correct the situation.

The difficulty of proving gerrymander makes the issue of burden of proof all important.²⁷ The decision as to who must sustain the burden may determine the success or failure of allegations of discrimination.

Attendance areas on geographical plans are not irrevocable assignments of children. Most plans have some kind of transfer rule allowing a child to transfer from the school in his attendance zone to another school. The Supreme Court in 1963 ruled on a transfer provision based on race.²⁸ The rule, adopted by the Knoxville school system, allowed any child to transfer from a school in which he was a racial minority to one in which his race was in the majority. The rule in practice would preserve the racial composition of the traditionally all-Negro schools, because all white children living in the attendance zone of a Negro school transferred out rather than attend the traditionally all-Negro school. The Supreme Court held the provisions unconstitutional, stating:²⁹

The alleged equality--which we view as only superficial--of enabling each race to transfer from a desegregated to a segregated school does not save the plans. Like arguments were made without success in the School Segregation Cases in support of the separate but equal educational program. Not only is race the factor upon which the transfer plans operate, but also the plans lack a provision whereby a student might with equal facility transfer from a segregated to a desegregated school. The obvious one-way

26. Bush v. Orleans Parish School Board, supra note 24.

27. In Bell v. School City of Gary, 213 F. Supp. 819 (N.D. Ind. 1963), the court held that the burden of proof was on the Negro plaintiffs. For a contrary view in certain circumstances, see Evans v. Buchanan, 207 F. Supp. 820 (E.D. Del. 1962).

28. Goss v. Board of Education (Knoxville), 373 U.S. 683 (1963).

29. Id. at 685.

operation of these two factors in combination underscores the purely racial character and purpose of the transfer provisions. We hold that the transfer plans promote discrimination and are therefore invalid.

However, the Court was careful to point out that it was not passing judgment on an open transfer policy not tied to race.

The other mechanism often submitted as a school desegregation plan is the open enrollment policy. Under this plan a student is completely free to enroll in any school he wants to attend. Actually, it varies little from the open transfer policy. The main objection is that an apparent free choice may not be a free choice at all. More specifically, if a school system continues to operate its traditionally Negro and traditionally white schools, staffed by the same faculties and personnel, white children may be dissuaded from attending the formerly segregated Negro school and Negro children may fear harassment or other pressures emanating from a choice of the formerly all-white school.

At least two courts have expressed doubts as regards the efficacy of free choice plans. Dollarway School District of Pine Bluff, Ark., had been operating under a grade-a-year, free-choice of schools for several years. The Negro plaintiff, a 10th grader, several years above the currently desegregated grade, applied for transfer to an all-white school. The school authorities denied her request on the ground that the desegregation plan did not forbid assignment on a racial basis in grades not yet reached in the desegregation plan. The plaintiff countered with the allegation that the plan was not functioning, and offered as proof the fact that very few Negroes applied for admission to the formerly all-white schools. The court adopted the plaintiff's position, ordered the school board to consider plaintiff's application for transfer on nonracial grounds, and cautioned the school authorities that the grade-a-year, free-choice plan would be reformed by the court if more Negro pupils did not choose the formerly all-white schools.³⁰

Courts have recognized the practical difficulties encountered by Negroes who try to transfer out of all-Negro schools. In a case involving the school system of Oklahoma City, the following transpired:³¹

30. Dove v. Parham (Dollarway), Civ. No. 3680, E.D. Ark., Aug. 30, 1962, and Oct. 25, 1962.

31. Dowell v. School Board of the Oklahoma City Public Schools, 219 F. Supp. 427 (W.D. Okla. 1963).

In due time young Robert Dowell a Negro wishing to enter a predominantly white school, Northeast High School/ appeared before Lederle J. Scott, principal of Northeast High School, and was prepared to enroll. Mr. Scott painted a very dark and doubtful picture to young Dowell with reference to enrolling in an electronics course The basis for admission and pointed out many hazards that might befall him should he undertake the course. Generally the discussion was such as to put fear into Robert Dowell as to the wisdom of taking the course and to enrolling. The evidence indicates that the young boy had the feeling regardless of how hard he worked he would be met with reprisals to the extent that he should not undertake to enroll in Northeast High School, and after his conference with Mr. Scott he temporarily abandoned his desire to go to Northeast High School but instead enrolled in Bishop McGuinness High School, a Catholic High School in north central Oklahoma City.

Another case considered the efficacy of an ostensibly non-discriminatory transfer policy for vocational programs. Significantly, the Federal court did not require evidence of actual discrimination, but solely upon examination of the provisions themselves concluded:³²

We are of the opinion that this transfer plan is too detailed and too complicated and offers too much opportunity for a transfer to be stopped, either by the transferring principal or by the receiving principal. The appeal to the Superintendent and then to the board would be time consuming and with little practical relief to the rejected student. Should he win his appeal he would be hopelessly behind the class he wished to join.

The court's apparent rationale (that a desegregated plan that does not actually desegregate is not a step toward full compliance) seems applicable to other court-administered plans that are moving very slowly. It is also apposite to school districts which are desegregated by policy, but have no actual desegregation. Can these districts successfully maintain that they are in full compliance, or even moving toward full compliance, as required by the Brown decision?

In Kentucky, when the school authorities of Richmond preferred an open enrollment plan, the Federal district court refused to approve it. Instead the court ordered geographical zoning.³³

32. Goss v. Board of Education (Knoxville), 305 F. 2d 523, 526 (6th Cir. 1962).

33. Walker v. Richmond, Ky. Board of Education, Civ. No. 241, E.D. Ky., June 14, 1963.

In contradistinction to the preceding cases is the unique decision in a case involving the School District of Transylvania County, N.C. There the court allowed the Negro pupils to opt to attend out-of-county secondary schools, where they had always been sent, rather than requiring them to enroll in the local, formerly all-white secondary schools.³⁴ Clearly this is a transfer provision tied to race, tending to indurate segregation. Consequently, it would seem to fall within the proscriptions of the Supreme Court decision on the minority transfer rule.

DESEGREGATION PLANS AND THE NEGRO TEACHER

Desegregation suits, with increasing frequency, are including demands for desegregation of teachers and administrative personnel. However, the issue of teacher desegregation has rarely been decided. The Federal courts have generally postponed the issue indefinitely,³⁵ or deferred ruling until the problem of pupil desegregation has been substantially solved.³⁶ In fact, the Court of Appeals for the Fifth Circuit advised a lower Federal court in Florida as follows:³⁷

In the exercise of its discretion, however, the district court may well decide to postpone the consideration and determination of that question /desegregation of teachers, principals, and other school personnel/ until the desegregation of pupils has either been accomplished or has made substantial progress.

Several district courts have ruled on the question. A Federal court in Florida enjoined two school boards from assigning school personnel on the basis of race.³⁸ A district court in Kentucky required submission of a desegregation plan which would "provide that no teachers or other

34. Conley v. Transylvania County Board of Education, Civ. No. 2054, W.D.N.C., Mar. 28, 1962. But see Vick v. County Board of Education (Obion County), 205 F. Supp. 436 (W.D. Tenn. 1962).

35. E.g., Vick v. County School Board, supra note 34.

36. E.g., Bush v. Orleans Parish School Board, supra note 24.

37. August v. Board of Public Instruction (Escambia County), 306 F. 2d 862, 869 (5th Cir. 1962).

38. Braxton v. Board of Public Instruction (Duval County), Civ. No. 4598, S.D. Fla., Aug. 21, 1962, 7 Race Rel. L. Rep. 675 (1962) Tillman v. Board of Public Instruction (Volusia County), Civ. No. 4501, S.D. Fla., Aug. 21, 1962, 7 Race Rel. L. Rep. 687 (1962).

personnel of the public schools of Richmond, Kentucky, shall be employed, assigned, denied employment or denied assignment on the basis of race or color."³⁹

The strongest judicial order has been issued against the Oklahoma City Board of Education. The Federal court in this case went beyond the general order not to discriminate by race in the employment and assignment of teachers and supervisors;⁴⁰

The School Board . . . and all of its officers and agents, are ordered to establish a policy of integrating supervisory and teaching staffs, in good faith, and with deliberate speed, commencing with the school year beginning in September 1963. [Emphasis added.]⁷

The one note against the desegregation of school personnel comes from the Court of Appeals for the Sixth Circuit. Negro plaintiffs suing for the desegregation of faculties and staffs of Chattanooga's public schools were told that they could not raise the issue of segregated school personnel other than teachers and principals.⁴¹ The theory apparently was that Negro children had a right to an education free from racial considerations, but the only personnel who affected their education were teachers and principals. Janitors and central administrative personnel who had no direct contact with the Negro children were said to have no effect on their education, and consequently, the children could not complain of that type of discrimination.

In an overview, the problem of teacher desegregation is not only not settled, but it is far from any prospect of settlement.

39. Walker v. Richmond, Ky. Board of Education, supra note 33.

40. Dowell v. School Board, supra note 31.

41. Mapp v. Board of Education (Chattanooga), Civ. No. 15038, 6th Cir., July 8, 1963.

3. Does Segregation in Public Schools of the North and West Violate the 14th Amendment?

When a "neighborhood school" becomes improperly exclusive in fact or in spirit, when it is viewed as being reserved for certain community groups, or when its effect is to create or continue a ghetto type situation it does not serve the purposes of democratic education.¹

The School Segregation Cases established the proposition that enforced assignment of pupils to public schools on the basis of race is constitutionally forbidden. In all the cases before the Court at that time the practice of assigning pupils to schools by their race was permitted or required by State law. The Supreme Court has not yet considered a case where the school in fact was populated by pupils of one race and where the assignment of pupils to the school was not specifically made on a racial basis.

Many factors individually or in combination may cause an uneven distribution of the various ethnic groups living in a particular school district among the public schools. Residential segregation plus school assignment by the place of residence is the principal cause in the North and West.² Each of these factors, the existence of residential segregation in the community and school assignment by residence, gives rise to a variety of factual situations which may be determinative of the constitutionality of much of the racial segregation in the public schools outside of the Southern States.

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1. N.Y. State Commissioner of Education, Advisory Committee on Human Relations and Community Tensions, Guiding Principles for Securing Racial Balance in Public Schools June 17, 1963.
 2. In a few places, as will be pointed out later in this chapter, school assignment by race, although long contrary to State law, appears still to be practiced or only recently abandoned.

Residential segregation in some places may have been wrongfully caused by an agency of the State other than the school board. This might have occurred by zoning ordinance,³ court enforcement of racially restrictive covenants,⁴ or the establishment of racially segregated public housing.⁵ If school attendance areas are superimposed on a racial residential pattern created by State authority (the effects of which are shown still to exist), may minority group pupils constitutionally be compelled to attend

3. See Holland v. Board of Public Instruction (Palm Beach Co.), 258 F. 2d 730 (5th Cir. 1958) where the court said at p. 732: "In the light of compulsory residential segregation of the races by city ordinance, it is wholly unrealistic to assume that complete segregation of the races existing in the public schools is either voluntary or the incidental result of valid rules not based on race." The school district had been created and the city ordinance adopted prior to Buchanan v. Warley, 245 U.S. 60 (1917).
4. In the hearing on motion for a temporary injunction in Woods v. Board of Education (Highland Park), Civ. No. 21593 E.D. Mich. (1961), the unenforceability of racially restrictive covenants was claimed to have made the area around the Thomson School in Highland Park, Mich., exclusively Negro. The case was dismissed before trial on the merits after the school board adopted a desegregation plan. See North and West Report 17, 24.
5. Prior to Shelley v. Kraemer, 334 U.S. 1 (1948) public housing in the North and West, as well as the South, was entirely segregated by race. Thereafter, either voluntarily or by order of a Federal court a nondiscriminatory policy was adopted by some local authorities but in many cases the change in policy had little effect on the occupancy. PHA, Trends Toward Open Occupancy in Low-Rent Housing: Programs of The Public Housing Administration No. 11, Mar. 31, 1962.

The effects of public housing on the racial composition of the school to which the residents' children are assigned has been a cause for recent comment. The chairman of the board of education of Norwalk, Conn., in discussing the responsibility of the board for the 95 percent Negro enrollment in one elementary school said: "We didn't create Roodner Court /a predominantly Negro housing project/ and we have warned the Mayor and the Common Council that the proposed Railroad Avenue housing project may create a second Roodner." N.Y. Times, May 23, 1963, p. 25.

In Gary, Ind., where many schools are all or almost all Negro (see app. B, table 4) three out of five public

schools having the racial complexions of their neighborhoods? This situation seemingly would be controlled by the School Segregation Cases because the State, through two agents, is doing in two steps what it is forbidden to do in one.

Closely allied to but distinct from the case of a State-created residential pattern, is one arising from the location of schools formerly serving only one race. For example, in the southern part of New Jersey,⁶ in Indiana,⁷

housing projects are reported to have been exclusively occupied by Negroes as of Mar. 31, 1962, and no nondiscriminatory policy statement is reported. (See supra PHA, Trends Toward Open Occupancy 28).

In Fisher v. Board of Education (Orange), No. M-7042 (C-42), N.J. Comm'r of Education, May 15, 1963, the Comm'r. mentions that "A large part of the enrollment /of the school in question/ comes from a Federal housing project whose occupants are practically all Negro." (p. 7.) The PHA report, supra at 28, shows one white family in otherwise all Negro occupancy and a nondiscrimination policy adopted in 1949.

6. Although New Jersey first passed nonsegregation legislation in 1881 (N.J. Laws 1881, ch. 149, p. 186) and the N.J. Supreme Court upheld an order to admit Negroes to a public school from which they had been denied admission as early as 1885 (Union District School Trustees v. Pierce), 47 N.J.L. 348 (1885)), separate schools for Negroes continued to grow in the southern part of the State until the 1950's. (Wright, "Racial Integration in Public Schools in New Jersey," 23 J. Negro Ed. 282 (1954)). For an account of the segregation in and desegregation of nine school districts in South Jersey, see Staff Report to U.S. Commission on Civil Rights, Civil Rights U. S. A., Public Schools: Camden and Environs 1963, (hereinafter cited as Camden Report). See pp. 16 (Camden City), 33 (Pennsauken) and 42-43 (Woodbury).
7. Indianapolis operated completely separate schools for whites and Negroes from the late 1920's until 1949 when the legislature repealed the State laws permitting segregation. The process of conversion to geographic assignment was not completed until 1953. Hearing in Indianapolis, Ind., Before the U.S. Commission on Civil Rights 137 (1963) (hereinafter cited as Indianapolis Hearing). (Unpublished manuscript in Commission Library). In Gary some schools were segregated by law until 1949. See Bell v. School City of Gary, 213 F. Supp. 819. (N.D. Ind. 1963).

in Kansas,⁸ and in individual school districts in other Northern and Western States, separate schools for white and Negro pupils were operated, with or without sanction of law, until recent years.⁹ When the policy of assignment to school by race was abandoned and geographic zoning instituted in most cases, very little change in school attendance resulted. Racial factors had been used to determine the size and location of schools. Schools were located, taking into account the racial group they were intended to serve. In superimposing geographic zoning in such circumstances the school board would seem to have perpetuated in the schools the segregation it originally initiated. It also would profit from its own wrongdoing by zoning around a residential pattern which arose during or was reinforced by de jure segregation.

8. Kansas City, Kans., operated racially separate public schools by express authority of State law until Sept. 1954. See Downs v. Board of Education (Kansas City), Civ. No. KC-1443, D. Kans., July 9, 1963.
9. E.g., Mount Vernon, Ill., operated an elementary school for Negro pupils until June 1962 although "for some years" Negro pupils were "permitted to attend school in the districts in which they lived." Letter From J. L. Buford, Superintendent of Mount Vernon City Schools, to this Commission, Jan. 25, 1963. Danville, Ill., operated an undistricted elementary school for Negro pupils until June 1962. Negro pupils living in the district of other schools apparently (at least in recent years) were permitted to attend such schools. Letter From Conan S. Edwards, Superintendent of Danville Public Schools to this Commission, Jan. 28, 1963. Casa Grande, Ariz., assigned all its Negro pupils to one of its five elementary schools through the school year 1961-62. As a result of Negro protest geographic zones were established effective Sept. 1962. The formerly segregated Negro school was about 50 percent Negro in 1962-63. Nearby Eloy made a similar change effective at the same time but the formerly Negro school was 95 percent Negro in enrollment in the 1962-63 school year. The county superintendent suggests that Eloy does not enforce the boundary lines drawn and that Negroes residing outside of the district still enroll in the formerly Negro school and that whites living in the district attend another school. The formerly Negro school only has four classrooms which makes it unattractive to whites accustomed to one grade per classroom. Letter From Mary C. O'Brien, Superintendent of Schools, Pinal County, to this Commission, Jan. 31, 1963.

In Indianapolis the establishment of school attendance areas for the Negro elementary schools on a neighborhood basis had a minimal effect on the school to which pupils were assigned since they were located to serve Negro children in the first place.¹⁰

In Gary, where de jure segregation was not complete, more Negro children attended all Negro schools after zoning than before.¹¹

In Kansas City, Kans., where geographic attendance areas were established in the fall of 1954, all the formerly Negro schools in use as schools in April 1962 were still all Negro in enrollment or had in excess of 99 percent Negro pupils.¹² Eleven of 31 formerly white elementary schools were still 100 percent white and 9 more had less than 5 percent Negroes in the total enrollment.¹³

In Camden, N. J., the establishment of geographic attendance areas in accordance with the neighborhood school concept in 1948 was difficult in a number of instances, because, in the de jure period, the city built a white school and a Negro school nearby. The four formerly Negro schools still in use as elementary schools in 1962-63 were 82.8 to 100 percent Negro.¹⁴

The Carpenter Street Elementary School in Woodbury, N.J., although not designated to serve all the town's Negro elementary pupils since it was zoned in 1948 (gerrymander corrected in 1954), is still an all-Negro school.¹⁵

The formerly unzoned Jackson Elementary School in Danville, Ill., for which an attendance area was established for the first time in September 1962 had a 97.5 percent Negro enrollment in the school year 1962-63.¹⁶

10. Indianapolis Hearing 137, 152.

11. See articles by Kaplan appearing in 58 Nw U.L. Rev. 1, 157 (1963).

12. See Downs v. Board of Education, supra note 8, at p. 3 and defendant's exhibit E attached. One school listed as a Negro elementary school in 1954 is not listed in exhibit E. Conversely a school not listed in exhibit E appears on the 1962 list and is more than 99 percent Negro.

13. Ibid.

14. Camden Report 16.

15. Id. at 43.

16. Letter From Edwards, supra note 9.

Orange, N. J., required all Negro children in the city, without regard to residence, to attend the Oakwood school until 1958 when the school authorities were forced by the State Division Against Discrimination to establish an attendance area for that school as for all others in the school system.¹⁷ In 1962-63 this school was still 99 percent Negro.¹⁸

Thus, of the 13 school systems¹⁹ in the North and West, which as a matter of policy maintained a segregated school system in recent years, only in 2 did the change of policy to assignment by residence instead of by race effect a change in the school attended for more than a few pupils. In Mount Vernon, Ill.,²⁰ the formerly Negro schools were closed. Only in Casa Grande did geographic districting alone make a material change in the enrollment of the formerly Negro school.²¹

The constitutional question inherent in the types of situations described above may be answered by adverting to decisions in cases arising in the South. The underlying question is: Must a desegregation plan result in placing white and Negro children together in the schools in order to meet constitutional requirements? Is it enough to change the criterion of pupil assignment if practically there is no change in the distribution of children in the schools? Several recent court decisions concerned with the disestablishment of segregation in southern school systems suggest that to meet constitutional requirements a desegregation plan must in fact have a desegregative effect.²²

Even though the residential confinement in a community may be the consequence of purely private discrimination against Negro citizens, the school board itself may have been guilty of action resulting in segregation in the schools. Its opportunities for concealed but nonetheless

17. Newark Hearing 248.

18. Fisher v. Board of Education (Orange), supra note 5, p. 2.

19. See Camden Report 33, for plan in Pennsauken, N.J.

20. See Buford letter, supra note 9.

21. Letter From O'Brien, supra note 9.

22. Norwood v. Tucker, 287 F. 2d 798, 809 (8th Cir. 1961); Dove v. Parham, Civ. No. 3680, E.D. Ark., Oct. 25, 1962, 7 Race Rel. L. Rep. 1047 (1962); Ross v. Dyer, 312 F. 2d 191, 194 (5th Cir. 1962).

deliberate action to bring about segregation are many. In selecting the site for a new school and deciding upon its size, the school board may in fact determine the race of its pupil population. The enlargement of one school rather than another may confine Negro pupils to one school instead of permitting them to transfer to a school attended by white pupils. Similarly the location of mobile classrooms, which are now used in many cities as a temporary solution to overcrowding, may be a device for continuing segregation. School boards have broad discretion in all these matters. In general, in reaching decisions, boards may consider such factors as seem to them relevant and reasonable. These might include cost, convenience and safety of pupils, projections as to population growth and many other things. In the absence of a showing that the factors used were not relevant and reasonable, or were a sham to foster segregation, courts have refused to find an abuse of discretion.²³ It seems clear, however, that if an intention to segregate can be shown, a basis for finding a denial of equal protection exists.

Gerrymander of school attendance boundaries for the purpose of confining Negro pupils to one school has already been held by lower Federal courts to violate the 14th amendment,²⁴ as has manipulation of pupil transfer privileges.²⁵

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23. Sealy v. Department of Public Instruction, 159 F. Supp. 561 (1957), aff'd 257 F. 2d 898 (3d Cir. 1958), cert. denied, 356 U.S. 975 (1958); Henry v. Godsell, 165 F. Supp. 87 (E.D. Mich. 1958).
 24. Clemons v. Board of Education (Hillsboro), 228 F. 2d 853 (6th Cir. 1956); and Taylor v. Board of Education (New Rochelle), 191 F. Supp. 181 (S.D.N.Y. 1961). The case of McNeese v. Board of Education (Cahokia, Ill.), 373 U.S. 668 (1963), dismissal rev'd, has yet to be heard on its merits. The complaint there alleges gerrymander of the attendance area boundaries in 1957 to make the Chenot School a Negro school. It also alleges the transfer of white pupils to the school to relieve overcrowding in an adjacent school and the segregation of the white pupils transferred in separate classes, a situation similar to the Negro complaints in St. Louis. (See ch. 4 infra note 21.) In Bell v. School City of Gary, supra note 7 and in Downs v. Board of Education, supra note 8, the issue of gerrymander was decided in favor of the school board.
 25. Taylor v. Board of Education (New Rochelle), supra note 24. In the New Rochelle case the court found that during the period 1934-49 the school board permitted white pupils only to transfer out of the Lincoln School, thus purposely maintaining segregation in the Lincoln School.

(Continued on p. 65.)

The creation or continuation of optional areas within school attendance zones for the purpose of permitting white pupils to transfer out of a school attended by Negroes also may place culpability on a school board.²⁶

A similar situation appears to exist in Coffeyville, Kans. Coffeyville maintained a segregated school system by permission of State law in 1954. (See So. School News, Oct. 1954, p. 16). The Cleveland Elementary School was one of its Negro schools. Until May 1962 the school board permitted white children living in the Cleveland district to transfer to predominantly white schools. As in New Rochelle, all white pupils elected to do so. In May 1962 the board adopted a resolution requiring all kindergarten children to attend school in their districts beginning with the school year 1962-63. The rule is applicable to the next higher grade each year. White children above kindergarten grade who had previously transferred to Cleveland were permitted to complete the elementary grades in the school to which they had transferred. In Sept. 1962 eight white kindergarten children were enrolled at Cleveland. The NAACP branch is opposing this gradual elimination of what it claims to be discriminatory use of a transfer rule to perpetuate segregation. Letter From Leonard H. Carter, Field Secretary, Region IV, NAACP to this Commission, May 14, 1963.

26. Bannister v. Board of Education (New York City), 62 Civ. No. 3241, S.D.N.Y. Jan. 10, 1963. The court there said in reply to the school board's contention that discrimination was absent as a matter of law because the options in question were granted to particular neighborhoods: "In cases where the racial imbalance of the neighborhood is less marked such a fact might be persuasive but where, as here, the area in question is over 95 percent Negro, the argument is somewhat like Hobson's choice, Courts are well aware that subtle and sophisticated means are available to foster racial discrimination."

See also Mason v. Jessamine County, Ky., Board of Education, Civ. No. 1496, E.D. Ky., Jan 20, 1963, 8 Race Rel. L. Rep. 75 (1963). There the school board submitted a desegregation plan which gave children an option to attend the formerly all-Negro schools or the formerly all-white schools. The court recognized that the traditions and social currents in the area would influence the choice of students to the degree that segregation would probably continue and disapproved the option.

A similar situation appears to exist in Buffalo. For a discussion of the possible effect of optional areas on the racial composition of schools in that city, see

Any official rule or provision the purpose and effect of which is to create, promote, or preserve racial segregation in public schools seems to be within the rationale of the Supreme Court's decision on June 3, 1963, in Goss v. Board of Education (Knoxville). The Court there said with regard to a rule permitting all pupils to transfer from a school to which they were geographically assigned, if their race represented a minority, to a school in which their race was in the majority:²⁷

The obvious one-way operation of these two factors in combination underscores the purely racial character and purpose of the transfer provisions.

/N/o official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment.

In Goss both the purpose and consequence were clear. In the North and West the difficulties of proof of purpose are great. The language quoted above suggests that the purpose may be inferred from the inevitable consequence, which would be easier to prove in many instances.

Much of the school segregation outside of the South, however, may have arisen without official action of any kind that can be proved to have had a segregative purpose, that is, the present segregation cannot be shown to be the result of previous wrong official action. Does the Constitution command school boards to act affirmatively to break up racially homogeneous school populations in such cases? Is segregation per se unconstitutional? Where this issue has been presented, lower Federal courts have decided against Negro plaintiffs, saying that the Constitution commands nondiscrimination but not integration.²⁸

The California Supreme Court clearly recognizes the possibility of a constitutional deprivation to a pupil assigned to a predominantly Negro school even in the absence

U. S. Commission on Civil Rights. Civil Rights U.S.A.: Buffalo 23-27 (1963) (hereinafter called the Buffalo Report).

27. 373 U.S. 683 (1963).

28. Bell v. School City of Gary, *supra* note 7. Evans v. Buchanan, 207 F. Supp. 820 (D. Del. 1962), Brown v. Board of Education (Topeka), 139 F. Supp. 468 (D. Kans. 1955). But see Branche v. Board of Education (Hempstead), 204 F. Supp. 150 (E.D.N.Y. 1962).

of discriminatory conduct by the school board in the Pasadena City School District case. The court there said:²⁹

Where . . . [residential] segregation exists it is not enough for a school board to refrain from affirmative discriminatory conduct. The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographic basis without corrective measures.

Since the decision in that case is that of a State court, it may have limited influence outside the State.

Negro plaintiffs argue that the Court's finding in the School Segregation Cases³⁰ that a segregated school is inherently unequal applies to any racially segregated school without regard to the cause of the segregation. School boards counter with the argument that the Court in that case was in fact considering segregation resulting from assignment by race and expressly limited its decision to segregation solely on the basis of race.

In the New Rochelle case the defendant school board argued that the principles of the School Segregation Cases had no application because it did not operate a dual system of racially segregated schools. In denying the board's contention the court said:³¹

That opinion, while dealing with a State-maintained dual system of education, was premised on the factual conclusion that a segregated education created and maintained by official acts had a detrimental and deleterious effect on the education and mental development of the minority group children.

Finding that the segregation complained of resulted from official action intended to have that effect, and that the board had not acted to undo its original wrong, the court held the principle of the School Segregation Cases applicable. Having reached this conclusion it did not have to decide the broader issue. This, however, was decided by another Federal district court in Bell v. School City of Gary.³²

29. Jackson v. Pasadena City School District, 382 P. 2d 878, 882 (Calif. 1963).

30. Brown v. Board of Education, 347 U.S. 483, 493 (1954).

31. Taylor v. Board of Education, supra note 24, at 192.

32. See Bell v. School City of Gary, supra note 7.

In the Gary case the court held against the Negro plaintiffs on the allegation that the school board had gerrymandered school attendance zones to segregate Negro pupils in school, and also on the charge that the schools to which Negroes were assigned were unequal in facilities and in the education provided. The court, therefore, had to decide the ultimate question: Does a school board have a constitutional duty to provide and maintain a racially integrated school system? The court's answer was "no."

It should be pointed out that in Gary the plaintiffs did not claim that gerrymander can be accomplished by inaction as well as action if a school board for racial reasons refuses to alter zone lines it would otherwise change. Nor did the plaintiffs contend simply that the existence of all Negro schools raised a presumption of unlawful purpose in its zoning. Both of these propositions have judicial support³³ and in many instances might mean success for the plaintiffs. A school board might be hard pressed, if it had the burden of proof, to justify its failure to rezone if some schools (usually all or almost all-white) were underutilized and others (usually all or almost all-Negro) were overcrowded and often on double shift. Similarly, a school board might have difficulty in proving its lack of racially motivated purpose in fixing or failing to change a zone boundary line coinciding with the white and Negro residential boundaries.

The Gary plaintiffs' argument that a constitutional violation is inherent in segregation however caused is based upon the following syllogism:

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33. See Burton v. Wilmington Parking Authority, 365 U.S. 715, (1961); In the Matter of Skipwith, 180 N.Y.S. 2d 852, 871 (Dom. Rel. Ct. N.Y.C. 1958); Evans v. Buchanan, *supra* note 28 at 825. In the Wilmington Parking Authority case the Supreme Court said "But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be."

In Evans v. Buchanan, the court held that the fact that the school in question had only Negro pupils and teachers, was administered by a separate board of trustees and was surrounded by white attendance areas raised a presumption of unconstitutional action. "The promulgators of the plan should have the duty of justification" The court noted that "the one fact of an all-Negro student body might be sufficient to justify the invocation of the presumption."

The Supreme Court held in the School Segregation Cases that separate Negro schools are unequal and therefore unconstitutional because such schools harm Negro children by creating a sense of inferiority which interferes with the learning process.

An all-Negro school resulting from geographic zoning, or any other cause, is just as unequal and harmful to the Negro children forced to attend it as schools which are segregated by force of law.

Therefore a school system which maintains such a segregated school is acting unconstitutionally and must provide an integrated school experience for the segregated pupils.

The court rejected the plaintiffs' contention not only by finding that the principles of the School Segregation Cases applied only to schools segregated by force of law but also by finding that no segregated schools existed in Gary. It is clear that under a strict application of the doctrine of stare decisis the Supreme Court's holding has no application to a school system other than one like those before it, in all of which pupils were assigned to schools according to their race. The segregated schools found to be inherently unequal and harmful to Negro pupils in the School Segregation Cases were 100 percent segregated by official action--indeed, by permission or requirement of State law.

In fact at the time of the litigation only 3 of Gary's 40 schools were 100 percent Negro although in 9 others the proportion exceeded 99 percent.³⁴ In New Rochelle the court had found that the presence of 6 percent white pupils in the school in question did not change its essential character as a Negro school.³⁵ In Branche v. Board of Education (Hempstead)³⁶ three schools alleged to be segregated were 67, 78, and 86 percent Negro. The Hempstead case was not a decision on the merits but merely a denial of a motion for summary judgment dismissing the action. Hence it cannot be said to hold that the public schools of Hempstead are racially segregated, but it is authority for the

34. Bell v. School City of Gary, supra note 7, at 21.

35. Taylor v. Board of Education (New Rochelle), supra note 24, at 193. The court mentioned in a footnote that "The converse of this situation occurred in Gomillion v. Lightfoot /364 U.S. 339, 341 (1960)_. . . where the fact that a few Negroes were left within the city limits did not alter the illegal nature of the challenged rezoning." Thus, in cases where the segregation arose from wrongful official action, something less than 100 percent has been held to constitute segregation.

36. See cases, supra note 28.

proposition that an 86 percent Negro school may be a segregated school. In the Pasadena case the California Supreme Court said that the fact the the Federal decisions had been concerned with complete or almost complete segregation was not decisive of the constitutional issue. "Improper discrimination may exist notwithstanding attendance by some white children at a predominantly Negro school or attendance by some Negro children at a predominantly white school."³⁷

A decision in the case of Blocker v. Board of Education (Manhasset)³⁸ is expected in the fall of 1963. The trial which began on April 30, 1963, came to an end June 27, 1963, after over 4,000 pages of testimony.³⁹ This may be the case that the NAACP will try to take to the Supreme Court, if necessary, to establish that the operation of some schools populated almost entirely by Negro pupils, and of other schools enrolling mainly white pupils, is a violation of the 14th amendment without regard to the cause of the racial imbalance.⁴⁰

The plaintiffs in the Manhasset case attempted to prove by expert testimony that the low scholastic achievement of Negro pupils in the Valley School (93 percent Negro) was the direct result of their enforced attendance at a "segregated" school. Expert witnesses for the school board took the view that the Negro pupils at the Valley School were below the achievement level of the white pupils in the other schools because of their lower socioeconomic background and generally lower I.O.⁴¹

The acting dean of the Harvard Graduate School of Education, testifying for the NAACP, asserted that the predominantly Negro Valley School was the only true neighborhood school in the district, defining a neighborhood school as one within walking distance of pupils' homes. Both of Manhasset's two all-white elementary schools serve large areas and transport over half of their pupils to school by bus. He testified further that the term "neighborhood school" is rapidly becoming a euphemism for northern segregation.⁴²

37. See Jackson v. Pasadena School District, supra note 29.

38. No. 62 C285, E.D.N.Y.

39. Letter from Samuel M. Lane, attorney for the Manhasset Board of Education, to this Commission July 15, 1963. See also N.Y. Times, June 29, 1963.

40. Newsday, June 28, 1963, p. 90.

41. Id., May 2, 1963, p. 5; id., May 7, 1963, p. 95.

42. Id., May 7, 1963, p. 95.

Public school administrators also have found schools less than 100 percent Negro to be segregated and assignment to such school in contravention of State laws requiring non-discrimination.

In the Matter of the Appeal of Mitchell v. Board of Education ⁴³ (Malverne), the New York Commissioner of Education found the racial imbalance in the three elementary schools a ground for relief. One school was found to have a Negro to white ratio of 3 to 1, increasing annually, and each of the other two, approximately 6 to 1.

In the three recent appeals to the New Jersey Commissioner of Education relief was granted to petitioners assigned to attend schools 96 to 99 percent Negro.⁴⁴

The Morristown, N.J., Board of Education recognized the Lafayette School which enrolled 12 percent white pupils to be a segregated school.⁴⁵

The settlement of litigation effected in Newark, N.J., gave pupils enrolled in schools enrolling 88 percent or more Negro pupils the right to transfer under an open enrollment plan.⁴⁶

The Teaneck, N.J., Board of Education has adopted a limited open enrollment plan to offset developing imbalance at the Bryant Elementary school which was 46 percent Negro in 1962-63.⁴⁷

On June 14, 1963, the Commissioner of Education for the State of New York issued a directive to all local school administrators and presidents of boards of education on the subject of racial imbalance in the schools. In that statement he declares that "racial imbalance existing in a school in which enrollment is wholly or predominantly Negro interferes with the achievement of equality of educational opportunity and must therefore be eliminated from the

43. Opinion No. 7240 of the Commissioner of Education, June 17, 1963, p. 2.

44. Fisher v. Board of Education (Orange), *supra* note 5. Booker v. Board of Education (Plainfield), No. C-424, N.J. Comm'r of Education, June 1963, p. 2; Spruill v. Board of Education (Englewood), No. C-425, N.J. Comm'r of Education, July 1963, p. 3.

45. N.Y. Times, Feb. 10, 1962, p. 1.

4. . Newark Hearing 389.

47. Letter From Harvey B. Scribner, Superintendent of Teaneck Public Schools to this Commission, May 28, 1963.

schools of New York State."48 The Commissioner called upon all local boards to report to him by September 1, 1963, on their plans to carry out their responsibility to eliminate imbalance in their schools. For the purposes of the duty to report the Commissioner defined a racially unbalanced school as one having 50 percent or more Negro pupils enrolled.49 Although the statement seems clear that imbalance is defined only as to the duty to report, it has been widely interpreted in the State as fixing 50 percent as the ratio requiring remedial action.

In Gary the plaintiffs' expert witness proposed an entirely different definition of segregation. He defined a segregated school as:50

/A/ny school where the percentage of Negro to white students was one-third greater or one-third less than the percentage of Negro students to white students in the entire system.

Applying his formula to the Gary schools he concluded that any school with less than 36 percent Negro students was a segregated white school and any school with more than 72 percent colored students was a segregated Negro school.

The court found no authority to support the formula as a good legal definition and declared that:51

A simple definition of a segregated school is a school which a given student would be otherwise eligible to attend, except for his race or color, or, a school which a student is compelled to attend because of his race or color.

This is the definition of a dual school system to which pupils are assigned by race such as was before the Court in the School Segregation Cases.

48. Directive From James E. Allen, Jr., Commissioner of Education of New York State, to Local School Administrators and Presidents of Boards of Education, June 14, 1963, p. 2.

49. Id. at 3.

50. Beil v. School City of Gary, supra note 7, at 829.

51. Ibid.

Whatever definition of segregation is ultimately found to be acceptable by the courts,⁵² it seems clear that a relation of the definition to the racial composition of the enrollment is more reasonable than any absolute percentage. Under the approach advocated in Gary, a 66.7 percent Negro school in a system enrolling only 10 percent would be a segregated school, but in a school system 50 percent Negro overall it would not be. In application, however, the administrative problems of applying such a rule to all schools in a system would be much greater. In some situations such a rule might require a transfer of pupils to and from each school. Thus, in a school system made up of 10 schools of 100 pupils each in which 9 schools had no Negro pupils and one had an all-Negro enrollment, the rule suggested would require that all schools enroll from 6.7 to 13.3 percent Negro pupils. The pupil transfers required would obviously affect all schools. This may be thought to be an extreme example but is not far different from Gary itself. The Negro school population in Gary at the time of the litigation was 53.8 percent. Thus, a school enrolling more than 71.3 or less than 37.7 percent Negroes would be a racially unbalanced school. Only 1 out of 40 Gary schools falls within this nonsegregated range, but since only 8 of the 40 enroll both white and Negro pupils in any proportion the fact that only 1 can be said to be racially balanced in its enrollment might be expected. As appears in the next chapter, Gary has only one additional school enrolling more than 10 percent Negro pupils. It has no school enrolling whites in less than a 44 to 56 percent ratio.⁵³

The definition suggested by the plaintiffs in Gary carries the implicit assumption that white pupils segregated in school are also harmed thereby. This may well be true if the dual purpose of public education in our Nation is taken into consideration, as discussed hereafter.

52. It should be noted what constitutes segregation for the purposes of judicial relief under the 14th amendment and what may be required or permitted under State law requiring equal educational opportunity may prove to be different. The administrative decisions and actions given above have pertinence in considering what is segregation for constitutional purposes in that they represent the opinion of qualified educators of the harm inflicted on Negro children by segregation irrespective of its cause.

53. Data from Bell v. School City of Gary, supra note 7, at 821.

Any rule eventually adopted may well have to be subject to the qualification injected by the New Jersey Commissioner of Education in his decision in Fisher v. Board of Education⁵⁴ (Orange), "that reasonable means consistent with sound educational and administrative practice" exist to reorganize the schools to change the racial imbalance. The California Supreme Court said much the same thing in more detail in the Pasadena case.⁵⁵ The court declared that school authorities are not required to attain exact racial proportions in all schools but should consider as to each school the degree of racial imbalance, the extent to which it affects educational opportunity, the difficulty and effectiveness of revising school boundaries, and the availability of other facilities to which students can be transferred.

Beyond the question of what the Constitution may require a board to do is the question of what the Constitution may permit a board to do to relieve or to prevent existing or threatened racial imbalance in its schools. The action taken by the boards of education in Montclair and Teaneck, N.J., are illustrative of types of action the constitutionality of which may be questioned.

The Montclair policy permitted all pupils of the Glenfield Junior High School (90 percent Negro), which was to be closed for educational reasons, to transfer to one of three other schools. (Hillside, already 60 percent Negro was excluded.) Parents of Glenfield pupils were allowed to make a first, second, and third choice of schools, and priority among the Glenfield parents was established by a public drawing of their individual choices. White parents living in attendance areas other than Glenfield appealed to the New Jersey Commissioner of Education claiming that the plan discriminated against them because they had no choice, and also on the ground that the plan adopted was motivated and impelled by racial considerations. The commissioner rejected both contentions.⁵⁶ As to the first, he found "no foundation in New Jersey law to support a contention that a local board of education is required to use but one means of assigning pupils to school, provided that no unlawful discrimination is practiced in the means employed."⁵⁷ Since petitioners failed to show their rights or educational opportunities were adversely affected by their assignment by

54. Fisher v. Board of Education, supra note 5, at 10.

55. Jackson v. Pasadena City School District, supra note 29.

56. Morean v. Board of Education (Montclair) decision of Commissioner of Education, July 3, 1963. See ch. 5, text following note 37.

57. Id. at 8.

residence, the school board's plan was upheld as not illegal, arbitrary, unreasonable, or discriminatory.⁵⁸

The board's conceded concern with racial imbalance (evident by the exclusion of Hillside) likewise did not invalidate the plan. The commissioner pointed out that all Glenfield pupils, both white and Negro, were given the same choice.

The commissioner concluded, therefore, that even though the board's action took race into account, the plan's "effect is to minimize rather than amplify any undesirable results that might accrue from increasing imbalance in the Hillside School," consequently, he found "no discrimination either for or against any racial group as such."⁵⁹

The Teaneck restricted open enrollment plan, adopted by the board of education in the spring of 1963 and effective with the school year 1963-64, is discussed in chapter 5.⁶⁰ The plan permitted parents to request transfer of their children to or from the Bryant School from or to any of six other elementary schools (one school 33 percent Negro is omitted). The board stipulated that transfer would be permitted if it would further the board's objective of preventing imbalance at Bryant, and would be denied if it would not.⁶¹ This appears to mean that the race of the individual pupil would be the basis for action on the request for transfer. The transfer of Negro pupils out of Bryant and white pupils to Bryant would prevent a higher concentration of Negro pupils at Bryant. Thus, a white pupil at Bryant might be denied and a Negro pupil be granted the right to transfer solely on the grounds of race. This differs from Montclair's plan where both white and Negro pupils at Glenfield were given the same choice.

The goal of a heterogeneous racial school population may be socially desirable, but it seems doubtful that the 14th amendment permits it to be promoted by school authorities by denying individual pupils admission (or transfer) to a public school on racial grounds. Whatever else the School Segregation Cases may mean, it seems clear that they do not permit denial of admission to any public school solely on basis of race.

58. Id. at 9.

59. Id. at 7.

60. See text at note 102, ch. 5 and following.

61. Letter From Harvey B. Scribner, supra note 47, to Parents of Children at Bryant Elementary School, dated May 9, 1963, and copy of resolution of Teaneck Board of Education attached thereto.

As pointed out above, the duty-to-integrate argument is premised upon the factual conclusion of the Supreme Court of the harm segregation inflicts upon Negro children--harm resulting from a sense of inferiority and a lessened motivation to learn. But the development of the potential ability of the individual pupil is only one of the two purposes of education.

The purposes of public education as clearly and simply stated by the president of Teachers College, Columbia University,⁶² are:

/The/ school is expected to give every student the opportunity and the means to develop to the full whatever individual potentiality he may have The second purpose is . . . to induct the young person systematically into the culture and society to which he is an heir and in which he should be a partner.

Segregation in school would seem to be equally harmful to Negro children if the second purpose of education instead of only the first is considered. Both the individual and society as a whole have as much at stake in preparing young people to move into the adult world with confidence as in the development of their individual abilities. Special programs have been adopted in many school systems to counter lack of motivation and the consequent poor scholastic performance of the minority group child segregated in school, but they do little to achieve the second goal of education.⁶³ Special educational programs may help the minority group child attain skills, but it is doubtful that he can take his place in the world of work if his personal experience has been one of complete isolation from the majority group.

The language of the Supreme Court in the School Segregation Cases concerning the sense of inferiority and consequently lessened motivation to learn inflicted on the Negro child by segregation has been emphasized by those seeking to extend the principle there stated to all existing segregation, perhaps because it is stated in the form of a factual conclusion. It is significant that, in discussing the importance of education, the Court declares education to be "the very foundation of good citizenship." The Court says further that education "is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."⁶⁴ This is the second

62. John H. Fischer, Washington Conference 13.

63. Some such programs are described in this report, others in 1961 Education Report 123-35.

64. Brown v. Board of Education, supra note 30. at 493.

goal of education, not the first. The court in the New Rochelle case understood this when it said the deprivations imposed by segregation are "the educational and social contacts and interaction"⁶⁵ with pupils of the majority race.

Surely, the Supreme Court gave considerable weight to the second purpose of education when it found the denial of admission of a Negro to the University of Texas Law School unconstitutional in Sweatt v. Painter.⁶⁶ Inability to attend the university law school deprived the Negro of educational contact with the white majority, which included 85 percent of the State's population, most of the lawyers, witnesses, jurors, judges and other officials with whom a lawyer deals professionally. The Negro in the segregated school might learn the law and still not be prepared to take his place in the world of work.

The report of the advisory committee on human relations and community tension to the New York Commissioner of Education, upon which the Commissioner's decision In the Matter of the Appeal of Mitchell v. Board of Education⁶⁷ (Malverne) was based, takes this view of the relevance of racial balance in the schools to equal educational opportunity. The first of six guiding principles announced:⁶⁸

The common school has long been viewed as a basic social instrument in attaining our traditional American goals of equal opportunity and personal fulfillment. The presence in a single school of children from varied racial, cultural, socioeconomic, and religious backgrounds is an important element in the preparation of young people for active participation in the social and political affairs of our democracy.

The principal of the all-Negro high school in Indianapolis told the Commission at its Hearings in that city in March 1963 that there is a fundamental deficiency in a segregated school, whether segregation is a result of law or of the facts of neighborhoods and living conditions. He said, "This deficiency is created by the difficulty of developing

65. Taylor v. Board of Education, supra note 24, at 193.

66. 339 U.S. 639 (1950).

67. No. 7240, June 17, 1963.

68. N.Y. State Commissioner of Education, Advisory Committee on Human Relations and Community Tensions, Guiding Principles for Securing Racial Balance in Public Schools, June 17, 1963.

the necessary image of an integrated world in the minds of children learning in a segregated school."⁶⁹ The record showed that over a period of 6 years he had been able to improve the motivation and performance of pupils in spite of their segregation in school. The dropout rate had been reduced from 22.5 percent to 18.4 percent.⁷⁰ "The percentage of graduates going to college had been increased from 18 to 39 percent."⁷¹ But in his view the fundamental deficiency remained. The students as a result of segregation in school were not prepared for a world populated with white people as well as Negroes.

Purely adventitious segregation in the North and West may be more vulnerable to constitutional attack on this ground than on the inherent inferiority-due-to-lowered-motivation theory. Only if the ethnic composition of the schools reflects in some degree the community of which their pupils will be a part upon the completion of their schooling, can the schools prepare them to take their places in the world of work on terms of equality. The mobility of our population today belies an assumption that young people will necessarily stay in the shadow of the school they attended for the rest of their lives. It has been stated, "we must prepare these children for the world in which they are going to live, and . . . they're going to live in an integrated world."⁷²

69. Indianapolis Hearing 12. Report to U.S. Commission on Civil Rights, Alexander M. Moore, Principal, Crispus Attucks High School, Indianapolis, Ind.

70. Id. at 21.

71. Id. at 7.

72. Moore, supra note 69. at 187.

4. Racial Segregation in the Public Schools of the North and West

Local customs, however hardened by time, are not decreed in heaven.¹

—Felix Frankfurter, Associate Justice,
United States Supreme Court

The increase in the nonwhite population in the cities of the North and West since 1950 has had great impact on their public school systems. There are several possible reasons for this. Both the Negro migration to these cities and the white exodus from them appear to have been mainly young couples having school age children. But it has not been an even exchange of Negro children for white children.² In general, the average Negro family has more children than the average white family,³ and fewer Negro children attend

1. Cooper v. Aaron, 358 U.S. 1, 25 (1958).

2. The following figures on the changes in the racial composition of the population under 5 years of age in three cities between the 1950 and 1960 censuses show the exodus of white children approaching school age and the proportionately larger influx of nonwhites in the same age group:

St. Louis.—The total percentage increase of children under 5 years was 6.4 percent but the white-nonwhite ratio had changed from 79 to 21 in 1950 to 60 to 40 in 1960.

Philadelphia.—The total percentage increase was 9.1 percent in children under 5 years but the white-nonwhite ratio changed from 78 to 22 in 1950 to 64.5 to 35.5 in 1960.

Oakland.—The total number of children decreased by 1.4 percent from 1950 to 1960. In 1950 the white-nonwhite ratio was 82 to 18; in 1960 it was 61 to 39.

3. The nonwhite population of the U.S. shows a total of 33.85 live births per 1000 as compared with 21.53 for whites in 1959. Furthermore, the difference in the death rate between whites and nonwhites had almost closed by 1959: 9.3 per 1000 for whites, 9.9 for nonwhites. U.S. Department of Health, Education, and Welfare, 1 Vital Statistics of the U.S., sec. 6, table 6-A (1959).

private and parochial schools.⁴ Thus, in all probability a larger proportion of the incoming nonwhites are to be found in the public schools than of the whites who moved to the suburbs.

The new nonwhite population, like that coming from the South in earlier years, has not spread throughout the city but has tended to settle in the part of the city where nonwhites already live because of such factors as their low economic status, their need to be with or near friends or relatives, and the inability to find housing open to them any place else.

In order to present a factual picture of the dimensions of racial segregation in the public schools of the North and West data were assembled on 16 school systems which have had a rapid growth in their nonwhite population in recent years.⁵ Nine of these are among the 14 large cities, all of which have total populations of 500,000 or more,⁶ four are medium sized cities of the 100,000-500,000 class,⁷ and three are small cities, with less than 100,000 population.⁸ Geographically they are located from coast to coast in nine States of the North and West and the District of Columbia.

It should be emphasized that the Commission recognizes that constitutional rights are individual and personal. Whether or not any of these school systems are denying equal protection of the laws to pupils therein is not dependent upon the number or proportion of their schools

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4. The 1960 census shows the white and nonwhite private school enrollment for the same cities as follows:

St. Louis—white 33,506 (92%), nonwhite 2,826 (8%).

Philadelphia—white 134,096 (94%), nonwhite 9,070 (6%).

Oakland—white 7,853 (90%), nonwhite 857 (10%).

5. Listed in order of percent nonwhite population in app. C, table 1.
6. The nine large cities are Baltimore, Buffalo, Chicago, Detroit, New York City, Philadelphia, Pittsburgh, St. Louis, and Washington, D.C. The increase in their nonwhite population from 1950 to 1960 is given in app. B, table 2.
7. The four medium sized cities are Camden, N.J., Gary, Ind., Newark, N.J., and Oakland, Calif.
8. Montclair, Orange, and Plainfield, N.J.

which under any definition may be segregated in fact.⁹ The discussion which follows is relevant only from the broad point of view of seeing the size and extent of existing public school segregation in the North and West.

It has been mentioned earlier that residential segregation plus school assignment by the place of residence, often called the neighborhood school policy, are the principal causes of school segregation in the North and West. The neighborhood school policy has had its most marked effect at the elementary school level because legitimate concern for the health and safety of young children has tended to make elementary schools smaller than secondary schools and therefore they serve the population of smaller areas. The smaller the geographic area, the more apt it is to be predominantly inhabited by one race.¹⁰ Therefore, insofar as available data permit, elementary school populations have been examined to determine the racial composition of the enrollment.¹¹

The first important fact about the racial composition of the public elementary schools of the 16 cities is that the percentage of nonwhite pupils greatly exceeds the proportion of nonwhites in the total population. Among the nine larger cities, in Buffalo, Pittsburgh, and St. Louis the percentage of minority group children in the public elementary schools is more than double the proportion in the total population; in Chicago, New York, and Philadelphia it is almost exactly twice the total population percentage; only in Baltimore, Detroit, and Washington, D.C., is it proportionately less than twice the total population percentage. Among the medium sized cities, Camden and Oakland have proportionately more than twice as many Negroes in the public

9. In the New Rochelle case only one of the 12 elementary schools was found to be segregated. The fact that all the other schools enrolled both white and Negro children (three in minimal numbers) did not affect the rights of the plaintiffs who were assigned to the one school found to be segregated. (For statistics on the racial composition of New Rochelle schools, see North and West Report 97.)
10. Another factor may be the higher proportion of Negroes in elementary than in secondary schools. This differential appears in the figures given in app. C, table 1, which gives the percentage nonwhite elementary pupils as compared with pupils in all schools for nine cities.
11. The racial composition of elementary schools only was available for 14 of the 16 cities. See app. C, table 1. The racial composition of all public schools is given for 8 cities which includes the two, Detroit, Mich., and Gary, Ind., where the breakdown for elementary schools only was not available. See app. C, table 4.

elementary schools as in the general population. In Newark the difference is less great. In the small cities studied only one, Orange, N.J., has more than twice the proportion of Negroes in the elementary school population as in the total population; in Montclair and Plainfield, the proportionate difference is much smaller.¹²

The second important fact disclosed by the figures is that in five of the cities, Baltimore, Newark, Philadelphia, St. Louis, and Washington, D.C., the percentage of minority group children in the public elementary schools exceeds 50 percent of the total elementary school enrollment, the range being from 53 percent in Philadelphia to 86 percent in Washington, D.C.¹³ In six more the proportion is approaching 50 percent, being 49.3 percent in Camden, 46 percent in Chicago, 46.2 percent in Detroit (all schools--undoubtedly higher in the elementary schools, as elsewhere), 47.3 percent in Oakland, 48.9 percent in Orange. Only in four of the cities, Buffalo, Pittsburgh, Plainfield, and Montclair is the proportion below 40 percent, the range being from 32.2 percent in Montclair to 37 percent in Plainfield.

Are these proportionately large numbers of minority group children in fact segregated in the schools of these cities? To answer this question, a definition of a segregated school must be decided upon. Must a school's pupil population be entirely of one race before it can be said to be racially segregated in fact? If not, how much less than 100 percent constitutes such segregation? A definitive answer may be many court decisions away.

It was pointed out in the previous chapter that a school less than 94 percent Negro in enrollment has been held to be unconstitutionally segregated by the courts, and defendant's motion to dismiss was not granted in another case where the highest concentration of Negroes in any school was 86 percent.¹⁴ School administrators have found Negro concentrations in the schools in percentages ranging from 46 to 99 percent to be grounds for administrative action to reduce racial imbalance.¹⁵

12. See app. C, table 1.

13. This is undoubtedly also true of Gary where the percentage nonwhite in the total school population is 53.5. The elementary school enrollment would be expected to be 57 percent or more Negro. The average differential between the elementary and all public school enrollment for the seven cities for which both figures are available is 3.8 percent.

14. See text ch. 3 at notes 35-37.

15. See text ch. 3 at notes 43-47.

If segregation in fact not caused by official action is ultimately held to be within the principles of the School Segregation Cases, the courts will have to decide also what concentration of a minority group within a school or other conditions are essential to a finding that segregation in fact exists.

For pragmatic reasons a maximum proportion of 90 percent of pupils of one race was adopted as a definition of a segregated school. For comparative purposes it seemed desirable to assemble data on various school systems on the same basis, and figures on more cities were available if this rule were used.¹⁶ The Commission Staff holds no brief for 90 percent but notes that this figure is midway between court recognized percentages and also within the range of administrative action.

If schools enrolling 90 percent or more white pupils are considered to be white schools, schools enrolling 90 percent or more Negro pupils are considered to be Negro schools, and those enrolling more than 10 percent of each race are classified as integrated, certain conclusions may be drawn about the extent of racial segregation in the 16 cities. For purposes of comparison a series of tables have been prepared and are found in appendix C. Table 2 shows the racial composition of the elementary schools of 14 cities and gives the percent of the total elementary schools enrolling 90 percent or more white or Negro pupils, and the percent enrolling 10 percent or more of each race. Table 4 presents the same data for all schools in 10 cities, 8 of which are also included in table 2. Tables 3 and 5 compare the percent of schools segregated in fact under the definition adopted with the percent nonwhite pupils, for elementary and all public schools, respectively.

Although many other factors, such as the degree of residential confinement of the Negro population, the extent to which school zoning corresponds to the housing pattern, the existence or denial of transfer privileges, may contribute to racial concentrations in the schools, the most important single influence would seem to be the racial composition of the enrollment. To limit the effect of size alone, tables 3 and 5 compare large, medium, and small cities separately. Tables 3 and 5, however, show that the percent of schools enrolling 90 percent or more of one race, both in elementary schools alone and all schools, does not fall into a pattern which follows the racial composition of the enrollment.

16. New York City and Detroit figures were only available on this basis. Pittsburgh and Philadelphia have also been included although, as noted in app. C, table 2, the definition of segregation adopted by those compiling statistics in these cities used a higher percentage.

Washington, D.C., has a much higher proportion of Negroes in its elementary schools (86.0 percent) than the next highest of the large cities, St. Louis (58.5 percent) and Baltimore (58.2 percent). Yet the percentage of segregated schools is about the same in Baltimore as in Washington and somewhat greater in St. Louis and Buffalo, the last of which has a smaller percent of Negroes in the enrollment (33.7 percent).

New York, which has about the same proportion of minority group students as Chicago, has a much lower proportion of segregated schools (about 55 percent as compared with 90 percent in Chicago).

If both elementary and secondary schools are considered, the four large cities for which figures were available are in closer range. But again St. Louis has a larger proportion of segregated schools and Baltimore has about the same proportion as Washington. Detroit, for which elementary school figures were not available, ranks below Baltimore having 8 percent less segregated schools, but it also has 7 percent fewer Negroes in its total school enrollment.

Among the medium sized cities the comparison of only elementary schools shows Oakland the most segregated, and Newark, with a larger proportion of Negro pupils, the least. Camden with a proportionately smaller Negro enrollment (49.3 percent) than Newark falls about half way between Oakland and Newark.

If all public schools instead of elementary only are considered, four medium sized cities instead of three can be compared. The additional city of Gary, Ind., with a slightly smaller Negro component in its school population than Newark, is found to have by far the highest proportion of segregated schools--82.5 percent in contrast with 38.1 percent in Newark and 50 percent in Oakland, the second most segregated. Camden with much the same racial composition in its schools as Oakland is slightly less segregated.

The small cities can be compared only at the elementary school level. Table 3 shows that Montclair with the smallest proportion of Negro elementary pupils (32.2 percent) has the highest proportion of segregated schools (63.7 percent). Orange which has proportionately 50 percent more Negro pupils than Montclair has fewer segregated schools (25 percent).¹⁷ Plainfield, also with a smaller proportion of Negro elementary pupils than Orange, has a larger percentage of segregated schools.

17. Figures for 1961-62 school year. In 1962-63 only one school was more than 90 percent Negro. By administrative action effective September 1962 the proportion in one school was reduced to 66 percent. See Fisher v. Board of Education (Orange), No. M-7042 (C-42), N.J. Comm'r of Education, May 15, 1963.

These data strongly support a general conclusion that the proportionate size of the minority group enrollment is not entirely determinative of the percentage of segregated schools. At the elementary level, Chicago with proportionately about the same minority group enrollment as New York has over 60 percent more segregated schools. The tenacity with which Chicago confined its Negro pupils to neighborhood schools, and refused to rezone attendance areas on the fringes of the concentrated Negro residential areas or to relax its no-transfer-from-zone-of-residence rules, is well known.¹⁸ In contrast, New York City made strenuous efforts to limit segregation in the schools in all feasible ways. Its open enrollment program enabled Negro and Puerto Rican pupils to transfer out of schools in which they were enrolled in excessive proportions to predominantly white schools and provided transportation for those electing to do so.¹⁹

The fact that Baltimore, with a free choice of schools plan²⁰ and the same proportion of Negroes in its elementary school population as St. Louis, had proportionately only slightly fewer segregated elementary schools than St. Louis where a neighborhood school policy is strictly enforced²¹

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18. See North and West Report 177-248. The limited transfer rule effective in September 1962, discussed pp. 191-94 of that report, is reported to have resulted in only 32 transfers of Negro pupils out of zone. Chicago Defender, Dec. 1-7, 1962.
 19. See Conference in Washington, D.C., Before the U.S. Commission on Civil Rights, Education 126-29 (1962) (hereinafter cited as Washington Conference).
 20. See Nashville Conference 147-48, and Conference in Williamsburg, Va., Before the U.S. Commission on Civil Rights, Education 37-39 (1961) (hereinafter cited as Williamsburg Conference) for an account by the superintendent of schools of the operation of Baltimore's free choice plan.
 21. See North and West Report 278-81. The figures on St. Louis do not include some 4,500 pupils bused from overcrowded Negro schools with their teacher to outlying underutilized white schools in the enrollment of the receiving school. (N.Y. Times, June 30, 1963, p. 44.) Since they are kept as separate, self-contained units in the receiving school, this method of reporting seems valid. Other cities (e.g., Detroit and New York) resorting to similar busing to relieve overcrowding, distribute the pupils in the receiving school, and they are counted in the latter's enrollment. See Washington Conference 190-91.

raises questions as to the effectiveness of free choice as a means of reducing segregation in the schools or its administration in Baltimore.²²

Whether segregation of minority group children in the public schools of the North and West which is not proved to be the result of purposeful official action is a denial of equal protection of the laws under the 14th amendment--indeed, what constitutes such segregation--are open questions which only the Supreme Court can answer. Segregation exists to a great degree in the 16 cities for which data were available, if 90 percent white or Negro enrollment in a school is segregation. If the percentage is reduced there will be more than suggested above; if increased, there will be less; but it exists. As mentioned earlier, active investigation and protest sponsored by the NAACP is being carried out in 64 cities in 18 Northern and Western States. The present mood of Negro residents of States in the North and West suggests the questions will get to the Supreme Court in the near future.

22. In fact, Baltimore's administration of its free choice of schools plan has been challenged on several grounds by a group of citizens. See Report of 28 citizens, Seven Years of Desegregation in the Baltimore Public Schools (Mar. 1963). The school administration has replied to the specific criticisms made and a hearing has been held before the Baltimore Board of Education which has taken the matter under advisement. Washington (D.C.) Star, June 30, 1963, p. C2.

5. Protests and Changing Policy

[Justice] can be achieved . . . if those people who are not directly affected by a wrong are just as indignant about it as those who are personally hurt.¹

—Earl Warren, Chief Justice,
United States Supreme Court

The growing pressures on school authorities of the North and West reflect the opinion of Negro parents that they have both a legal and a moral right to send their children to schools which are not segregated. They are indifferent to distinctions between de facto and de jure segregation, and they wish their children to attend biracial schools now. Developments in the North and West show that a growing number of white parents share this view. They also show that it is not necessary to go to the South to find white parents resistant to changes designed to bring white and Negro pupils together in the classroom.²

The Negro strategy appears to be to press school systems having State or local policies or attitudes which suggest that the chances of negotiating a settlement are favorable. This may be based upon an assumption that success in one place will breed success elsewhere, or it may reflect impatience to achieve immediate and dramatic successes somewhere.

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1. From an address at the First World Conference on World Peace Through Law, Time Magazine, July 12, 1963, p. 26. The Chief Justice explained that he was paraphrasing the Athenian lawgiver, Solon. Solon's statement may be found in 14 Plutarch, The Lives of Noble Grecians and Romans 71.
 2. E.g., white parents in St. Louis appeared at a school board hearing to oppose implementation of the recommendations of the board's citizen committee to lessen segregation in the schools. N.Y. Times, June 30, 1963, p. 44.

White parents in Montclair, N.J., have brought action in the Federal district court opposing changes made in the school organization to reduce segregation in September 1962 as unconstitutional. N.Y. Times, July 6, 1963, p. 5.

In the preceding chapter the quantitative dimensions of segregation in 16 cities in the North and West were described. An understanding of the causes requires some explanation of the generally prevailing organization of school systems and how population changes in the last decade have thrown it out of balance to the detriment of the Negro school child.

Duly constituted school boards operating more than one school for pupils of the same grade have long been recognized to have inherent power to designate the school each child shall attend.³ By far the most usual method of pupil assignment in the Northern and Western States is by dividing the total school district into attendance areas for each elementary school and by assigning all elementary pupils to the school of the zone of their residence. This is popularly called the neighborhood school plan.

Secondary schools also are often zoned geographically, or the same result is achieved by the designation of the high school that graduates of each elementary school must attend. The latter method is called a feeder system; certain elementary schools "feed" certain high schools. An elementary-junior high-senior high school system follows the same procedure in three steps instead of two. Every child living in a school district would thus live in the attendance area of an elementary school, a high school, and a junior high school also if it were part of the system.

The administrative advantages of this method of school assignment are obvious. With knowledge of the grade of each pupil and the capacity of each school, authorities can distribute the pupil population evenly throughout the system and control class size. In fixing boundaries, particularly for elementary schools, distance and traffic hazards can be taken into account. At the secondary level, where schools are usually much larger and serve a larger geographic area, public transportation routes are of importance. Few cities find it necessary to provide transportation for pupils since the density of urban populations puts the homes of most elementary school children within a few blocks of a school. Older pupils can walk a greater distance or use public transportation.

In practice even this method of pupil assignment is not as simple as it sounds. Most northern and western cities have been operating public schools for 75 years or more and many school buildings still in use were built 50 to 75 years ago. The size and location of these buildings were

3. Messick, The Discretionary Power of School Boards 100-01 (1949).

determined by the population density of the period in which they were built. New schools have been added and existing buildings enlarged to accommodate the increased population, but the change in the population density has made many older schools in large cities inadequate for the present school population of the geographic area they serve. This is true in all the cities studied. St. Louis will be used as an example.

In the period between desegregation of the schools in September 1955 and the school year 1961-62, the white elementary school population of St. Louis decreased from 44,779 to 37,669 and the Negro enrollment increased from 27,921 to 45,000.⁴ The Negro-white inversion during this period was accompanied by an expansion of the Negro population from the central city into the West End area in large numbers. The now crowded West End, a 98 percent white section in 1950, had become 64 percent Negro by 1960.⁵ Soldan High School, which serves this area of the city as a general high school, was 74 percent white after desegregation in 1955 and 99 percent Negro in 1962. The 11 elementary schools in the West End district in 1955 ranged from 45 to 100 percent white in enrollment; 6 were over 90 percent or more white. In October 1962, the school administration made a head count. At that date there was 1 more elementary school in the West End district than in 1955 making a total of 12. All but 2 of the 12 schools were over 90 percent Negro.⁶

Of greater importance, the enrollment in these schools had increased from 9,892 in 1955 to 19,527 in 1962.⁷ The classroom space which had been sufficient to accommodate the area's children in 1955 had become grossly inadequate because of the change in the density of its population. The enrollment in one elementary school in November 1962 was almost three times its November 1955 enrollment. Obviously, schools planned for some 10,000 pupils could not

4. North and West Report 266.

5. St. Louis Post Dispatch, Apr. 24, 1962, p.1C.

6. Hickey, Superintendent of Public Instruction, St. Louis Public Schools, Replies to 136 Statements, Accusations, and Criticisms of Desegregation Policies and Practices of the St. Louis Board of Education and School Administrators, Apr. 4, 1963 (hereinafter cited as St. Louis Superintendent's Report) Reply No. 5. For a comparison of the racial composition of these schools in 1955 and 1962, see app. D, table 1.

7. Ibid.

accommodate twice that number. St. Louis' partial answer has been to transport about 5,000 of the pupils officially enrolled in these schools to distant and almost always predominantly white schools, until the building program catches up with the increase in pupils.⁸

In detailed reply to charges brought by the NAACP against administrative practices claimed to have caused the schools in the West End not to reflect the racial characteristics of the neighborhood (60 percent Negro and 40 percent white), the school administration had three answers:⁹

By 1960, the white population remaining in West End was predominantly composed of persons aged 65 or over;

there were almost four times as many nonwhites (7,684) as whites (2,186) under 14 years of age living in the area; and

a higher proportion of white children attended parochial and other private schools than did nonwhites.

The superintendent concludes, "it [is] quite evident that there are not now in the area enough white public school pupils to maintain balanced Negro-white ratios in either the elementary schools or in the Soldan High School."¹⁰

To maintain racial balance in the elementary schools would require the transportation into West End of white pupils from currently underpopulated schools miles away, at enormous expense, the superintendent claims. Additionally, the school board would have to deny white pupils the privilege of taking vocational and technical training at the vocational high school outside the district and deny other students the privilege of transfer to other general high schools for courses not offered at Soldan, to retain any white students there.¹¹ In fact the superintendent's report shows that 717 of the 2,441 public high school students living in the Soldan district attended high school out of district in 1962-63. An undisclosed number of the 717 were Negro.¹²

8. St. Louis Post Dispatch, June 16, 1963 p. 14A. Some of these schools may have supplementary capacity provided by portable classroom units located on school playgrounds. Of 77 such units in use in the 1961-62 school year, 67 at 14 locations housed pupils in all-Negro or predominantly Negro districts. North and West Report 274.

9. St. Louis Superintendent's Report, Reply No. 1. p. 3.

10. Id. Reply No. 6.

11. Ibid.

12. Id. Reply No. 2.

The West End area of St. Louis is a typical example of the present problems of racial imbalance in the urban schools of the North and West. Committed to the neighborhood school plan, school authorities have built or are in the process of building new schools where the burgeoning Negro population lives. The racial composition of the elementary schools and the high school they feed cannot be changed greatly now by any shifting in attendance area boundary lines. Schools have been located and their capacities are relatively inflexible. At the fringes of the white-Negro residential areas some redistribution of pupils should be possible by rezoning, and change in the elementary-secondary school feeder system is always a possibility, but in a crowded school system such changes require adjustments in many if not all school district organizations.

Other types of solutions which have been adopted or proposed elsewhere, and which will be discussed hereafter, do not appear to have been urged by Negro leaders in St. Louis, nor to have been considered by the St. Louis school board. At present, in addition to redrawing school zone boundary lines to minimize segregation, the complaints and demands for immediate relief in St. Louis relate to the treatment in the receiving schools of pupils transported to relieve overcrowding, and alleged use of racial criteria in the assignment of teachers. These also will be discussed hereafter.

IN THE STREETS

Negro protest of school segregation until 1962-63 was principally by petition and personal appearance of representatives before school boards to voice their complaints and demands. However, the growing direct action movement seeking access to public accommodations and nondiscriminatory employment, without waiting longer for legislation granting these rights or litigation vindicating them, has been moving into the school area also.

The metropolitan area of New York City, which includes northern New Jersey, has been the center of demonstrations, picketing, sit-ins, and school boycotts to dramatize the urgency of petitions and protests since the summer of 1962. In most instances the move to direct action came after months or years of unsuccessful complaint and negotiation.

The New York City Board of Education, however, which cannot be said to be either recalcitrant or dilatory, has been exposed to all these techniques throughout the school year 1962-63.¹³

13. See N.Y. Times, Sept. 18, 1962, p. 35; *Id.*, Sept. 19, 1962, p. 33; *Id.*, Sept. 26, 1962, p. 23; *Id.*, Oct. 26, 1962, p. 24; *Id.*, Nov. 3, 1962, p. 40; *Id.*, Apr. 12, 1963, p. 29; *Id.*, June 19, 1963, p. 21; Washington (D.C.) Post, Feb. 5, 1963, p. 13A.

The small suburban city of Englewood, N.J., across the Hudson River from Manhattan, has become the symbol of the Negroes' drive to achieve integration in the schools by direct action. Englewood has had periodic rallies featuring Negro celebrities, sit-ins in the school superintendent's office, picketing of the Governor's office in Trenton, school boycotts and most recently sit-ins by Negro pupils assigned to the Lincoln School (99 percent Negro) at a nearby white school.¹⁴

Englewood schools closed the school year 1962-63 as they began with pupil boycotts of the Lincoln School. The September boycott sponsored by the Lincoln PTA was to show parental displeasure over the abandonment of the school board's plan to start eliminating segregation at Lincoln by establishing a central school for all the city's fifth and sixth grade pupils.¹⁵ The board had been forced to abandon its plan by the refusal of the Board of School Estimate to provide funds to renovate a building owned by the board for use as the central school.¹⁶

The mayor of Englewood took the unusual step of sending a questionnaire to the 7,800 households in the city listed in the telephone directory, seeking the opinion of Englewood residents on various plans for relieving the racial imbalance at Lincoln. He announced that of the 3,577 replying the vote was 3 to 1 in favor of preserving the neighborhood school and 20 to 1 against more extensive plans for correcting racial imbalance.¹⁷

After the close of school, the New Jersey Commissioner of Education ordered the Englewood board of education to adopt a plan for ending imbalance at Lincoln effective in September 1963 and to submit it to him before August 1.¹⁸ The mayor telegraphed the Governor pledging his cooperation with the school board.¹⁹

Late spring brought signs of growing impatience elsewhere. In May 1963 Negroes picketed the Thaddeus Stevens Elementary School, an all-Negro school in Twin Oaks, Pa., carrying signs "Jim Crow Must Go," "Twin Oaks, Alabama" and "We've

14. Washington (D.C.) Evening Star, June 3, 1963, pp. 1, 8.

15. N.Y. Times, Sept. 4, 1962, p. 39C.

16. Id., Aug. 1, 1962. p. 51.

17. Id. Sept. 10, 1962, p. 21C.

18. Spruill v. Board of Education, (Englewood), No. C-425, N.J. Comm'r of Education, July 1963.

19. N.Y. Times, July 3, 1963, p. 11.

Stopped Talking and Started Walking." The school which is the object of the complaints has three Negro teachers and 57 Negro pupils. The local Negro leaders claim that the school board promised in November 1962 to submit a plan to end the segregation of these Negro pupils by March 15 but that it had voted in May to postpone action for another year.²⁰

June brought protest demonstrations in both Boston and St. Louis. The Negro population of Boston is comparatively small and most Negroes live in what is known as the Roxbury-Dorchester area. Disappointed with the results of a hearing before the Boston school committee on their complaint of segregation and substandard education, local Negro leaders called for a school boycott. About 3,000 junior and senior high school students, out of some 5,000 in those grades, stayed out of school for a day and attended workshops in neighborhood churches and social centers where they were instructed in Negro history, U.S. government and civil rights, and the principles of nonviolence. There was no disorder.²¹

St. Louis Negroes also seem to have wearied of the talking stage of protest. On June 7, 1963, 30 parents and ministers blocked the departure from West End's Dozier School of 12 buses containing about 500 children who were to be transported to underutilized white schools some miles away.²² The Negro complaint with regard to busing is the segregation of the transported Negro children in separate classrooms in the receiving school. About 4,850 children, primarily Negro, are transported daily from overcrowded elementary schools in the central and West End areas of St. Louis to outlying schools having space, which are almost invariably populated by whites.²³ School officials insist that their policy of transferring complete classes is necessary to avoid administrative chaos. To allow for travel time, transported children are on a different schedule from

20. Id., May 21, 1963, p. 22. The size and staff of this school suggest that it may be a remnant of former segregation by policy.

21. Id., June 16, 1963, p. 59; id., June 19, 1963, p. 21 id. Subjects of workshops from Unitarian Universalist Association, June-July 1963, p. 2. The end of July negotiations with the school committee had broken down and mass demonstrations were threatened. (N.Y. Times, July 31, 1963, p. 14C)

22. St. Louis Superintendent's Report, Reply No. 5 shows a total of 864 pupils transported from Dozier School. See app. D., table 1.

23. St. Louis Post Dispatch, June 16, 1963, p. 14A.

other pupils in the receiving school. Transported pupils arrive at the receiving school after other classes have begun and leave early to get back to their home schools by 3:40 p.m. They have a 40-minute lunch period instead of an hour to compensate, in part, for the shorter day. To Negro parents, however, this is segregation from the white pupils.²⁴ Academic reasons for keeping the transported as a unit were also advanced by school administrators and interpreted by Negro leaders to imply an inferiority of the Negro race. This, school administrators denied, but they pointed out that some transported groups scored lower in ability and achievement than their counterparts in the receiving school, and that they also tended to be a year older.²⁵

Two weeks later 2,000 Negroes marched in long orderly lines in front of the board of education headquarters carrying signs saying "Freedom Now" and "Don't Teach Segregation." The demonstration was sponsored by the major Negro and civil rights organizations in the city and included many white people. The demonstrators demanded three changes which they say have been under discussion with the school authorities for 3 years: (1) assimilation of transported pupils into classes at the receiving schools; (2) assignment of teachers without regard to race; and (3) re-drawing school zone boundary lines to minimize segregation. A spokesman for the protest committee said: "The point of the demonstration is that we want action now and not talks--we have had hearings and talks off and on for three years."²⁶

Mass demonstrations were threatened in New York City,²⁷ and elsewhere,²⁸ if school officials did not make clear promptly what they intended to do in September 1963 about racial imbalance in the schools.

24. Id., June 7, 1963, p. 11.

25. Id., June 6, 1963, p. 3A.

26. N.Y. Times, June 21, 1963, p. 12.

27. Id., June 19, 1963, p. 21, and id., June 24, 1963, p. 20. On July 31 the NAACP threatened to boycott the city's schools unless the school board adopted a plan and timetable satisfactory to the association by September 1. (Id., July 31, 1963, pp. 1, 14C).

28. See id., May 19, 1963, p. 1.

ADJUSTMENTS EFFECTED SEPTEMBER 1962

The Negro protests to and negotiations with school authorities during the year 1961-62 which brought changes in school organization or granted transfer privileges to Negro children assigned to all- or almost all-Negro schools in September 1962 were, for the most part, in small school districts. Some appear to have been tardy recognition by school authorities that the last vestiges of a Negro school to serve the entire district could no longer be retained. Of a total of 13 school districts known or reported to have put changes into effect in September 1962, only two are medium-size cities (100,000-500,000) and none are large cities (over 500,000). Actually, most of the 10 smaller cities range in total population from 5,000 to 50,000.

The changes made in Casa Grande and Eloy, Ariz., and Danville and Mount Vernon, Ill., were previously mentioned.²⁹ It was pointed out that only in Casa Grande and Mount Vernon did a change to geographic zoning make a material difference in school assignment, and in Mount Vernon the former Negro school was closed.

Coatesville, Pa., a community of about 13,000, also took action which resulted in integrating the Negro elementary school children into the school system. In 1961-62, the all-Negro James Adams Elementary School enrolled 331 pupils, kindergarten through grade 6, and was staffed by Negro teachers. The Terry Elementary School, only three blocks away, enrolled 429 pupils, including a sprinkling of Negroes. Under the plan adopted by the school board in April 1962, beginning in September 1962 the Terry School was to serve the combined enrollment of Adams and Terry for kindergarten through grade 3, and Adams for grades 4 through 6. The name of the Adams School was changed to eliminate its association with Negroes in the minds of residents. The plan also provided for transfer of some white teachers to the formerly Negro school, and some of its Negro teachers to the other three elementary schools. The organization of the town's other two elementary schools was not affected.³⁰

The method of reorganization used to desegregate the Adams School in Coatesville is an adaptation of the "Princeton Plan," where it is supposed to have been first used.³¹

29. See note 9, ch. 3, supra.

30. (Philadelphia) Evening Bulletin, Apr. 27, 1962, p. 4.

31. Princeton put its plan into effect in 1949. Letter From Chester R. Stroup, Superintendent of Schools, to this Commission July 25, 1963.

Essentially under the Princeton plan the attendance areas of two or more schools are combined and all children living in the area are assigned by grade to one of the schools. Thus, as in Coatesville, one school might serve kindergarten through grade 3, and the other, grades 4 through 6 or, if the elementary schools included eight grades, one school would have kindergarten through grade 4, and the other, grades 5 through 8.

Salem, N.J., adopted a Princeton-type plan of organization as early as September 1948. The three elementary schools of Salem were reorganized: A Negro school and a white school operating on the same school grounds, and sharing the playground space, were combined into one school to serve grades 2, 3, and 4 for the entire city; the third school was given kindergarten and grades 5 and 6.³²

In response to an inquiry as to community acceptance and the educational success of their method of school organization the Salem superintendent of schools said:³³

In answer to your question about the community acceptance and the educational value, these are obviously intangibles. Our town has had few, if any, racial incidents in the past decade; and integration seems to be accepted as a part of the way of life in the town. Observing our youngsters on the playgrounds of the elementary schools, there is no color barrier or cleavage as far as play activities are concerned. In the classroom, there seems to be generally an acceptance of each other by both Negro and white, although we have noted some tensions in the upper elementary and high school [grades] in the last year, which we attribute to the increasing pressures in other districts and other cities toward integration, which have been so well publicized.

Our youngsters, according to IQ tests, seem to be about average, with the average IQ for the total school population running around 99-100. As far as national norms are concerned, generally we score a little better than the national norm or at the national norm on standardized achievement tests.

Pressure by NAACP branches for action to alleviate segregation in the schools has been widespread in New Jersey for the past 2 years, and longer in some places. Five New Jersey cities made changes in their school organization in September 1962 in response to Negro protests.

32. Letter From Granville S. Thomas, Superintendent of Salem Public Schools, to this Commission May 24, 1963.

33. Ibid.

A study by the Jersey City school administration revealed that eight of its elementary schools had pupil populations ranging from 53 to 95 percent Negro. The school board agreed that de facto segregation existed and appointed a committee of five educators and five NAACP representatives to work out a solution "amicably and unemotionally."³⁴ The administration's study also showed that 82 of the 104 part-time classes in the school system were in schools where enrollment was more than two-thirds Negro (a frequent cause for Negro complaint of the inferiority of education offered in predominantly Negro schools).³⁵ The solution adopted permitted transfer of 259 Negro pupils from overcrowded schools to less crowded, predominantly white, nearby schools.³⁶ The exact terms of what appears to be an open enrollment plan are not known since no reply to a staff inquiry was received from the superintendent of schools.³⁷

Montclair had been pressed by its Negro residents to close the 90 percent Negro Glenfield Junior High School for many months before it agreed to do so. Since that time white parents have brought action in the Federal district court against the school board for violating the constitutional rights of their children by granting Glenfield pupils a choice of schools not enjoyed by white pupils. The plaintiffs appealed to the State Commissioner of Education upon dismissal of the suit for failure to exhaust State administrative remedies,³⁸ and the Federal judge who dismissed the suit in 1962 has agreed to decide the constitutional issue raised in view of the dismissal of the appeal by the Commissioner of Education.³⁹

Montclair had four junior high schools in 1961-62 which enrolled roughly 1,600 pupils. Three of these schools enrolled both white and Negro pupils but the largest (Mount Hebron, 568 pupils) only whites. At Glenfield, by far the smallest of the four (183 junior high pupils), the ratio of Negroes to whites was 9 to 1.⁴⁰

34. N.Y. Times, Mar. 10, 1962, p. 23.

35. Ibid.

36. Id., Sept. 6, 1962, p. 22C.

37. Letter From this Commission, Jan. 18, 1963, to Raymond A. Brown, Superintendent of Jersey City Public Schools.

38. Morean v. Board of Education (Montclair), No. M-7107, N.J. Comm'r of Education, July 1963.

39. N.Y. Times, July 6, 1963, p. 5; id., July 9, 1963, p. 17.

40. Newark Hearings 351.

An educator ⁴¹ who served on a citizens committee appointed by the board of education in the spring of 1961 to study Montclair's junior high schools and recommend desirable changes, told this Commission, at its Newark Hearings in September 1962, that the basic problem in Montclair was not de facto segregation in one of its junior high schools, but lay in the fact that Montclair had insufficient pupils educationally to justify four junior high schools.⁴²

A majority of the citizens committee recommended the building of a single central high school. As a temporary expedient the committee proposed that junior high grades at Glenfield be closed out, one other junior high serve the 9th grade for the city as part of the senior high school, and the other two junior high schools take the 7th and 8th grade pupils for the entire city in alternate years.⁴³

The board accepted the committee's recommendation for a long-range solution⁴⁴ but substituted its own less expensive plan for the period until a new school could be built.

The board closed Glenfield School for educational reasons as recommended and gave the parents of each Glenfield student the opportunity to register first, second, and third choices for assignment of their children among the other three schools. Priority of choice was established by a public drawing of the preference envelopes on May 17, 1962.⁴⁵ Negro pupils registered in the school of their choice in September 1962. Mount Hebron School in Upper Montclair enrolled Negro pupils for the first time since it opened in 1893. "They were received amiably by most white students, and all mixed freely."⁴⁶

Morristown, N.J., also voluntarily made a change in its school organization effective in the fall of 1962, after protest by the NAACP of segregation in Lafayette Elementary School. Morristown has four elementary schools. Lafayette School enrolled 341 Negroes and 42 white pupils. The other

41. Dr. E. Alden Dunham, director of admissions at Princeton University. Ibid.

42. Ibid.

43. Id. at 35.

44. Id. at 354.

45. Newark Evening News, Aug. 16, 1962, p. 25.

46. N.Y. Times, Sept. 7, 1962, p. 30C.

three schools were mostly white in enrollment. ⁴⁷ Morristown converted Lafayette School into a 7th and 8th grade school for the entire city and distributed Lafayette's kindergarten through 6th grade pupils among the other three schools. As part of the plan transportation was provided for all kindergarten pupils, for all pupils in grades 1-6 living three-fourths of a mile or more from their assigned school, and for all pupils in grades 7 and 8 living a mile or more from school.⁴⁸ This again is an adaptation of the Princeton plan which effectively brings all of the elementary pupils of the neighborhood together in school.

The school board's study showed that this reorganization would result in the following racial composition of the three k-6 schools and the one school for grades 7 and 8:⁴⁹

<u>Enrollment</u>			
<u>School</u>	<u>Total</u>	<u>White</u>	<u>Negro</u>
<u>K-6</u>			
Washington	467	312	115
Hamilton	613	429	184
Jefferson	349	234	115
<u>7-8</u>			
Lafayette	355	263	92

Newark, N.J., instituted a limited open enrollment plan in September 1962 in settlement of a legal action alleging unconstitutional segregation of Negro pupils brought by the local NAACP branch in a Federal district court. ⁵⁰ Of Newark's 49 elementary schools, 11 enrolled more than 90 percent Negroes in October 1961, and 5 more had in excess of 88 percent Negro pupils.⁵¹ The open enrollment or transfer plan adopted classified elementary schools composed of 88 percent or more Negroes as sending schools, and schools having at least one available classroom as receiving

47. Id., Feb. 10, 1962, p. 1.

48. Copy of plan for pupil distribution and transportation received from Harry W. Wenner, President, Board of Education, Morristown Public Schools, Jan. 30, 1963.

49. Ibid.

50. N.Y. Times, Mar. 17, 1962, p. 26.

51. Newark Hearings 429-30.

schools. Pupils enrolled in sending schools were permitted to transfer to receiving schools to the limit of their capacity, priority being established by the receipt of applications.⁵² A total of 690 vacancies were established in receiving schools for which 464 applications were received and 347 approved. (Most disapprovals were because vacancies in the schools applied for had been filled by earlier applicants.)⁵³ More than 300 pupils in fact transferred in September.⁵⁴ Little change in the racial composition of either the sending or receiving schools could have resulted since the schools having 88 percent or more Negroes enroll almost 20,000 pupils and the receiving schools an equal number.⁵⁵

Plainfield, N.J., instituted an unrestricted open enrollment plan in September 1962 after complaint by the NAACP of segregation in the elementary schools in May 1961 and a year of study by the school administration, by a lay advisory committee appointed by the school board, and by consultants hired by the committee.⁵⁶ At the time school opened in the fall of 1962 an appeal had been filed by Negro parents to the State commissioner of education from the school board's rejection of other, more effective means of solving the racial imbalance in the schools. The appeal was decided in favor of the appellants on June 26, 1963.⁵⁷

By stipulation three possible plans were submitted to the commissioner. Two, originally proposed by the consultants hired by the advisory committee, were urged by the petitioners. One, an adaptation of the Princeton plan, would have set up three pairs of schools, combined their attendance areas, and assigned pupils in grades 1-3 to one school and those in grades 4-6 to the other of each pair. An alternative supported by the petitioners called for re-zoning of the attendance area for all elementary schools. The school board advanced a new scheme which it called the "Sixth Grade Plan" and urged its approval. Under this proposal Washington School (96.2 percent Negro) would become a school for all 6th grade pupils in the city; and the Washington pupils in kindergarten through grade 5 (k-5) would be distributed among other elementary schools except those already more than 50 percent Negro.

52. Id. at 389.

53. Id. at 435.

54. Baltimore Sun, Sept. 7, 1962, p. 9.

55. Newark Hearings 429-30.

56. Id. at 262.

57. Booker v. Board of Education (Plainfield), No. C-424, N.J. Comm'r of Education, June 1963.

Of the 11 elementary schools (exclusive of Washington) the latter proviso would exclude 5 schools, Emerson (72.1 percent Negro), Stillman (67.6 percent Negro), Bryant (65.5 percent Negro), Clinton (58.9 percent Negro), and Lincoln (63.0 percent Negro).

In his decision of June 26, the commissioner left the choice of plan to the school board which by stipulation agreed to put a plan into effect in September 1963. Not surprisingly, the board chose its own plan.⁵⁸

The attorney representing the Negro parents announced that the plan was insufficient and that he had been instructed to carry the suit further; that the parents had charged that racial imbalance existed in all Plainfield schools.⁵⁹

In March 1962, Plainfield operated 12 elementary schools which enrolled about 5,000 pupils, 37.0 percent of whom were Negro. At that time the enrollment of Washington School was over 95 percent Negro and four other schools were more than half Negro in enrollment.⁶⁰

Under the open enrollment plan adopted by the board for the 1962-63 school year, children above kindergarten age, through their parents, could request and would be granted transfer to a school outside of their zone of residence as long as acceptable class size in the chosen school was not exceeded.⁶¹ As in Newark, transfers had little effect on the racial composition of schools. Eighty-eight children applied for 530 available spaces. Of the 88 applications 61 were granted.⁶²

Portsmouth and Xenia, Ohio, complete the list of school systems making changes in September 1962 in response to NAACP protest. In Portsmouth the school board made some adjustments in school zone lines claimed to be discriminatory in 1962 and agreed to rezone the entire school system to reduce segregation before September 1963. Xenia instituted open enrollment for the year 1962-63 until the entire system could be rezoned.⁶³

58. Birmingham News, June 28, 1963, p. 4.

59. Ibid.

60. Newark Hearings 274. In 1963 one more school was more than half Negro in enrollment, supra note 57.

61. Booker v. Board of Education, supra note 57, p. 3.

62. Newark Hearings 262.

63. Memorandum From June Shagaloff, special assistant for education, NAACP, Jan. 1963, "Public School Desegregation in the North and West."

ADJUSTMENTS EXPECTED SEPTEMBER 1963

In September 1963, changes in organization to reduce school segregation were expected in 12 cities and perhaps elsewhere where definite plans had not been announced. Orange, Englewood, and Plainfield, N.J., and Malverne, N.Y., were under orders by their State commissioners of education to take action.⁶⁴ Other action was voluntary, at least at that juncture.

The planned reorganization of the New Rochelle, N.Y., school system, the first step to have been taken in September 1963, is of great interest for two reasons. It not only is a long-range plan to improve education for all the city's children; it appears to provide a permanent solution to segregation in the schools which has caused years of strife and tension in the community.

New Rochelle has been operating since September 1961 under a Federal court order requiring it to permit pupils living in the zone of Lincoln School to transfer to other elementary schools of their choice.⁶⁵ Many pupils have done so.⁶⁶ As the first step in the new plan Lincoln was closed in June 1963 and will not open in September.⁶⁷ It was the decision to replace Lincoln School with a new school on the same site which sparked the litigation in the Federal courts leading to the order that Lincoln pupils be permitted to apply for transfer to an out-of-zone school subject to space limitation in the school selected.

Before the first transfer of Negro pupils from Lincoln in 1961, the enrollment in that school was 94 percent Negro. After the transfers the school was 88.6 percent Negro,⁶⁸ apparently because the few white pupils enrolled did not elect to use their option. The enrollment in the school

64. Of the four communities listed only Plainfield appears to be prepared to act, and as noted above in text at note 58 the Negro petitioners are not satisfied with the plan adopted.

65. See North and West Report 33-103 for detailed discussion of New Rochelle litigation and court order.

66. Id. at 88, 1961 transfers.

67. The information about the plan which follows is derived from Board of Education, New Rochelle, N.Y. A Comprehensive Plan for Educational Excellence: A Report to All Citizens of New Rochelle, May 14, 1963 (hereinafter cited as New Rochelle Board Report).

68. North and West Report 100.

had dwindled, however, from 483 in November 1961⁶⁹ to 210 in April 1963. The superintendent estimated the enrollment to be 90 percent nonwhite at that time.⁷⁰

The operating costs of the school, originally built in 1898, exceeded the city average by \$180 a year per pupil.⁷¹ Clearly the continued operation of Lincoln was uneconomical but the board's recommendation to close the school had another base. It declared that "we [the New Rochelle school board and administration] cannot achieve the values of the common school for either our white or our nonwhite pupils in classrooms that are racially homogeneous."⁷²

In the fall of 1963, as originally announced, all children attending Lincoln were to be permitted to transfer to the schools of their choice in accordance with the provisions of the Federal court decree governing that school.⁷³ Since that time the board has petitioned Judge Kaufman, who issued the original order in the district court, but is now on the Second Circuit Court of Appeals, for permission to assign Lincoln pupils to the other elementary schools in a manner to preserve the racial balance in the other schools.⁷⁴ The elementary schools nearest Lincoln already have substantial Negro enrollment but more distant schools have few Negro pupils.⁷⁵ In approving the requested modification of the original order, Judge Kaufman had high praise for the present school board and new superintendent. In conclusion he said:⁷⁶

In two years. . . we have come full circle from New Rochelle as a city which condoned segregation to one which is the trailblazer in providing equal opportunity of education to all children.

The requirement of the original decree that parents furnish transportation if needed probably has limited the number of transfer applications. This is remedied by the new

69. Id. at 97.

70. New Rochelle Board Report 10.

71. Id. at 19.

72. Id. at 10.

73. For transfer rules see North and West Report 80-81.

74. N.Y. Times, June 25, 1963, p. 1.

75. North and West Report 97, 102.

76. N.Y. Times, June 25, 1963, p. 1.

plan. In the fall of 1963 transportation was to be provided for all New Rochelle pupils attending schools more than 1-1/2 but less than 10 miles from their homes. Parents of children at Lincoln school were to be encouraged to select (now assigned to) outlying schools.⁷⁷

The closing of Lincoln is the first step in a program to reorganize New Rochelle's 6-3-3 plan of grade organization to a 5-3-4 form. The new organization will make elementary schools include kindergarten through grade 5 (k-5), the intermediate schools (now called junior high schools), grades 6 through 8, and the senior high school, grades 9 through 12. Enlargement of the city-wide high school is required to accommodate all of the city's 9th grade pupils in addition to the grades now housed. This is projected for September 1966.⁷⁸

A new central elementary school to serve all pupils living in the central area of New Rochelle is also proposed. The new central elementary school will replace all elementary schools over 50 years old still in use at its scheduled completion in September 1967. Washington, which will be closed as a classroom facility at the end of the 1963-64 school year, would not qualify under the 50-year rule, but three other schools will all be over 50 years old by that time.⁷⁹ Thus, the new central facility is planned to accommodate the enrollments of five schools, the smallest as well as the oldest ones in the system.⁸⁰

New Rochelle's present superintendent marshalls impressive educational and financial reasons to support the reorganization of New Rochelle's schools as outlined above. From the standpoint of achieving a racial balance in the schools it seems well conceived. Based upon the 1961 racial composition of the five elementary schools which will be combined in the new central elementary school, the Negro enrollment will be slightly less than one-half of the total. In fact, it might be lower, for a few years at least, if Negro pupils transferring from Lincoln to outlying schools in 1963 and from Washington in 1964 complete the elementary grades in those schools.

77. New Rochelle Board Report 10.

78. Id. at 3.

79. Id. at 19. Nearby Washington school, scheduled for closing September 1964, was 54.0% Negro after receiving Lincoln transfers in 1961. Other schools surrounding Lincoln had the following percentages of Negro pupils at that time: Mayflower 41.7, Webster 35.7, Columbus 19.7, Stephenson 25.1. Four outlying schools to the north showed Negro percentages ranging from 0.8 to 12.8. North and West Report 100.

80. North and West Report 97.

The decision to retain a single city high school and add one grade to its program is in keeping with the present thinking in New Rochelle that racial homogeneity in the schoolroom does not serve the purposes of education for either white or Negro students. The enlarged high school will continue to bring all of the community's youth together for their four high school years.

The action ordered in Malverne, N.Y., is of greater importance to future developments in the State than the New Rochelle action, because the former represents State and the latter local policy. The Malverne appeal led to a directive by the commissioner on June 14, 1963, to all local superintendents and board presidents to take action to correct racial imbalance in their schools.

The petitioners in the Appeal of Mitchell v. Board of Education⁸¹ (Malverne) protested racial imbalance in the schools, a plan to transfer the 6th grade of all elementary schools to a proposed new junior high school, refusal of the school board to rezone school attendance areas, and the inferiority of the Woodfield Road School as compared with the predominantly white schools.

In June 1962 the Commissioner had appointed an advisory committee on human relations and community tensions composed of the president of Teachers College, Columbia University, a professor of sociology at City University of New York, and a rabbi of a synagogue, New York City.⁸²

After hearing the parties argue the issues in November 1962, the commissioner requested the advisory committee to make a special study of the Malverne situation and to report to him. The committee reported on April 30, 1963, after which further oral arguments were held.

Malverne operates five schools, a senior and a junior high school, and three elementary schools. The commissioner found that the Woodfield Road Elementary School was 75 percent Negro and that the ratio of Negroes to whites was increasing there annually. The other two elementary schools each enrolled about 14 percent Negro pupils.

On the specific issues raised by the petitioners, the commissioner found racial imbalance to exist, but decided against the petitioners on the other three issues. As to the charge that the educational standards at Woodfield Road School were not equal to the other two schools, he pointed out the committee's report showing special efforts

81. No. 7240, N.Y. Comm'r of Education, June 1963.

82. N.Y. Times, June 19, 1963, p. 2.

to raise the quality of education in Woodfield. Having found racial imbalance to exist and the other possible grounds for relief unsupported by the facts, the commissioner had to decide whether the imbalance found constituted a deprivation of educational opportunity under New York law for the pupils compelled to attend that school. The commissioner found that it did, in spite of the special efforts to improve the quality of teaching at that school. In so finding the commissioner relied both on the committee's policy statement on imbalance,⁸³ and the 1960 policy statement of the New York Board of Regents.⁸⁴

The advisory committee had proposed four possible solutions⁸⁵ for the imbalance at Malverne, recommending the first. At the second oral argument the school board rejected all of the proposals but offered no plan of its own. The commissioner found the first proposal reasonable and workable and ordered the board to put it into effect upon the opening of school in September 1963.

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83. Commissioner's Advisory Committee on Human Relations and Community Tensions, Guiding Principles for Securing Racial Balance in Public Schools. June 17, 1963.
84. N.Y. Board of Regents, Intercultural Relations in Education, quoted in part in Washington Conference 67.
85. The four proposals as stated by the Commissioner in his decision, supra note 81, are:
- (1) Reorganize the attendance areas of the District so that all pupils from kindergarten to grade 3 inclusive, will attend either the Davison Avenue or the Lindner Place elementary school; all pupils in grades 4 or 5 will attend the Woodfield Road School. All pupils in grades 6 to 12 will, of course, attend the Junior and Senior High School as they do now.
 - (2) Redraw the attendance lines in an East-West direction with the boundaries roughly parallel to each other.
 - (3) Establish a policy of "open enrollment" for the entire elementary school system.
 - (4) Transfer approximately 100 pupils from the Woodfield Road School to the other two elementary schools.

The plan is an adaptation of the Princeton plan to three schools instead of two. It calls for the reorganization of the elementary school attendance areas so that all pupils kindergarten through third will attend the two schools not in dispute and all pupils grades 4 and 5 will attend Woodfield Road School. In other words, the k-3 grade pupils at Woodfield are to be divided between the other two schools, each of which would presumably retain the pupils living in their present areas, and the Woodfield School will serve the entire school district for grades 4 and 5 as a true community school such as already existed in the district above the 5th grade.

The Freeport, L.I., board of education has already adopted a new plan of organization for its schools effective in September 1963 in keeping with the spirit of the New York Commissioner of Education's directive of June 14. Freeport's plan calls for the closing of the Cleveland Avenue Elementary School, which has a 90 percent Negro enrollment, and the transfer of its pupils to five other elementary schools.⁸⁶

The decision of the New Jersey State Commissioner of Education in Fisher v. Board of Education⁸⁷ (Orange), like the New York commissioner's decision in Malverne, is of

86. N.Y. Times, July 4, 1963, p. 30M. Other school districts are complaining that the only way they could comply with the directive would be to transport white children to predominantly Negro schools or vice versa. For reaction to directive of various school administrators see id., June 19, 1963, p. 21. For Mount Vernon, N.Y., which claims to have a unique problem, see id., June 30, 1963, p. 46. The president of the New York City Board of Education announced that the school system has no plans to transfer white pupils to Harlem schools. Id., July 2, 1963, pp. 1, 44. Such action was recommended by the members of a conference held at Teachers College May 1 and 2. (Id., June 25, 1963, p. 1.) The United Federation of Teachers has recommended a similar course by a system of pairing a white and a Negro school and transferring pupils between the two schools. (Id., July 23, 1963, p. 19C.)

87. May 15, 1963.

importance in that it is a statement of State policy against racial imbalance in the schools, as well as an order requiring corrective action by the particular board effective September 1963.⁸⁸

It should be pointed out that the New York commissioner had the support of the State Board of Regents and also of his advisory committee in making his decision. The New Jersey State commissioner did not have the public support of his State board of education, but the Governor of the State had been forthright on the subject. It should be remembered that the NAACP activity in New Jersey has been intense for 2 years and had been building up before then. Governor Hughes told NAACP representatives at a meeting on February 20, 1962, "It seems to me there is a middle ground between open enrollment and the rigid pattern of the neighborhood school."⁸⁹ In December 1962 he amplified his position:⁹⁰

We must remember that with all its virtues the neighborhood concept must be reasonably applied so as to assure that fundamental objective of American life--equal educational opportunity under the law; for all children. As I previously stated: "While the preservation of the neighborhood school policy is essential, where it collides with the concept of equality in education opportunity, its adaptation to circumstances to prevent "de facto" segregation is not only necessary, but normally feasible.

The commissioner, therefore, had the blessing of the Governor of the State, when he made policy in the Orange appeal.

In Orange the commissioner stated that the concentration of Negroes in the Oakwood School was not the result of deliberate, purposeful segregation policies on the part of the school board. Nevertheless, he said, enforced assignment of Negro children to an almost all-Negro school

88. On June 13 the Orange school board filed an appeal to the State Board of Education from the commissioner's order which required, among other things, the submission of a plan to him by July 1. The commissioner had retained jurisdiction of the appeal until the school board adopted a plan approved by him. The State Board of Education refused to permit the Orange board to start an appeal to it that would take the matter out of the commissioner's hands. N.Y. Times, July 11, 1963, p. 18C.

89. Camden Report 12.

90. Ibid.

engendered feelings and attitudes which interfered with their learning. The commissioner declared, therefore, that such extreme racial imbalance as existed in Oakwood (99 percent), "at least where means exist to prevent it, constitutes under New Jersey law a deprivation of educational opportunity for the pupils compelled to attend the schools."⁹¹ Finding additionally "that reasonable means consistent with sound educational and administrative practice do exist to avoid the extreme concentration of Negro pupils in the Oakwood School,"⁹² the commissioner directed the board to formulate a corrective plan, submit it for his approval, and put it into effect in September 1963.

The New Jersey commissioner recognized the traditional values of the neighborhood school in reaching his decision, but stated that the extreme concentration of Negro pupils in the Oakwood school could be eliminated "without doing violence to logical attendance areas or at the sacrifice of sound educational considerations."⁹³

The commissioner noted that several possible solutions had been presented for consideration. Carefully observing that it was only one of many, the commissioner mentioned a Princeton type plan that would combine the attendance area of the 99 percent Negro school with the Park School which would reduce the concentration of Negroes in Oakwood to 72 percent.⁹⁴ The Orange board was ordered to submit a plan for approval by July 1 and to put an approved plan into effect in September 1963.

It is worth noting that the plan for Orange mentioned by the commissioner would reduce the Negro concentration at Oakwood to 72 percent--just below the 75 percent found to deny equal educational opportunity in Malverne. However, in 1962-63 the total Orange elementary enrollment was 50 percent Negro; in Malverne it was 32.5 percent.⁹⁵ Thus, although about the same percentage concentration of Negroes

91. Fisher v. Board of Education (Orange), No. M 7042 (C-42), N.J. Comm'r of Education, May 15, 1963, p. 10.

92. Ibid.

93. Id. at 8.

94. The Park Elementary School was 30 percent Negro in 1961-62. The combined Negro enrollment for the two schools in that year is 72% of the total enrollment of the two schools. Newark Hearings 248.

95. Report Advisory Committee on Human Relations and Community Tensions, Apr. 30, 1963, p. 2.

in one school is imbalance in Malverne and acceptable in Orange, in Malverne it represents 135 percent more than the district average, and in Orange less than 50 percent.

The New Jersey policy enunciated in Orange was given emphasis by the decisions which followed concerning Plainfield and Englewood.

Again entirely on a rationale of racial imbalance, the Plainfield board of education, which, as mentioned in chapter 3, had rejected the recommendations of its own advisory committee and the committee's experts in favor of an open enrollment plan, was ordered on June 26 to implement a more effective plan in September 1963. Two plans presented by the lay advisory committee's experts and one presented by the board itself were found by the commissioner to be educationally sound, reasonable, and practicable, and the board was ordered to put one of the three into effect by September, notifying the commissioner of its choice.⁹⁶

In the Plainfield case the commissioner makes his position against purely fortuitous segregation clear:⁹⁷

But even though the underlying cause and the final answer do not lie with the Board of Education, the school district is in no way thereby relieved of its responsibility to take whatever reasonable and practicable steps are available to it to eliminate, or at least mitigate, conditions which have an adverse effect upon its pupils.

Englewood also was ordered on July 1, 1963,⁹⁸ to make plans to reduce the imbalance in the Lincoln School (98 percent Negro) effective in September 1963.

Charges of discrimination in the schools are not new in Englewood. In 1955 Negro petitioners secured an order from the commissioner of education requiring rezoning between two elementary schools and the closing of one of two junior high schools.⁹⁹ In fairness to the Englewood school board and its superintendent, it must be stated that in response to protests of segregation in the Lincoln School by Negro leaders, studies were undertaken and plans proposed by the

96. Booker v. Board of Education (Plainfield), supra note 57. The plan adopted is given in text following note 57, supra.

97. Id., p. 5.

98. Spruill v. Board of Education (Englewood), No. C-425, N.J. Comm'r of Education, July 1963.

99. Id. at 3.

school authorities that the city's political organization effectively blocked.¹⁰⁰ The commissioner, relying upon his decision in Orange again ordered the school board to formulate a plan to be approved by him and put into effect September 1963. The commissioner said:¹⁰¹

Compulsory attendance at an all Negro school, such as the Lincoln School, at least where appropriate means can be found to avoid it, constitutes a denial of educational opportunity under New Jersey law which the school district is required to correct.

Although New Jersey has taken a strong position against extreme racial imbalance in the public schools, it is not clear that the State commissioner would find a 75 percent concentration of Negro pupils a denial of equal educational opportunity to Negro pupils as did New York in the Malverne case.

Teaneck and Union Township are the only other New Jersey school districts making a change in their school assignment procedures to reduce racial imbalance in their schools in September 1963. On May 8, 1963, the Teaneck school board adopted modifications of its voluntary optional pupil transfer policy for the 1963-64 school year to discourage racial imbalance at the Bryant Elementary School without complete disregard of its neighborhood school policy.¹⁰² The plan may be called a restricted open enrollment plan since it permits only transfers to or from Bryant School from or to any of six specified elementary schools (the Washington Irving School, 33 percent Negro, is not included) within the class-size limit of 25 pupils, grades 1-3, and 30 pupils, grades 4-6. The transfer plan is further limited by the proviso that applications will be accepted or rejected on the basis of whether or not the granting of the request will advance the board's objective of preventing racial imbalance at Bryant.¹⁰³ This appears to mean that only Negro pupils may transfer out of Bryant and only white pupils may transfer to Bryant.

100. Newark (N.J.) Star-Ledger, Aug. 1, 1962, p. 11.

101. Spruill v. Board of Education, supra note 98 at 6.

102. Letter From Harvey B. Scribner, Superintendent, Teaneck Public Schools, to Parents of Children at Bryant Elementary School, May 9, 1963, and copy of resolution of Teaneck Board of Education attached thereto.

103. Ibid.

The superintendent of schools wrote that within 3 weeks he had received requests from two white families to transfer their children to Bryant and that seven Negro families had requested transfer of their children from Bryant to all white schools.¹⁰⁴

Union Township school board adopted a limited transfer plan effective in September 1963 which will permit pupils in the predominantly Negro elementary school to request transfer to any of the township's other elementary schools. Negro leaders have said they will appeal to the State commissioner because the plan requires Negroes to request transfer and does not shift any white children to the Negro school.¹⁰⁵

In May 1961 the NAACP protested to the Stamford, Conn., school board its proposed zoning for school assignment of pupils between Stamford High School and the new Rippowam High School. The NAACP claimed that only 12 Negroes would be included in the new Rippowam zone and more than 100 at the old, previously only, district high school. It also claimed that the poor as well as Negroes were to be excluded from Rippowam.¹⁰⁶

After several hearings the school board by a 5 to 4 vote adopted a Princeton type plan of high school assignment under which both schools would be 2-year institutions, one serving grades 9 and 10, and the other 11 and 12.¹⁰⁷ The plan is to take effect in September 1963.¹⁰⁸

At the same time, the 6th grade of Stamford's elementary schools will be shifted to the junior high, and the 9th grade from junior to senior high. This will make the school system a k-5, 6-8, 9-12 organization,¹⁰⁹ a form of school organization similar to that adopted by New Rochelle, described earlier.

The Norwalk, Conn., school board has announced a plan to produce racial balance at the Ely Elementary School by transferring about 230 Negro pupils to 6 other practically all-white schools. Transportation will be provided for pupils grades 1 to 6 living more than a mile and a half

104. Letter From Harvey B. Scribner to this Commission May 28, 1963.

105. N.Y. Times, June 21, 1963, p. 14.

106. Id., Feb. 3, 1962, p. 8.

107. Id., May 4, 1962, p. 29M.

108. Id., May 6, 1962, p. 72.

109. Ibid.

from their schools. After adoption of the plan, the NAACP picketed the board in protest of its failure to transfer any white pupils to Ely.¹¹⁰

After complaint by the Wisconsin NAACP to the State superintendent of schools that the high Negro population in Milwaukee's inner city had the effect of creating segregated schools, Milwaukee school officials announced the transfer of 29 classes of pupils (probably some 900 children) from 11 inner city schools to outlying schools in September 1963. The transfers were announced as temporary to relieve overcrowding.¹¹¹

STATE AND LOCAL ANTI-DISCRIMINATION POLICIES

Policy which can have far reaching effect on the organization and procedures of public school systems in the North and West is being made throughout the country.

New York Board of Regents led the way with its statement of January 1960 which declared that even adventitious segregation of Negro pupils in public schools may affect adversely their motivation to learn and is, therefore, a denial of equal educational opportunity under State law.¹¹² This declaration of the Board of Regents was followed up by a more precise statement by the New York Commissioner of Education in August 1961.¹¹³ These two documents officially committed New York State school authorities to action to bring about a maximum degree of racial and ethnic heterogeneity in its public schools.

Following up this policy in October 1961 the commissioner ordered local boards to take a racial census of elementary school populations in the State, the results of which were published in October 1962. At that time, the Commissioner made no recommendations for action. Buffalo, which the census showed was even more segregated proportionately than New York City, resented the lack of any recommendations.¹¹⁴

The appeal from Negro parents against the Malverne school board, discussed earlier, gave the commissioner an opportunity to spell out for New York State school boards ways in which purely adventitious segregation in the State's public schools can be remedied.

110. Id., July 20, 1963, p. 36M.

111. St. Louis Post Dispatch, July 16, 1963, p. 7C.

112. Washington Conference 67.

113. Ibid.

114. Buffalo Report, pp. 17-20.

The report of the commissioner's advisory committee on human relations and community tensions, June 17, 1963, entitled "Guiding Principles for Securing Racial Balance in Public Schools," issued after its detailed study and report on Malverne, 115 has value to school boards beyond the borders of New York. School boards in other States which want to solve similar problems will have to reckon with the high principles declared by New York because of their conformance with the goals of education in the United States and the necessities of preparing all American youth for participation in citizenship.

The New York commissioner made both the principles of the advisory committee statement and their implementation at Malverne official State policy by the directive issued to all local superintendents and presidents of local school boards on June 14, 1963. The commissioner's directive calls for the following information by September 1, 1963: 116

1. A statement indicating the situation in your district with regard to any problem of racial imbalance, regardless of the number of Negro children enrolled, or to the actual existence of or trend toward racial imbalance. At this time and for the purpose of this report, a racially imbalanced school is defined as one having 50 percent or more Negro pupils enrolled.
2. A statement of policy by your board of education with respect to the maintenance of racial balance in your schools.
3. In districts where racial imbalance exists, or is a problem, a report of progress made toward eliminating it.
4. In such districts, your plan for further action, including estimates of the additional cost, if any, and of the time required for carrying out your plan.

The commissioner's directive requires reports on about 60 schools from some 24 school districts, exclusive of New York city. 117

115. The report is reproduced in full in app. E.

116. Memorandum to All Chief Local School Administrators and Presidents of Boards of Education from James E. Allen, Jr., Commissioner of Education. (The Advisory Committee's Report, app. E, is quoted in this directive although dated 3 days later.)

117. Johnson, Report of Special Study of Elementary School Pupils (N.Y. State) table VII.

In the spring of 1962 California became the second State to take a position on the educational undesirability of predominant concentrations of minority group pupils in public schools. On June 14, 1962, the California State Board of Education adopted a policy statement affirming its agreement with the principle announced in the School Segregation Cases that racial segregation in the schools "even where physical and other tangible factors are equal, inevitably results in unlawful discrimination."¹¹⁸ The resolution adopted says further:¹¹⁹

We fully realize that there are many social and economic forces at play which tend to facilitate de facto racial segregation, over which we have no control, but in all areas under our control or subject to our influence, the policy of elimination of existing segregation and curbing any tendency toward its growth must be given serious and thoughtful consideration by all persons involved at all levels. Wherever and whenever feasible, preference shall be given to those programs which will tend toward conformity with the views herein expressed.

On October 18, 1962, the California State Board in implementation of its earlier policy adopted an amendment to the California Administrative Code concerning the establishment of school attendance areas in school districts.¹²⁰ The stated purpose of the amendment is to avoid "insofar as practicable, the establishment of attendance areas which in practical effect discriminate upon an ethnic basis against pupils or their families or which in practical effect tend to establish or maintain segregation on an

118. Statement quoted in full in Staff Report to Commission on Civil Rights, Civil Rights U.S.A., Public Schools North and West 1963, Oakland, app. D (hereinafter cited as Oakland Report).

119. Ibid.

120. Calif. Adm. Code, tit. 5, ch. 1, subch. 8, art. 5, effective Nov. 22, 1962. Amendments given in full in Oakland Report, app. E.

ethnic basis." Five factors to be considered by school boards are detailed.¹²¹

The Board of Education of San Francisco Unified School District by its adoption of the report and recommendations of its ad hoc committee to study ethnic factors in its public schools on April 16, 1963, established a general philosophy and policy governing the school district's consideration of racial factors.¹²² The committee, appointed by the board on September 18, 1962, had held a series of public meetings where groups and individuals appeared to express their views and staff members explained existing policies and practices, personally visited schools, reviewed a report by a consultant engaged to make a study of school attendance areas from the point of view of the racial distribution of teachers, over a period of 6 months. The subjects considered by the committee include: attendance zones; site selection; out-of-district transfer permits; public transportation for efficient building utilization; buildings, maintenance and modernization; class size and teacher-pupil ratio; human relations; teacher employment, assignment, and turnover;

121. The five factors are:

- (a) The ethnic composition of the residents in the immediate area of the school.
- (b) The ethnic composition of the residents in the territory peripheral to the immediate area of the school.
- (c) The effect on the ethnic composition of the student body of the school based upon alternate plans for establishing the attendance area.
- (d) The effect on the ethnic composition of the student body of adjacent schools based upon alternate plans for establishing an attendance area.
- (e) The effect on the ethnic composition of the student body of the school and of adjacent schools of the use of transportation presently necessary and provided either by a parent or the district.

122. S.F. Chronicle, Apr. 17, 1963, p. 14.

pupil transiency; and dropouts.¹²³ The section of the report on attendance areas fails to mention the California State policy discussed above. No change in attendance areas, the feeder system, or any administrative practice has been announced as a result of the adoption of this report. The suit against the school board brought by the NAACP asking for relief from racial imbalance in the schools is reported to be still pending.¹²⁴

Los Angeles City Board of Education also appointed an ad hoc committee of board members in 1962 to study the ques-
tion of equal educational opportunities within the district. Its report and recommendations were adopted by the board on May 20, 1963.¹²⁵

The Los Angeles policy statement makes four specific recommendations:¹²⁶ (1) to encourage actions and programs to avoid segregation or discrimination in such matters as school boundaries, student discipline and counseling, and teacher placement, transfer, and promotion; (2) to establish a position concerned with human relations and compensatory education in the superintendent's office; (3) to expand compensatory education programs; (4) to implement the rules of the State board adopted on October 18, 1962. Two points of difference from the San Francisco report stand out. In recommending its own continuance "until the job undertaken can be completed," the Los Angeles committee seems to recognize that further action will be necessary to realize the ideal it set as a goal--equality of educational opportunity for all ethnic groups. The Los Angeles committee also affirmatively recognized the new State policy regarding elimination of ethnic discrimination in school attendance areas.

The NAACP continues to press the Los Angeles school board. On June 6, 1963, the NAACP and a new group called the United Civil Rights Committee made three demands on the board:¹²⁷ (1) redistricting to effect significant changes in what they call "de facto segregation"; (2) transportation of Negro pupils in overcrowded schools on half-day session to underutilized predominantly Caucasian schools;

123. Report of the Ad Hoc Committee of the Board of Education to Study Ethnic Factors in the San Francisco Public Schools, dated Apr. 2, 1963.

124. Memorandum From June Shagaloff, supra note 63.

125. Letter From Jack P. Crowther, Superintendent of Los Angeles Public Schools, to this Commission June 12, 1963.

126. Report of Ad Hoc Committee on Equal Educational Opportunities to Los Angeles City Board of Education, May 2, 1963.

127. Los Angeles Times, June 25, 1963, p. 1.

(3) "a more proportionate distribution" of Negro teachers throughout the system and a revision of promotion procedure. On June 24, 1,000 demonstrators marched through the downtown area to the school board headquarters to protest board "stalling" on their "minimal demands."

Additional demands were placed before the board on July 16. These were:¹²⁸ (1) reduction in class size in schools in underprivileged areas; (2) remedial classes for all basic subjects at all grade levels in all schools in underprivileged areas; (3) use of audio-visual and library materials showing contributions to American life by minority groups; and (4) use of textbooks containing an objective account of Negro history and the Negro's role in modern society.

One of these demands was met quickly. On July 20 the board voted to add 137 teachers to 79 schools in minority residential districts. This action will reduce class size in grades one through three from 34.5 to 31.5 pupils. However, a motion to authorize funds for busing 10th grade Negro pupils from three minority-group schools to predominantly white schools, and vice versa, was voted down.¹²⁹

Negro leaders broke off further negotiation with the school board on July 23 and were reported to be preparing "lawsuits, demonstrations and boycotts aimed at ending school segregation." The board's action in providing more teachers for the minority-group schools was called "the

128. Id., July 16, 1963, p. 20-I. A statement of an associate superintendent that "national publishers of textbooks have glossed over many controversial issues and usually have slanted their books toward the Caucasian middle-income segment" is a frequent complaint or excuse of administrators.

Follett Publishing Co., of Chicago, has published three primary readers developed by the writers' committee of the Great Cities School Improvement Program of the Detroit Public Schools which relate more to urban than suburban life and depict every day events in the life of the city children, white and Negro.

In 1963 the Board of Education of the City of Detroit published a 52-page pamphlet entitled "The Struggle for Freedom and Rights, Basic Facts About the Negro in American History" to be used in connection with classroom texts in grade 8. The pamphlet has been warmly praised by Negro leaders in Detroit. (Michigan Courier, May 11, 1963.)

129. N.Y. Times, July 21, 1963, p. 44.

same old sop" by the education chairman of the combined NAACP-United Civil Rights Committee--"a confusion of remedial education with integration" in the schools.¹³⁰

Illinois has joined the ranks of New York, California, and New Jersey in taking a positive stand against racial imbalance, but by a different route. In New York and California, State boards initiated the action; in New Jersey, the State commissioner of education set State policy; in Illinois, the legislature acted.

On June 13, 1963, the Governor of Illinois signed HB 113 which requires all school boards in the State to review school attendance areas as soon as practicable and, from time to time, to change or revise existing school zones in a manner which will take into account and eliminate the prevalence of segregation in the public schools because of race, color, or nationality. The law further requires avoidance of such segregation "in erecting, purchasing or otherwise acquiring buildings for school purposes."¹³¹

This Illinois legislation is the first of its kind by such a body, so far as the Commission staff knows, to place an affirmative duty on each school to change existing school attendance boundaries to prevent segregation of children in public schools because of race. The sponsor of the bill, had introduced it at every biennial session since 1957. In an address to the Waukegan, Ill., school board on July 15, 1963, he explained that the purpose of the law was "to stop Northern boards of education from hiding behind the curtain of residential segregation in promoting segregation in public schools."¹³² He urged all Illinois school boards to make surveys of all school attendance areas in their districts as soon as possible, saying "if a survey is not made, what defense will the Board have to lawsuits alleging that the Board has not performed the duty required under the new law?"¹³³

In describing the effects of school segregation on Negro children in northern cities the representative said:¹³⁴

130. Id., July 24, 1963, p. 16C.

131. House Bill 113, Ill. 73rd Gen. Assembly 1963, signed by Governor, June 13, 1963.

132. Statement delivered Before the Board of Education, Waukegan, Ill., July 15, 1963, by Representative Charles F. Armstrong, 22d District, p. 1. (distributed by Chicago Urban League).

133. Id. at 2.

134. Id. at 3.

We are breeding a new crop of relief recipients. We are educating the children of the disadvantaged and culturally deprived as if they are expected to grow up to assume the same sub-standards in life as their parents. We are educating them to become drop-outs, delinquents and dependents.

An integrated school system helps both the white and the colored child. The white child will eventually have to make his way in the world made up of men and women of all races.

If we expect to solve such problems as relief and unemployment, we are going to have to begin at the stage of the colored child's first contact with the outside world--the time when he first enters public school--and begin to educate that child in such a manner as will indicate to him that he is a full-fledged citizen who will be able to and expected to carry out the duties and responsibilities of such a citizen when he grows to adulthood.

Some major cities of the North and West, after several years of pressure and protest by the NAACP, have agreed to consider the grievances submitted and to announce what action they will take in the near future. Among these, because of their size, the most important are Baltimore,¹³⁵ Philadelphia,¹³⁶ and St. Louis.¹³⁷

The close of the 1962-63 school year brought intense activity into the school board rooms throughout the North and West. This report has covered only a few of the pending disputes and with a broad brush. It is hoped that it will give readers a feeling of the rush of history in the making, and of the urgency of the demands of the Nation's Negro citizens for equal educational opportunity for their children during their childhood.

135. (Washington, D.C.) Evening Star, June 30, 1963, p. 2C.

136. Press release, Mrs. John F. Lewis, vice president, Board of Public Education, June 25, 1963.

137. N.Y. Times, June 15, 1963, p. 47.

6. Programs to Improve Educational Opportunity of Minority Group Children

The condition of the slum or gray area school, and the underlying causes of this condition, have re-emerged as an important facet of America's priority social and educational problem--the integration of our low status minorities into the cultural and economic mainstream. The school that was the last has become the first.¹

—Henry Saltzman, Coordinator Great Cities
Gray Area Projects, Ford Foundation

The need for public schools to deal with the educational problems of the "culturally deprived"² children of low-income parents, has come to the fore with the drive to desegregate schools. The fact that most such children score lower in standard scholastic achievement tests is well known. Again St. Louis will be used as a specific example.

Although 8th grade pupils in the highest achieving group of predominantly Negro schools in St. Louis showed great improvement between 1957 and 1961 in test scores for track assignment to high school, when compared with the highest achieving group of predominantly white schools, a great disparity appears.³ The improvement in the predominantly Negro district undoubtedly reflects the strenuous efforts of the administration during that period to raise the achievement level of Negro pupils in elementary schools.⁴

1. From speech delivered to Detroit Public School Teachers Oct. 1962, reprinted in Detroit Great Cities Project, 2 Footnotes No. 2, Oct.-Nov. 1962. p. 5.
2. Sociologists seem to disagree as to the use of the term "culturally deprived." Frank Riessman, in his recent book The Culturally Deprived Child (1962) objects to the term (although he uses it himself) on the ground that lower socioeconomic groups have a culture of their own. "The term 'culturally deprived' refers to those aspects of middle class culture--such as education, books, formal language--from which these groups have not benefited." (p. 3).
3. See app. F for percent of pupils eligible to enter high school, by tracks, for highest scoring predominantly Negro and predominantly white districts, 1957 and 1961.
4. The program in another almost all-Negro district in St. Louis is described in North and West Report 303-09 and Williamsburg Conference 213-22. In fact that particular district (Banneker) does not score quite as high as the one used in app. F (Turner).

Nevertheless, the percentage of pupils from the white elementary schools qualifying for track 1 in the fall of 1961 was twice the percentage from the Negro schools. Conversely, the ratio assigned to track 3 was three times greater from the Negro schools, and proportionately five times as many Negroes as whites qualify only for terminal education.

There is no reason to believe that the achievement of Negro pupils is abnormally low in St. Louis; it could be abnormally high. St. Louis is used as an example solely because quantitative official data are available from that city to compare a large number of Negro and white pupils.

Oak Park, Mich., a suburb of Detroit, provides a more extreme example in that all of its Negro pupils are from the lowest income group (it is estimated that about 70 percent of the Negro families living in that district are on relief)⁵ and all the white pupils are middle and upper middle class. Eighty percent of the white graduates from the town's public high school go to college. (St. Louis would be expected to have middle class as well as low income Negroes, and lower class as well as middle class whites.)

In achievement tests given 4th grade pupils in October 1962, the system average in Oak Park was in the top 13 percentile nationally, the Negro children within its school district were in the bottom 5 percentile nationally. In all tests the average scores were 6 months to almost a year above grade level by the Iowa tests of basic skills. The Negro children scored 6 months to a year below grade level.⁶

The number of culturally deprived children in the 14 large cities of the North and West⁷ has increased from approximately 1 out of every 10 in 1950, to 1 out of 3 in 1960. It is estimated that by 1970 there may be one culturally deprived child for every two children enrolled in the schools of these cities. Since the population of these 14 cities alone represents one-sixth of the population of the entire Nation the urgency of finding solutions to their educational problems is self-evident.⁸

5. Detroit News, Feb. 3, 1963, p. 1.

6. Oak Park School District, The Status of Racial Integration in the Oak Park School District, Jan. 1963, p. 4.

7. Listed in app. B, table 2. Table shows nonwhite percentage of total population of these cities in 1950 and 1960.

8. Estimates from The Culturally Deprived Child, *supra* note 2.

The drive to desegregate schools stems from the premise that schools segregated for any reason are inherently inferior as compared with nonsegregated schools. Even if this claim is conceded, in the large cities of the North and West two facts limit the possibilities of achieving a nonsegregated education for more than a fraction of minority group pupils in the public school enrollment.

The first fact that limits the desegregation of many of the schools now predominantly nonwhite is the increasing proportion of nonwhites in the schools. In many large cities, the proportion exceeds or is approaching 50 percent.⁹ The second limiting fact is the size of the monolithic residential concentrations of nonwhites within the cities.

In particular areas, rezoning or an adaptation of the Princeton plan would change the racial composition of elementary schools on the periphery of the nonwhite residential areas. At the secondary level, changes in districting or feeder patterns would move some nonwhite pupils into predominantly white schools. But the racial composition of the schools in the center of Harlem, in the inner part of the central district of Detroit, in the middle of Chicago's South Side, or in the core of St. Louis' central and West Side districts, cannot be changed by any of these methods.

Open enrollment plans, particularly when transportation is provided by the school system, would help a few more pupils escape the all-Negro school. In spite of all efforts to achieve racially heterogeneous schools, it seems inevitable that many, particularly in large cities, will retain their present uniracial character until discrimination in housing and employment are things of the past--indeed, until by appropriate education and training more minority group members can qualify for better jobs and afford better housing.

The enormous and continuing increase in the proportion of Negroes in the public schools of the big cities makes any plan adopted of temporary utility. A more permanent solution might be devised if city school districts could be enlarged to include the suburbs that surround them. The New York State Commissioner of Education suggested at a press interview in June 1963, that such action would give the cities added flexibility to cope with problems of racial imbalance.¹⁰ The same questions in constitutional terms are raised in another report to this Commission. After commenting on the higher quality of education in suburban, as compared with city, schools, the report asks whether the 14th amendment permits "a State to surrender educational policy to the municipalities if the inevitable

9. See app. C. table 1.

10. N.Y. Times, June 29, 1963, p. 10.

result is discrimination which is more obvious than any existing within any individual school system."¹¹ This question has yet to be raised in other than an academic forum.

It is for these practical reasons that the Commission has long been interested in programs to make education for minority group children more effective in the segregated schools of the North and West, as well as under nonsegregated conditions. The education of today's children will not wait for tomorrow's answers.

Some of the problems of closing the educational gap between white pupils as a group and Negro and other minority group children as a group, and specific programs to meet these problems, are discussed in the Commission's 1961 Education Report. Others are described in the report on the Commission's 1962 Education Conference.

SPECIAL PROGRAMS IN THE SCHOOLS

The earliest widescale efforts, the Higher Horizons program in the New York City school system and the Great City Gray Area projects financed with matching grants from Ford Foundation in a number of large cities,¹² are chiefly concerned with remedial instruction, particularly in the language arts, developing a rapport between the parents and the school, guidance and counseling, and providing culturally enriching experience. These are ongoing programs, the evaluation of which will provide guidelines for the future.

STATE FINANCIAL AID

Two States, New York and California, have adopted legislation providing State financial support for local school districts initiating and carrying out programs for culturally deprived children in their schools. Upon recommendation of the New York Board of Regents, New York enacted legislation in 1961:¹³

. . . providing for an appropriation of \$200,000 a year for each of 5 years to be distributed as matching special grants to school districts.
Sixteen school district programs were approved

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11. North and West Report 184.
 12. 1961 Education Report 129-32.
 13. Ewald B. Nyquist, Deputy Commissioner of Education for the State of New York, Washington Conference 69.

to intensify the educational process for economically disadvantaged students. . . . Approximately 6,700 students, culturally deprived, with low socioeconomic backgrounds, were involved in these special projects the first year.

In the spring of 1963, California became the second State to sponsor compensatory education programs developed by school districts to aid culturally disadvantaged children. The maximum rate of reimbursement is fixed in the law at \$24 per culturally disadvantaged minor fully participating in a program for the entire school year.¹⁴ The legislature has appropriated \$235,000 for the first year of this program.¹⁵

PRIVATELY SPONSORED PROGRAMS

Norfolk, Va.--Since 1960 a voluntary group in Norfolk, calling itself the Norfolk Council for the Improvement of Education, composed of middle-class Negro and white citizens, has developed a three-faceted program to raise the educational performance of Negro pupils. The program is carried out by volunteers except for a program sponsored and carried out within the Negro junior high school (Jacox) by the faculty.¹⁶ The junior high program adopted the approach of Higher Horizons. With a negligible increase in budget to support the project, the staff used 301 entering 7th grade pupils as the pilot group. At the end of one year the group, which tested at 5th grade level in mathematics and language arts at the beginning of the year, had advanced over a year in both subject areas.

Another project sponsored by the Norfolk Council was primarily concerned with helping Negro students who had recently entered formerly white schools, and prospective candidates as students in prestige colleges outside of the South by individual tutoring and supervised home study. This part of the program is very similar to that sponsored by Home Study Program, Inc., for the Ken Gar children in Maryland.¹⁷

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14. McAteer, "A Law for Compensatory Education," 1 Integrated Education 48 (June 1963).
 15. Letter From Howard H. Jewel, Asst. Atty. Gen. Calif. to this Commission, July 23, 1963.
 16. Brazziel, Civic Group Experiments in Compensatory Development of Culturally Disadvantaged Children. The Program in Jacox Junior High School is described in Brazziel and Gordon, "Replications of Aspects of the Higher Horizons Program in a Southern Junior High School," 32 J. Negro Ed. 107 (spring 1963).
 17. See 1961 Education Report 120-21 and Williamsburg Conference 171-84.

The third Norfolk Council project is a preschool summer program for 3- to 5-year olds to prepare them to enter school.¹⁸

A typical week will include work with readiness books, games, vocabulary drills, lunches, practice for the ever present program, sustained conversations with adults, nature study sessions at the local library branch, a trip to the park, zoo, museum or to one of the arts festivals which are prominent in summer in Tidewater area (Norfolk, Ocean View, Virginia Beach). One complete day a week is given over to music, art and drama and members of the local arts colony work avidly with the children at this time.¹⁹

The results of the program are impressive:²⁰

The five and six year old children score at the national norm on readiness tests (Metropolitan Battery) after a six weeks session in this program. As important, they and their parents seem to value cleanliness, order, beauty and knowledge more than previously was the case. And most importantly, their verbal skills have increased, their personalities are less reticent, adults and adult learning are not considered hostile and white adults are not considered ogres. All of these things deal heavy blows to Negro children from poor families in the formative years. The cost for six weeks of such a program is approximately \$30.00 per child.

New Orleans, La.--A similar program was organized in the summer of 1962 by the president of SOS (Save Our Schools) to prepare Negro youngsters to enter first grade in desegregated schools the following fall. Eighty-six Negro children met in five groups (four of which also included from two to five white children) 3 times a week for 4 weeks. Each group was under the supervision of a white and Negro adult volunteer.

In addition to field trips to recently desegregated public facilities the Negro children had never visited, the children were given help in speaking clearly, listening attentively, following directions, and developing other habits and skills needed for success in schools.

18. The author of the report on Norfolk conducted a successful project having the same objective in Millington, Tenn., in 1960-61. See Brazziel and Terrell, "For First-Graders: A Good Start in School," 62 Elem. School J. 352 (1962), and Brazziel and Terrell, "An Experiment in the Development of Reading Readiness in a Culturally Disadvantaged Group of First Grade Children," 31 J. Negro Ed. 4 (winter 1962).

19. Brazziel, op. cit. supra note 16 at 7.

20. Ibid.

The New Orleans program seems to have been rewarding to both the children and adult volunteers. One volunteer is reported to have said at the end of the summer:²¹

It has been an enlightening experience for me because I could actually see the children grow culturally. What amazes me is how far some came in such a short time.

Other Volunteer Programs.—In the summer of 1962, with 175 college students as volunteers, the Northern Student Movement sponsored a tutoring program for several hundred teenagers in Philadelphia, about 75 percent of them Negroes.²² In the summer of 1963, 2,500 of this organization's members were tutoring high school pupils in Baltimore, Boston, Chicago, Detroit, Hartford, New York, Philadelphia, and Washington, D.C.²³ A similar tutoring project was carried out in Trenton in the spring and summer of 1963 by about 200 student volunteers from New Jersey colleges.²⁴

Seventy-one college students from Howard University, Trinity College, and the University of Maryland worked as volunteers during the school year 1962-63 with youngsters at the LaSalle Elementary School in Washington, D.C., providing what their teachers could not give them--personal attention.²⁵

Negro children of Prince Edward County, Va., who have had no formal schooling for 4 years, had another "crash" remedial program in the summer of 1963. Seventeen New York City school teachers and 15 Queens College students served as volunteers.²⁶ The college students originated the program and raised about \$7,200 to finance it.

The Chicago Boys Club sponsored an 18-week course for 38 Negro school dropouts to help them qualify for jobs by improvement in reading, writing, speaking, and arithmetic skills.²⁷

21. Sand, A Summer Pre-School Preparation Program for Negro Children of New Orleans, Nov. 1962, p. 4.

22. N.Y. Times, Aug. 5, 1962, p. 69.

23. Id., July 14, 1963, p. 60A.

24. Id., Apr. 28, 1963, p. 48

25. Washington (D.C.) Post, June 4, 1963, p. 2B.

26. Richmond (Va.) News Leader, July 16, 1963, p. 1.

27. N.Y. Times, July 7, 1963, p. 45.

Religious and Negro leaders in Boston who held workshops for Negro pupils boycotting schools in the spring of 1963 have announced the operation of "Freedom Schools" on a permanent, year-round basis. Like the 1-day workshops, the subjects taught include Negro history, the freedom movement, and civic responsibility. The program will be presented at three locations in the city, twice a week for adults and once a week for children. It is designed "to supplement public education and to protest existing inadequacies in the system as they pertain to presenting a true picture of our society."²⁸ There appears to be no dearth of qualified volunteers willing to give of their time to help solve these problems.

SCHOOL READINESS PROGRAMS

Providing the preschool deprived child with the experiences and background that middle class family life gives its children, in order that he may enter school on an equal basis, seems to be a relatively new idea. The small projects in Millington, Tenn., Norfolk, Va., and New Orleans, La., have been described briefly.²⁹ All of these were privately sponsored projects. Most local school systems would have difficulty financing such projects because, in general, State financial aid is for schooling grades 1 through 12. Where kindergartens exist, they usually are financed with local tax money. Reaching below the kindergarten level would pose insoluble problems of finance for most school systems. After the Board of Supervisors refused funds to support such a program, in the fall of 1962, the Baltimore public school system initiated a pilot project in two schools with funds granted by Ford Foundation. Called the "Early Admissions Program," largely manned by citizen volunteers, the program included about 120 preschool children in 1962-63. In 1963-64, the program will be expanded to two more schools.³⁰ A similar program, also financed by a Ford Foundation grant, for 3-1/2 year-olds in the Centennial School District of Bucks County, Pa., has been announced. It is the first of eight studies to be made by the Pennsylvania State Council for Human Services.³¹

A demonstration project for preschool children is being conducted in New York City schools by the Institute of Developmental Studies, an interdisciplinary unit of the

28. Id., July 18, 1963, p. 10.

29. Text at notes 16-21 supra.

30. Letter From Catherine Brunner, Project Coordinator, Early School Admissions Project, Baltimore Public Schools, to Commission, Nov. 5, 1963.

31. N.Y. Times, July 21, 1963, p. 21.

Department of Psychiatry of New York Medical College. This is only one of the Institute's programs to delineate the effects of social deprivation on the school experiences and general learning abilities of children. It is the Institute's belief that "if methods of identifying and alleviating such deprivation can be developed, then the cycle of . . . retardation carried from one generation to the next may be interrupted."³²

The program, called Early Childhood Enrichment, works with preschool and kindergarten children to prevent the kinds of learning and social disabilities which develop before age 6 in children from culturally deprived backgrounds.³³ Closely allied is a program to work with the parents of these children to stimulate their interest in an understanding of the school experience of the children,³⁴ and an in-service course for elementary school teachers.³⁵

TEACHER TRAINING

Teaching the Culturally Deprived Child.—There is a quickening interest among educators in the problems of teaching the minority group child successfully. Particularly encouraging are the reports from the teachers colleges trying to help new teachers to accept, understand, and help minority group children to acquire the skills they need for today's world.

Two years ago, the emphasis in programs to meet the educational problems of the culturally disadvantaged minority group child³⁶ seemed to be centered primarily on the child, his handicaps, and what had to be done to and about him to make him learn. The present emphasis seems to be on training and helping teachers to meet the needs of the child he or she faces in the classroom.

32. Institute for Developmental Studies, A Brief Overview of Research and Service Program 1 (Apr. 1962).

33. Id. at 20-22. The entire program, procedures and techniques are given in detail in Deutsch, A Program to Demonstrate the Effectiveness of a "Therapeutic Curriculum" for the Socially Deprived Pre-School Child (Jan. 1962).

34. A Program to Demonstrate, id. at 13-15.

35. Id. at 15-16.

36. Riessman, op. cit. supra note 2, at 4-5.

The author of The Culturally Deprived Child gives a partial list of the conventional reasons why underprivileged children do poorly in school:³⁷

1. The lack of an "educational tradition" in the home, few books, etc.
2. Insufficient language and reading skills.
3. Inadequate motivation to pursue a long-range educational career, and poor estimate of self.
4. Antagonism toward the school, the teacher.
5. Poor health, improper diet, frequent moving, and noisy, TV-ridden homes.

The author suggests that the reasons given place the fault wholly outside of the school, and that attention should be focused on matters with which the school can deal. He then reformulates some of the factors deterring the deprived child from learning:³⁸

1. The discrimination, frequently unintentional, seen in the classroom, Parent-Teacher Association, guidance office, psychological testing program, etc., which alienates John and his family.
2. Johnny's ambivalence toward education—not simply rejection of it—his lack of school know-how, test-taking skills, information concerning college, and his anti-intellectualism.
3. The culture of the school which overlooks and underestimates his particular skills and mode of intellectual functioning that arise out of his culture and way of life.
4. The deficits in Johnny's background which necessitate special transitional techniques to bring him into the academic mainstream. These do not require a "soft" approach, a lowering of standards, a capitulation to his deficiencies.

Such an approach requires teachers and other school personnel to recognize their own bias as middle class people against the lower class child, to learn the strengths and weaknesses of the subculture which is his heritage and to adapt teaching techniques so that they are assets rather

37. Ibid.

38. Id. at 5-6.

than liabilities, and in all ways to bridge the gap from the culture of the home to the culture of the schools. Most teachers do not have these skills; they were trained to teach the middle class child oriented to education. Some teacher training colleges, however, are developing programs to train teachers along these lines.

New York again was a pioneer. The Hunter College program to train teachers to teach in the "hard to staff" junior high schools of New York was outlined at the Commission's Washington Education Conference in 1962.³⁹ A brief review of a similar program at Queens College appears in a recent issue of the Journal of Negro Education.⁴⁰

Many big city school systems are trying to help their teaching staffs to gain the understanding they need to be successful teachers in the "different schools" by inservice training programs.

The educators' shift in emphasis from the inadequacies of the child who does not learn in the usual school program to the teacher who cannot teach the child who does not fit into the middle class mold holds promise.

Human Relations in the Classroom.—Another inadequacy of our schools, which is also getting increased attention from educators, is both a result of and a spur to the desegregation drive. A school that teaches only subject matter has not fulfilled the second goal of education--to prepare youth to function in a multiracial society as participating citizens.

An eloquent proponent⁴¹ of the proposition that schools should be representative of the entire community so that children, by acquaintance in school with children of backgrounds different from their own, learn the skills of living in today's world, warns of the dangers of the present emphasis on scholarship alone:⁴²

The German fiasco should have taught us that scholarship alone was not enough to solve man's pressing problems. They produced in pre-Hitler Germany the highest scholarship the world then knew. Without a balance between scholarship and citizenship, knowledge only served to enslave and debase mankind.

39. Washington Conference 60-62.

40. Kornberg, "Slum Children and New Teachers," 32 J. Negro Ed. 74 (winter 1963).

41. Dr. Dan Dodson, Director, Center for Human Relations and Community Studies, New York University. Address to N.J. State Association of Boards of Education, Atlantic City, N.J., Jan. 1963.

42. Ibid.

The North Central Association of Colleges and Secondary Schools conducted a survey in 1962 among 2,018 teachers in 540 public schools in its association to discover what human relations problems high school teachers were likely to meet in their second year of teaching, and how their training prepared them to meet these problems. The findings of the study are an indictment of our teacher training programs or the intelligence of middle class Americans, or both.

The survey disclosed negative attitudes toward Negroes, American Indians, Jews, Catholics, and other minorities and revealed deficiencies in information and skills required to handle both individual and group relations situations. Yet one-third of the respondents believed themselves fully informed on human relations, and reported very little difficulty in dealing with human relations problems. More than half never experienced any problems owing to a difference in socioeconomic levels between teacher and parent, but 98 percent reported having children in their classrooms from a lower group.⁴³

The conclusions of the study are pertinent to a consideration of what can or should be done to equalize educational opportunity in the public schools:⁴⁴

Anecdotes related by respondents reveal negative attitudes toward non-academic pupils, Negroes, Jews, Mexican-American Indians, in some cases Catholics, and very often lower class people. At times these attitudes seem to be attributable to lack of previous contact with people different from themselves, to devotion to middle class values and behavior patterns, and to possible feeling of intellectual superiority.

The study confirms the findings reported in "Teacher Education for Human Relations in the Classroom" concerning the lack of pre-service education in human relations. From what the respondents say, it is clear that the methods used by college professors and the content of many courses contribute little to the preparation of graduates for teaching the diversity of people found in the public schools.

In the wake of increasing litigation involving racial issues, sit-in demonstrations, newspaper headlines of disorder, tension, and near-rioting in Mississippi, Alabama, the Eastern Shore of Maryland, and elsewhere, a Washington,

43. North Central Association, Human Relations in the Classroom 18. A study of problems and situations reported by 1,075 second-year secondary school teachers.

44. Id. at 20.

D.C., news reporter surveyed eight major cities to find out how the schools were teaching race relations. In most, it was found that individual teachers decide how to handle the topic in the classroom. In many cases the survey showed that students are ahead of their teachers, the schools, and textbooks in facing up to problems of race relations. Students often must bring up the subject themselves, if they are to discuss it in the classroom. How the discussion is handled depends:⁴⁵

. . . largely on the intelligence, good will, objectivity; and skill of the teacher. Many teachers are unprepared to guide a thoughtful exploration of racial issues. They themselves haven't studied intergroup relations, the cultural contributions of minority groups, the place of the Negro in American history or the fundamentals of constitutional law.

A few specific college summer school programs dealing with this deficiency in teacher training have been reported.⁴⁶ Bank Street College of Education, an independent institution in New York City for graduate study for teachers, operated a summer institute in 1962 for educators, teachers and administrators of desegregating schools of the South. A similar program for teachers from the North and West was held in the summer of 1963.

Operating on a seed-money principle in 1962, Bank Street had four criteria for selecting the communities from which they would accept applicants meeting the schools' academic requirements for admission. These were:⁴⁷

1. Evidence that a community is grappling with its problems of school integration.
2. Some degree of positive support for integration within the school community, both administratively and socially.
3. Enough community and official receptivity to offer some prospect for constructive followup of the institute.

45. Washington (D.C.) Post, June 16, 1963, sec. E, p. 1. The cities surveyed were: Houston, Los Angeles, Milwaukee, Norfolk, Philadelphia, San Francisco, St. Louis, Washington, D.C. and suburbs.

46. E.g., Boston University, University of California.

47. Bank Street College of Education, Summer Institute for Educators in Integrating Schools 1 (fall 1962).

4. A university accessible to the school community, to make possible future institutes, to be held locally.

Based on these criteria, Charlotte, N.C., Louisville, Ky., St. Louis, Mo., and El Paso, Tex., were selected. Fifteen Negro and 15 white teachers were accepted. The experience white teachers had living and working for the first time with their Negro counterparts seems to have been of itself a full course in race relations. Among the benefits of the program, the report states that the teachers went back to their communities with:⁴⁸

. . . greater ability to gear the curriculum to a class with children from disparate backgrounds, and to use the difference for enrichment of the program. . . . In the case of every individual, however, the most important effect upon children and community can be safely predicted to be changed attitude toward the other race and toward school curriculum.

Similar institutes are expected to be organized in the localities from which the teachers came.⁴⁹ The 1963 summer institute included 58 teachers from schools in Boston, New York, Cleveland, and Washington, D.C. John H. Niemeyer, president of Bank Street College, outlined the purpose of the institute at its opening meeting. The practical as well as the theoretical aspects of advancing from desegregation to integration will be explored, he said. "The big question is shall we get the children early and prepare them for integration, or shall we get the schools ready for the children."⁵⁰

The notion that teachers and administrators in predominantly white schools have no need to be concerned with preparing their pupils for a multiracial society is vigorously protested by many:⁵¹

They /the white teachers in white schools/ forget that relatively few of the white pupils who are living in such exclusive communities will remain there, that many will move to places in which racially different people do live. . . . Moreover, they forget the danger of teaching about ideal democracy without presenting the realities of our national life, in which the democratic principles and values are not yet fully implemented.

48. Id. at 7, 9.

49. Id. at 9.

50. N.Y. Times, June 30, 1963, p. 45.

51. Noar, Teaching and Learning the Democratic Way 138-39 (1963).

Appendices

Appendix A

TABLE 1.--STATUS OF DESEGREGATION
OF SCHOOL DISTRICTS, 1962-63¹

	Total school districts 1962-63	Total with white & Negro pupils 1962-63	School districts desegregated	School districts segregated
Alabama	114	114	0	114
Arkansas	416	228	12	216
Delaware	87	87	87	0
District of Columbia	1	1	1	0
Florida	67	67	10	57
Georgia	198	182	1	181
Kentucky ²	205	166	149	17
Louisiana	67	67	1	66
Maryland	24	23	23	0
Mississippi	150	150	0	150
Missouri	1607	213 ³	203 ³	10
N. Carolina	173	173	18	155
Oklahoma	1180	241	196	45
S. Carolina	108	108	0	108
Tennessee	154	143	26	117
Texas	1461	919	177	742
Virginia	130	128	32	96
W. Virginia	55	43	43	0
Total	6197	3053	979	2074
Percent			32.1	67.9

1. Southern Education Reporting Service, Statistical Summary, Nov. 1962, revised especially for the U.S. Commission on Civil Rights to Aug. 1, 1963.
2. Figures for Kentucky from State Department of Education, Integration in the Public Schools of Kentucky (1962), lists for Sept. 1963, 169 school districts, 136 of which are biracial school districts and a Negro school population of 54,894.
3. Estimated.

(For Status of Segregation - Desegregation, in the 17 States and District of Columbia for the First Semester of the 1963-64 School Year: See Addenda, Table 2, p. 163.)

TABLE 2.—STATUS OF SEGREGATION-DESEGREGATION,
1962-63, IN 17 STATES AND DISTRICT OF COLUMBIA¹

	Enrollment		Negroes enrolled in desegregated schools		Percent of Negro pupils en- rolled in desegregated schools
	Total	White	Negro		
Alabama	807,287 ²	527,075 ²	280,212 ²	0	0.0
Arkansas	448,616	331,552	117,064	247	0.21
Delaware	90,761	73,769	16,992	9,498	55.9
District of Columbia	132,900	22,141	110,759	87,749	79.2
Florida	1,183,714	956,423	227,291	1,551	0.682
Georgia	987,385	662,244	325,141	44	0.014
Kentucky	655,000	610,000 ³	45,000 ³	24,346	54.1
Louisiana	759,990	458,270 ³	301,720 ³	107	0.035
Maryland	667,528	514,313 ⁴	153,215 ⁴	69,147	45.1
Mississippi	590,000	300,000 ³	290,000 ³	0	0.0
Missouri	857,620	767,620 ³	90,000 ³	35,000 ³	38.9
N. Carolina	1,141,641	800,289	341,352	879	0.258
Oklahoma	560,000	515,200 ³	44,800 ³	10,557 ³	23.6
S. Carolina	630,628	365,340 ³	265,288 ³	0	0.0
Tennessee	829,686	670,387 ³	159,299 ³	1,810	1.14
Texas	2,255,593	1,951,613 ³	303,980 ³	7,000 ³	2.3
Virginia	933,830	704,725 ³	229,105 ³	1,230 ³	0.537
W. Virginia	438,128	412,878 ³	25,250 ³	15,500 ³	61.4
Total	13,970,307	10,643,839	3,326,468	264,655	8.0

1. Southern Education Reporting Service, Statistical Summary, Nov. 1962, revised especially for the U.S. Commission on Civil Rights to Aug. 1, 1963.
2. 1961-62.
3. Estimated.
4. Official total; racial breakdown estimated.

(For Status of Desegregation of School Districts for the First Semester of the 1963-64 School Year: See Addenda, Table 1, p. 162.)

Appendix B

TABLE 1.—ENROLLMENT OF PERSONS AGED 5
THROUGH 18 IN PUBLIC SCHOOLS IN 1960

I. In the United States

A. Whites	29,880,220 ¹	85.9
B. Nonwhites	4,900,672 ¹	14.1
Total	34,780,892	

II. In the South

A. Whites	9,456,563 ²	75.8
B. Nonwhites	3,015,649 ²	24.2
Total	12,472,212	

III. In the North and West

A. Whites	20,423,657	91.6
B. Nonwhites	1,885,023	8.4
Total	22,308,680	

1. 1960 Census, PC(1) 1D, table 165.

2. 1960 Census, PC(1) 2D, 4D, 9D, 10D, 11D, 12D, 19D, 20D, 22D, 26D, 27D, 35D, 38D, 42D, 44D, 45D, 48D, and 50D, table 101.

TABLE 2.—14 CITIES OF NORTH AND WEST

Racial Composition of Population

Listed in order proportion nonwhite

	<u>Nonwhite Population</u>		<u>Percent increase</u>
	<u>Percent of total</u> <u>1960</u>	<u>1950</u>	
Washington, D.C.	54.8	35.4	47.4
Baltimore	35.0	23.8	44.8
Detroit	29.2	15.1	60.4
Cleveland	28.9	16.3	64.2
St. Louis	28.8	18.0	39.8
Philadelphia	26.7	18.3	41.2
Chicago	23.6	14.1	64.4
New York ¹	22.5	12.0	63.1
Pittsburgh	16.8	12.3	22.6

1. New York City -- Nonwhite Population and Persons Born in Puerto Rico.

<u>Year</u>	<u>Nonwhite</u>	<u>Puerto Rican</u>	<u>Total</u>
1960	1,141,322	429,710	1,571,032
1950	<u>775,516</u>	<u>187,420</u>	<u>962,936</u>
Increase	365,806	242,290	608,096
Percent increase	47	129	63

1960 Census, PC(1) 34B, table 20; and Commonwealth of Puerto Rico, Facts and Figures 17 (1963).

TABLE 2.—14 CITIES OF NORTH AND WEST--Continued

	<u>Nonwhite Population</u>		<u>Percent increase</u>
	<u>Percent of total</u> <u>1960</u>	<u>1950</u>	
Los Angeles ²	16.8	10.7	71.8
Buffalo	13.3	6.3	94.6
San Francisco ²	18.4	10.5	67.0
Boston	9.8	5.3	60.2
Milwaukee	8.9	3.6	189.0

2. Los Angeles — Nonwhite Population.

<u>Year</u>	<u>Total</u>	<u>Negro</u>	<u>Other</u>
1960	417,207	334,916	82,291
1950	<u>211,330</u>	<u>170,880</u>	<u>40,450</u>
Increase	205,877	164,036	41,841
Percent increase	97	96	103

San Francisco — Nonwhite Population.

<u>Year</u>	<u>Total</u>	<u>Negro</u>	<u>Other</u>
1960	135,913	74,383	61,530
1950	<u>81,525</u>	<u>43,460</u>	<u>38,065</u>
Increase	54,388	30,923	23,465
Percent increase	67	71	62

1960 Census PC(1) 6B, table 21; and 1950 Census, vol. II, Calif., table 53.

Appendix C

TABLE 1.—PERCENTAGE NONWHITE
PUPILS IN PUBLIC SCHOOLS IN SELECTED CITIES

Listed in order of percent in total population

<u>City</u>	<u>Total population¹</u>	<u>Public elementary² school population</u>	<u>Population all schools</u>
Washington, D.C.	54.8	86.0	83.0
Gary	38.4	not available	53.5
Baltimore	35.0	58.2	53.2
Newark	34.4	58.3	54.9
Detroit	29.2	not available	46.2
St. Louis	28.8	58.5	55.4
Philadelphia	26.7	53.0	not available
Montclair	24.1	32.2	not available
Camden	23.8	49.3	44.6
Chicago	23.6	46.0	not available
Orange	23.3	48.9	not available
Oakland	22.7 ³	47.3	43.5 ⁴
Plainfield	21.9	37.0	31.8
New York City	22.5 ⁵	44.8	not available
Pittsburgh	16.8	34.8	32.4
Buffalo	13.7	33.7	not available

1. 1960 Census, PC(1), table 20 of series B of the State in which cities are located and the District of Columbia.

Footnotes—Continued

2. Unless otherwise specified all statistics for school enrollment are derived from the following sources:

Baltimore: "Seven Years of Desegregation in the Baltimore Public Schools: A Report," p. 12. Data therein given was compiled from "Net Roll by Race," Oct. 31, 1961, published by Department of Education, Bureau of Research, City of Baltimore.

Buffalo: Computations made from University of the State of New York, State Department of Education, School Population Questionnaire, Buffalo, Apr. 1962.

Camden: Public School Enrollments, as of Jan. 20, 1963, racial census taken by Department of Education, City of Camden, for U.S. Commission on Civil Rights.

Chicago: Estimate by Chicago Urban League as of Sept. 1961. See North and West Report 185.

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Footnotes—Continued

3. Negro population only to correspond with school data. The Oakland nonwhite population is 26.3%. Orientals comprise 3.6% of the total population. 1960 Census PC(1) 6B, table 20, and Staff Report to the Commission on Civil Rights, Civil Rights U.S.A., Cities of the North and West, Oakland 1963 (hereinafter cited as Oakland Report).
4. Estimated as 3.8% less than elementary alone. This is the average difference for the seven school systems for which both figures are available.
5. Nonwhite and Puerto Rican. Puerto Ricans account for 7.9% of total population. 1960 Census, PC(1) 34B, table 20, and Commonwealth of Puerto Rico, Facts and Figures 17 (1963).

Puerto Ricans are included with nonwhites because official figures on school enrollment combine Negroes and Puerto Ricans as two equally disadvantaged minority groups.

TABLE 2.—RACIAL COMPOSITION OF PUBLIC ELEMENTARY SCHOOLS IN SELECTED CITIES¹

<u>City</u>	<u>Total No. of schools</u>	<u>No. enrolling 90% or more white pupils</u>	<u>No. enrolling 90% or more Negro pupils</u>	<u>No. enrolling more than 10% each</u>
Baltimore	146	49 (33.5%)	66 (45.2%)	31 (21.3%)
Buffalo	80	51 (63.7%)	14 (17.5%)	15 (18.8%)
Camden	26	7 (26.9%)	5 (19.2%)	14 (53.9%)
Chicago	400	260 (65%)	80-100 (20-25%)	40 (10%)
Montclair	11	6 (54.5%)	1 (9.2%)	4 (36.3%)
Newark	49	9 (18.3%)	11 (22.2%)	29 (59.2%)
New York City	578	118 (20.4%)	197 (34.5%)	263 (45.5%)
Oakland	64	23 (35.9%)	12 (18.7%)	29 (45.4%) ²
Orange	8	None	2 (25.0%)	6 (75.0%)

1. Source of data same as table 1.

2. Three of the 29 schools have dominant Oriental populations and do not have 10% enrollment of both whites and Negroes. They are included here for convenience.

TABLE 2.--Continued

<u>City</u>	<u>Total No. of schools</u>	<u>No. enrolling 90% or more white pupils</u>	<u>No. enrolling 90% or more Negro pupils</u>	<u>No. enrolling more than 10% each</u>
Philadelphia	214	61 (28.5%) ³	52 (24.3%) ⁴	101 (47.2%) ⁵
Pittsburgh	92	45 (48.9%) ⁶	6 (6.5%) ⁷	41 (44.6%) ⁸
Plainfield	12	3 (25.0%)	1 (8.3%)	8 (66.7%)
St. Louis	136	55 (40.4%)	58 (42.6%)	23 (17%)
Washington, D.C.	129	15 (11.7%)	87 (67.4%)	27 (20.9%)

3. Schools enrolling 99-100% white pupils.

4. Schools enrolling 97-100% Negro pupils.

5. All other elementary schools.

6. Schools enrolling 95-100% white pupils.

7. Schools enrolling 95-100% Negro pupils.

8. All other elementary schools.

Source of data: Same as table 1.

TABLE 3.--PERCENT OF SEGREGATED (WEST AND NORTH)
ELEMENTARY SCHOOLS IN SELECTED CITIES

Listed in descending order

	Percent of total schools 90% or more <u>white or Negro</u>	Rank order % nonwhite <u>enrollment</u>
<u>Large Cities</u> ¹		
Chicago	93.0	4 (46.0%)
St. Louis	83.0	2 (58.5%)
Buffalo	81.2	6 (33.7%)
Washington, D.C.	79.1	1 (86.0%)
Baltimore	78.7	3 (58.2%)
New York	54.9	5 (44.8%)
<u>Medium Large Cities</u>		
Oakland	54.6	1 (58.3%)
Camden	46.1	2 (49.3%)
Newark	40.5	1 (58.3%)
<u>Small Cities</u>		
Montclair	63.7	3 (32.2%)
Plainfield	33.3	2 (37.0%)
Orange	25.0	1 (48.9%)

1. Philadelphia and Pittsburgh omitted since figures in table 2 are on a higher percentage.

Source of data: Same as table 1.

TABLE 4.—RACIAL COMPOSITION ALL PUBLIC SCHOOLS IN SELECTED CITIES

<u>City</u>	<u>Total No. of schools</u>	<u>No. enrolling 90% or more white pupils</u>	<u>No. enrolling 90% or more Negro pupils</u>	<u>No. enrolling more than 10% each</u>
Baltimore	197	63 (31.9%)	85 (43.1%)	49 (25.0%)
Camden	32	10 (21.3%)	5 (15.6%)	17 (53.1%)
Detroit	273	106 (38.8%)	78 (28.5%)	89 (35.7%)
Gary	40	19 (47.5%)	14 (35.0%)	7 (17.5%)
Newark	63	11 (17.5%)	13 (20.6%)	39 (61.9%)
Oakland	86	26 (30.2%)	17 (19.8%)	43 (50.0%)
Pittsburgh	112	51 (45.5) ¹	7 (6.3%) ¹	54 (48.2%)
Plainfield	15	3 (20.0%)	1 (6.7%)	11 (73.3%)
St. Louis	147	57 (38.8%)	63 (42.8%)	27 (18.4%)
Washington, D.C.	168	17 (10.1%)	112 (66.7%)	39 (23.2%)

1. 95 percent or more. See footnotes 6, 7, and 8 table 2.

Source of data:

Detroit: Findings and Recommendations of the Citizens Advisory Committee on Equal Educational Opportunities, Mar. 1962, pp. 76, 126.

Gary: Figures derived from Bell v. School City of Gary, 213 F. Supp. 819, 820-21 (N.D. Ind. 1963).

All other cities same as table 1.

TABLE 5.—PERCENT OF SEGREGATED (WEST AND NORTH)
ALL PUBLIC SCHOOLS IN SELECTED CITIES

Listed in descending order

	Percent of total schools 90% or more <u>white or Negro</u>	Rank order % nonwhite <u>enrollment</u>
<u>Large Cities</u> ¹		
St. Louis	81.6	2 (55.4%)
Washington, D.C.	76.8	1 (83.0%)
Baltimore	75.0	3 (53.2%)
Detroit	67.3	4 (46.2%)
<u>Medium Large Cities</u>		
Gary	82.5	2 (53.5%)
Oakland	50.0	4 (43.5%)
Camden	46.9	3 (44.6%)
Newark	38.1	1 (54.9%)

1. Pittsburgh omitted since figures in table 4 are on a 95% instead of a 90% basis.

Source of data: Same as table 4.

Appendix D

TABLE 1.—COMPARISON OF THE RACIAL COMPOSITION
OF 13 SCHOOLS IN ST. LOUIS, MISSOURI, 1955-1962

School District	Estimated racial percentages in 1955	Per- centage in 1962	November enrollment, 1955	November enrollment, 1962
Ashland	95% W	91% N	690	1072
Arlington	90% W	99+% N	775	1813 ¹
Gundlach	75% W	97% N	748	1510 ²
Laclede	99% W	97% N	752	2157 ³
Dozier	90% W	99% N	749	1870 ⁴
Hamilton	100% W	52% N	849	1149
Hempstead	85% W	99+% N	993	2828 ⁵
Marquette	65% W	72% N	744	741
Clark and Br.	45% W	97% N	1046	1503
Emerson and Br.	80% W	99+% N	758	1625 ⁶
Wells	not available	99+% N	not available	335
Soldan	74% W	99% N	1475	2180
Scullin	97% W	95% N	313	744
			9,892	19,527

1. Includes 315 transported pupils.
2. Includes 156 transported pupils.
3. Includes 793 transported pupils.
4. Includes 864 transported pupils.
5. Includes 1,327 transported pupils.
6. Includes 492 transported pupils.

Source: Hickey, Superintendent of Public Instruction, St. Louis Public Schools, Replies to 136 Statements, Accusations, and Criticisms of Desegregation Policies and Practices of the St. Louis Board of Education and School Administrators, Apr. 4, 1963 (hereinafter cited as St. Louis Superintendent's Report) Reply No. 5.

Appendix E

GUIDING PRINCIPLES FOR SECURING RACIAL BALANCE IN PUBLIC SCHOOLS

Statement by State Education Commissioner's
Advisory Committee on Human Relations and
Community Tensions — June 17, 1963

In contemporary America, race or color is unfortunately associated with status distinctions among groups of human beings. The public schools reflect this larger social fact in that the proportion of Negroes and whites in a given school is often associated with the status of the school. The educational quality and performance to be expected from that school are frequently expressed in terms of the racial complexion and general status assigned to the school. It is well recognized that in most cases a school enrolling a large proportion of Negro students is viewed as a lower status school. It is also true, of course, that an all white school enrolling a substantial proportion of children from culturally deprived homes is frequently considered less desirable.

A cardinal principle, therefore, in the effective desegregation of a public school system is that all of the schools which comprise that system should have an equitable distribution of the various ethnic and cultural groups in the municipality or the school district. Where serious imbalance exists the school with the highest proportion of minority group and lower-status children tends to receive more such children as parents who are able to do so move to neighborhoods and schools of higher status.

A program which seeks an equitable distribution of majority and minority group children in all of the schools of a district offers several advantages. It will enable all children to profit from acquaintance with others of different backgrounds than their own, it will reduce distinctions among schools based on noneducational factors, and will probably stabilize the shifts of enrollment which often follow the arrival of minority group children in disproportionate numbers in a particular school.

The Committee recognizes that long established patterns and community customs are not easily or quickly changed and that psychological and social factors operate on all sides of such a situation as the one now before you. We therefore suggest six principles which seem to us relevant to the whole question of racial balance in the schools.

1. The common school has long been viewed as a basic social instrument in attaining our traditional American goals of equal opportunity and personal fulfillment. The presence in a single school of children from varied racial, cultural, socioeconomic, and religious backgrounds is an important element in the preparation of young people for active participation in the social and political affairs of our democracy.
2. In forming school policies, every educationally sound action should be taken to assure not only passive tolerance but active acceptance of a genuine respect for children from every segment of the community, with particular attention given to those from minority groups that may have been the objects of discriminatory mistreatment.
3. No action, direct or indirect, overt or covert, to exclude any child or group of children from a public school because of ethnic, racial, religious, or other educationally irrelevant reasons should be taken by any public agency. Wherever such action has occurred it is the obligation of the school authorities to correct it as quickly as possible.
4. No action should be taken which implies that any school or any group of pupils is socially inferior or superior to another, or which suggests that schoolmates of one group are to be preferred to schoolmates of another. In establishing school attendance areas one of the objectives should be to create in each school, a student body that will represent as nearly as possible a cross-section of the population of the entire school district, but with due consideration also for other important educational criteria including such practical matters as the distance children must travel from home to school.
5. A "neighborhood school" offers important educational values which should not be overlooked. The relation between a school and a definable community with which it is identified can, in many cases, lead to more effective participation by parents and other citizens in the support and guidance of the school. It can stimulate sound concern for the welfare of the school and its pupils and can lead to beneficial communication between the school staff and the community that staff serves.
6. When a "neighborhood school" becomes improperly exclusive in fact or in spirit, when it is viewed as being reserved for certain community groups, or when its effect is to create or continue a ghetto type situation it does not serve the purposes of democratic education.

Appendix F

PERCENT OF PUPILS ELIGIBLE TO ENTER HIGH SCHOOL
By Tracks Highest Scoring Predominantly Negro and
Predominantly White Districts

	<u>Negro</u>		<u>White</u>	
	<u>Fall 1957</u>	<u>Fall 1961</u>	<u>Fall 1957</u>	<u>Fall 1961</u>
Track I	6.2	20.0	25.8	40.3
Track II	39.7	57.7	62.3	53.6
Track III	54.1	15.5	53.6	5.0
Terminal education ¹	----	6.8	----	1.2

1. Category first appears 1959.

Source: St. Louis Superintendent's Report, Reply No. 22,
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Addenda

Addenda

TABLE 1.--STATUS OF DESEGREGATION
OF SCHOOL DISTRICTS, 1963-64¹

	Total School	Total with White & Negro	School Districts Desegregated	School Districts Segregated
Alabama	114	114	4	110
Arkansas	415	228	13	215
Delaware	86	86	86	0
District of Columbia	1	1	1	0
Florida	67	67	16	51
Georgia	197	181	4	177
Kentucky	204	165	163	2
Louisiana	67	67	2	65
Maryland	24	23	23	0
Mississippi	150	150	0	150
Missouri	1,597	212	203	9
North Carolina	171	171	40	131
Oklahoma	1,180	241	197	44
South Carolina	108	108	1	107
Tennessee	154	143	44	99
Texas	1,421	899	244	655
Virginia	130	128	55	73
West Virginia	55	44	44	0
TOTAL. . .	6,141	3,028	1,140	1,888
PERCENT.			37.7	62.3

1. Southern Education Reporting Service, Statistical Summary 2, September 1963-64--First Semester of School Session.

TABLE 2.—STATUS OF SEGREGATION-DESEGREGATION,
1963-64, IN 17 STATES AND DISTRICT OF COLUMBIA¹

	Total	Enrollment		Negroes enrolled in desegregated schools	Percent of total Negro pupils enrolled in desegregated schools
		White	Negro		
Alabama	827,410	539,996	287,414	11	.004
Arkansas	440,035	328,023	112,012	1,084	.968
Delaware	97,446	79,024	18,422	10,209	55.4
District of Columbia	137,718	19,803	117,915	98,813	83.8
Florida	1,202,112	964,241	237,871	3,650	1.53
Georgia	1,026,857	689,323	337,534	177	.052
Kentucky	666,000	611,126	54,874	29,855	54.4
Louisiana	762,022	460,000	301,433	1,814	.602
Maryland	701,613	540,667	160,946	77,816	48.3
Mississippi	596,197	304,226	291,971	0	0
Missouri	888,000	793,000	95,000	40,000	42.1
North Carolina	1,149,646	802,900	346,746	1,865	.538
Oklahoma	572,216	529,300	42,916	12,048	28.1
South Carolina	627,451	368,496	258,955	10	.004
Tennessee	852,842	687,902	164,940	4,466	2.71
Texas	2,371,858	2,045,449	326,409	14,000	4.29
Virginia	964,645	728,259	236,386	3,721	1.57
West Virginia	438,650	417,595	21,055	18,500	87.9
TOTAL	14,322,718	10,909,919	3,412,799	318,093	9.3%

1. Southern Education Reporting Service, Statistical Summary 2,
September 1963-64--First Semester of School Session.



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