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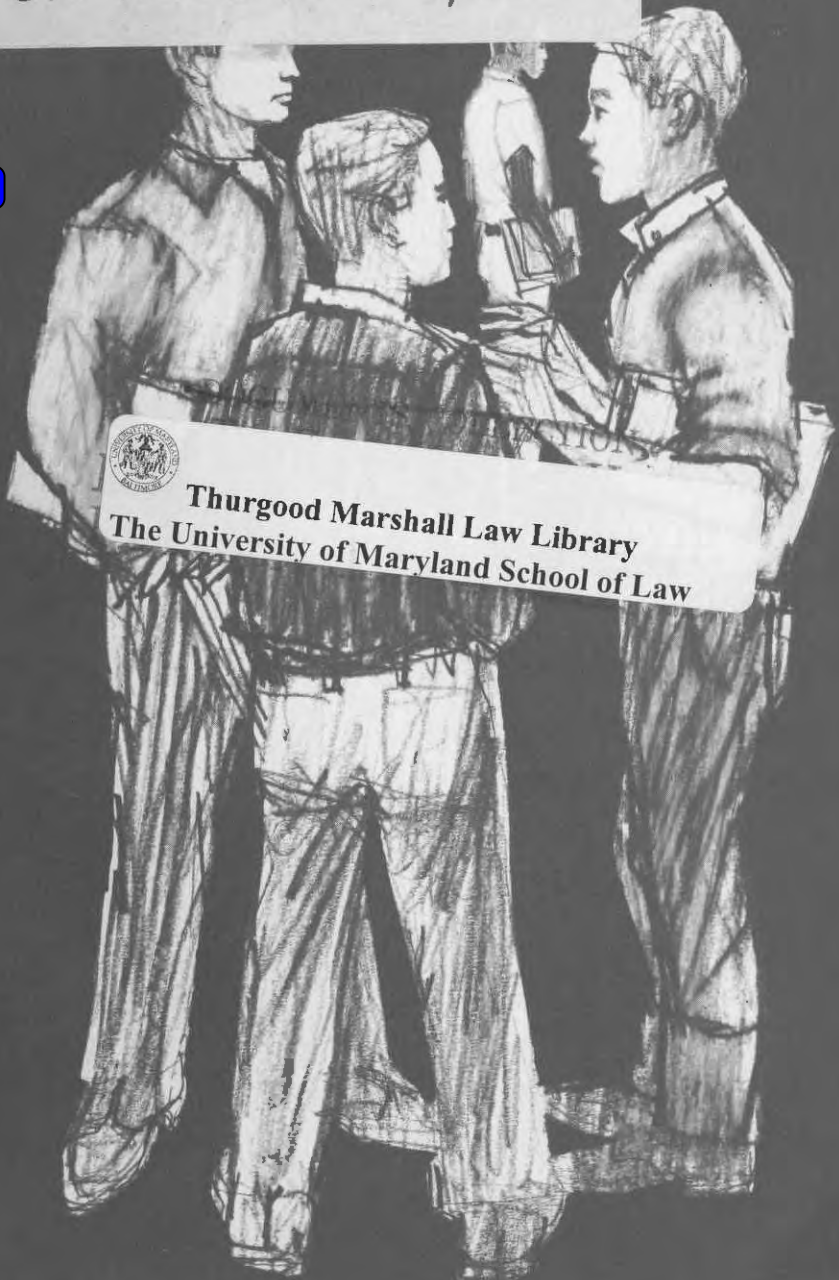
Public Schools Southern States 1962



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PUBLIC SCHOOLS

SOUTHERN STATES

1962

Staff Reports Submitted To

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Introduction

In its previous reports on equal protection of the laws in public schools, the Commission has presented an overview of administrative, legislative, and judicial developments since 1954 in all the Southern States where schools were organized and operated on a racially segregated basis in 1954 pursuant to State law.*

Believing that studies of smaller areas in greater depth than has heretofore been possible would lead to a better understanding of the desegregation process and its problems, the Commission decided to undertake a series of studies in individual Southern States. The first of this series which, includes reports on the States of Kentucky, North Carolina, Tennessee, and Virginia, follows. Each of these reports was prepared for the Commission, under contract, by a lawyer who is a member of the faculty of a law school of the State on which he reports, except for the Memphis portion of the Tennessee report. In the case of Memphis the reporter, a consultant to the Commission, was not a resident of the State, but he had visited Memphis regularly over a period of 3 years studying developments there. The work was supervised and coordinated by the Public Education Section of the Commission staff. To the greatest extent possible, editing of reports prior to publication was done in consultation with the individual reporters.

In the Commission's *1961 Report* the law of desegregation, as found in court decisions beginning with the *School Segregation Cases* in 1954, was analyzed and synthesized. In the year since that report was written there have been numerous new decisions deciding some issues which had not been adjudicated at that time and clarifying others. The first part of this report will, therefore, deal with the law of desegregation as it appears in 1962. This is the legal framework for the State studies which follow.

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*The Commission's previous publications in the field of education are: *Report of the U.S. Commission on Civil Rights*, 1959, part III; *Equal Protection of the Laws in Public Higher Education*, 1960; *1961 U.S. Commission on Civil Rights Report, Education;* Conferences Before the U.S. Commission on Civil Rights, Education: Nashville, Tenn., March 5 and 6, 1959; Gatlinburg, Tenn., March 21 and 22, 1960; Williamsburg, Va., February 25 and 26, 1961; Washington, D.C., May 3, and 4, 1962.

The Courts and Desegregation

> *At stake is . . . admission to public schools as soon as practicable on a nondiscriminatory basis. While giving weight to . . . public and private considerations, the courts will require . . . a prompt and reasonable start toward full compliance. . . . Once such a start has been made the courts may find additional time is necessary . . . in the public interest and is consistent with good faith compliance at the earliest practicable date.*
> —*Brown* v. *Board of Education of Topeka*, 349 U.S. 294, 300 (1955).

Seven years have elapsed since the Supreme Court issued this directive. The initial shock is over; school buildings are no longer dynamited;[1] National Guardsmen no longer use bayonets to bar children from schools;[2] and State legislatures no longer meet in special session to pour pounds of massive resistance into State statute books.[3] Initial assignment of pupils by race, using pupil placement laws, dual school zone maps, and other means, and transfer provisions tied to race characterize the present trend.

How do Federal courts now view the policies and practices which have limited desegregation to 25 percent of the Negro pupils enrolled in the school districts which, 8 years after the Supreme Court decision of 1954, have commenced desegregation of their school system or announced policies to that effect?[4] What do Federal court decisions now say about such policies and practices? Do the courts find that they meet the Supreme Court's requirements of a prompt and reasonable start toward good faith compliance at the earliest practicable date? The important court decisions from July 1961 to August 1962 are reviewed below to determine judicial opinion on these questions at this time.

A PROMPT AND REASONABLE START

Probably the surest observation which can be made in 1962 is that a prompt start (if indeed the concept is any longer appropriate) means

[1] Cotton Elementary School, Nashville, Tenn., September 1957, and Clinton High School, Clinton, Tenn., October 1958.

[2] Central High School, Little Rock, Ark., September 1957.

[3] *Report of the U.S. Commission on Civil Rights*, 1959, pp. 233-44; *1961 Report, Education*, pp. 67–77.

[4] So. School News, May 1962, p. 1. Only about 30 percent of the biracial school districts in the 17 Southern States had commenced desegregation in May 1962, and some of these by policy only.

immediate placement of some Negro students in some white schools. The time for community preparation has passed, and an 8-year history of resistance or indifference to compliance with the law of the land no longer serves as an excuse for delay. Since a "prompt start" means after the decision in the *School Segregation Cases*,[5] and not after a suit is brought against a particular school district,[6] it may be argued that the whole concept of "prompt start" is no longer apposite to school desegregation law; that, at some point in the past 7 years, the allowance for promptness gave way to the urgency of immediacy.

Another aspect of "prompt and reasonable start" is the effect of a lack of promptness on what is "reasonable." What might have been judicially countenanced as a reasonable start 7 years ago may not meet with approval today. More precisely, since there was no promptness, a small step toward desegregation may no longer be reasonable. Indeed, several recent decisions approving gradual plans for desegregation required an *initial step* of more than one grade.[7]

The Supreme Court's directive to the lower courts in May 1955 for carrying out its decree in the *School Segregation Cases* was based on equitable considerations. The phrases "giving weight . . . to public and private considerations", "consistent with good-faith compliance", and "deliberate speed" are all equitable considerations. Time for adjustment was extended to the school boards to prevent the disruption of school systems which might have resulted if immediate full compliance had been ordered.[8]

Considerations of equity do not flow in one direction only, however. If the parties want to be given equitable treatment, they must be deserving of it. The time-honored equity maxims of "clean hands" and "he who seeks equity must do equity" are appropriate analogies here. In the past year, Federal courts have refused to extend equitable considerations to school districts which retained a policy of discrimination. But how did the courts find a retention of a policy of discrimination? The cases will be developed to answer this question.

A start prior to suit

If a school district has formulated and implemented a desegregation plan prior to court action, this is some evidence of an abandonment of a policy of discrimination. This observation was made from the bench in *Vick* v. *Board of Education of Obion County*.[9] Obion

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[5] *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954), 1 *Race Rel. L. Rep.* 5 (1956).

[6] *Cooper* v. *Aaron*, 358 U.S. 1, 7 (1958), 3 *Race Rel. L. Rep.* 855, 856 (1958).

[7] *E.g., Goss* v. *Board of Education of the City of Knoxville*, 301 F. 2d 164 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 36 (1962); *Maxwell* v. *County Bd. of Education of Davidson Co., Tenn.*, 301 F. 2d 828 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 34 (1962).

[8] 349 U.S. 294, 300 (1955), 1 *Race Rel. L. Rep.* 11, 12 (1956).

[9] Civ. No. 1259, W.D. Tenn., Dec. 15, 1961.

County is a neighbor of Fulton, Ky., which had voluntarily desegregated its high school without incident several years before. Yet the Obion County officials had made no attempt to desegregate. The court ordered the defendants to produce a plan to desegregate all 12 grades the next school year. (Fulton had only desegregated its high school.) The court commented on the school board's present inaction:[10]

> . . . I think this is good law, that if a school board moves on its own and adopts a plan and puts it in operation, that plan may well be approved by the court if it is later attacked by lawsuit, where the court would not approve the plan if it was not submitted until after the lawsuit was brought . . . one of the important factors you look to is the good faith of the school board in implementing the decision. . . .

Pupil assignment acts as desegregation plans

Of course, not every desegregation plan adopted prior to a suit evidences an abandonment of segregative policies. There are basically two ways in which plans, even though instituted before a suit, may fail to meet the constitutional requirements of a good faith start: (1) the plan may on its face manifest a retention of discriminatory policy, even though it does allow some desegregation; or (2) the plan may on its face appear to be free from racially discriminatory defects, but be applied in a racially discriminatory manner.

When Federal courts consider a plan at its initial submission, they generally do not have evidence of how the plan will be applied. Thus, in determining whether a plan constitutes a "prompt and reasonable start," the plan itself is generally the best evidence of how it will operate. During the past year, as in previous years, pupil assignment plans continued to receive a substantial amount of judicial attention.

The pupil assignment acts have been the principal obstacle to desegregation in the South.[11] Essentially, these laws authorize either the State or local school authorities to assign pupils individually to various schools. The plans, adopted by all the former Confederate States,[12] fall into two categories. Those patterned on the North Carolina statute[13] use only three guidelines for pupil assignment: orderly and efficient administration of the school; effective instruction; and health, welfare, and safety of the pupils. Under the more popular Alabama plan,[14] the school authorities are directed to use

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[10] From the transcript of the trial, reprinted in 6 *Race Rel. L. Rep.* 1001, 1003 (1962).

[11] See *1961 U.S. Commission on Civil Rights Report, Education,* pp. 15–31.

[12] Ala. Acts 1955, Vol. 1, No. 201, p. 492; Ark. Acts 1959, Vol. 2, No. 461, p. 1827; Fla. Laws 2d Ex. Sess. 1956, ch. 31380, p. 30; Ga. Laws 1961, H. Res. No. 225; La. Acts 1958, Act No. 259, p. 856; Miss. Acts 1960, S. Bill Nos. 2010, 1900; N.C. Laws Ex. Sess. 1956, ch. 7, p. 14; S.C. Acts 1955, No. 55, p. 83; Tenn. Acts 1957, ch. 13, p. 40; Tex. Acts 1957, ch. 287, p. 683; Va. Acts Ex. Sess. 1956, ch. 70, p. 74, as amended by Va. Acts 1958, ch. 500, p. 638, as amended by Va. Acts Ex. Sess. 1959, ch. 71, p. 165.

[13] N.C. Laws Ex. Sess. 1956, ch. 7, p. 14.

[14] Ala. Acts 1955, Vol. 1, No. 201, p. 492.

many detailed criteria, falling into the categories of (1) available facilities, including staff and transportation; (2) school curricula in relation to the academic preparation and abilities of the individual child; (3) the pupils' 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.

None of the plans incorporates race as a criterion, and all have provisions allowing transfers after original assignment, upon individual application. Some allow protest at the time of the original assignment. Most acts provide an elaborate procedure for hearings and appeal to higher administrative bodies or State courts.

Until this year, the pupil placement acts were relatively successful where proffered as desegregation plans. The Fourth Circuit endorsed the North Carolina law as sufficient, even though it was unimplemented by the school board.[15] The Eighth Circuit expressly adopted the Fourth Circuit's reasoning (but, ambivalently, did enjoin discriminatory use of the placement plan *sub judice*, even though the plaintiffs had not exhausted their administrative remedies).[16] Only the Fifth Circuit clearly declined to approve a declared (but unimplemented) intention to operate under a placement act (Florida's) as a reasonable start toward full compliance.[17]

Thus, in June 1961 two circuit courts were diametrically opposed in their positions on the pupil placement laws as desegregation plans, and one circuit court was, at best, ambivalent. But in March 1962, the Sixth Circuit, in holding the Tennessee pupil placement act did not constitute a desegregation plan, added its authority to that of the Fifth Circuit.[18] The right of pupils to apply for transfer from an initial assignment made by race did not, in the court's view, make the law a desegregation plan:[19]

> These transfer provisions do not make of this law a vehicle to reorganize the schools on a nonracial basis. Nor has the practice for 4 years under the law been in the direction of establishing nonracial schools. . . . Any pupil through both parents may request a transfer, but in the final analysis it is up to the school board to grant or reject it. . . . In determining requests for transfers, the board may apply the criteria heretofore mentioned. None of these criteria is based on race, but, in the application of them, one or more could always be applied to a Negro. The denial of the transfers herein referred to is significant of the practical operation of the transfer provisions of the law.

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[15] *Carson* v. *Warlick*, 238 F. 2d 724 (4th Cir. 1956), 2 *Race Rel. L. Rep.* 16 (1956); *Covington* v. *Edwards*, 264 F. 2d 780 (4th Cir. 1959), 4 *Race Rel. L. Rep.* 278 (1959); *Holt* v. *Raleigh City Board of Education*, 265 F. 2d 95 (4th Cir. 1959), 4 *Race Rel. L. Rep.* 281 (1959).

[16] *Dove* v. *Parham*, 271 F. 2d 132 (8th Cir. 1959), 5 *Race Rel. L. Rep.* 43 (1959).

[17] *Gibson* v. *Board of Public Instruction of Dade County*, 272 F. 2d 763 (5th Cir. 1959), 4 *Race Rel. L. Rep.* 859 (1959); *Manning* v. *Board of Public Instruction of Hillsborough County*, 277 F. 2d 370 (5th Cir. 1960).

[18] *Northcross* v. *Board of Education of City of Memphis*, 302 F. 2d 818 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 40 (1962).

[19] *Id.* at 823, 7 *Race Rel. L. Rep.* at 44.

Significantly, 3 months earlier a Federal district court had also held the Tennessee placement act insufficient as a desegregation plan,[20] and questioned its purpose: [21]

> This law, as shown on its face, is not a plan for desegregation nor is desegregation a part of its subject matter or purpose. As the court understands it, its real purpose is to codify the law as it already existed. . . . The pupil placement law at best provides a most cumbersome and time-consuming procedure to accomplish transfers of students. . . . It is not in the court's opinion, a "prompt and reasonable start" toward desegregation. On the contrary, it would cause an unreasonable delay in effectuating the principle of the *Brown* cases.

Thus, in the latest decisions of first impression, the pupil placement acts have been held invalid as desegregation plans because they manifested a continued policy of segregation, *even though they did not expressly incorporate race as a factor in pupil assignment.* If this is a trend, it threatens the last strong artifice of segregation.

There are still, however, two circuit courts which have held that pupil assignment laws are, on their face, a valid means of effecting desegregation. Consequently, the pupil assignment acts of Virginia,[22] South Carolina,[23] Arkansas,[24] and North Carolina [25] are the only channels available to nearly a million Negro schoolchildren to secure a nonsegregated education. How successful have they been? The figures show less than one-tenth of 1 percent of these children attended biracial schools last year.[26] Now to explore why.

The prime fact in a 1962 discussion of the pupil assignment laws is that they are not used. The statistics show this. Most southern school districts simply assign Negro children to the most convenient Negro school, and white children to the most convenient white school. If the many criteria specified are used at all in pupil placement, they are used to determine to which Negro school or to which white school a Negro or a white child should be sent, respectively.

Of course, the unconstitutionality of placement according to race is clear. But what remedy should a Federal court give? Should it refuse to hear the case until the child and his parents exhaust all of the administrative appeals provided for within the pupil assignment acts? Should it give relief only to the children before the court, and, in effect, require all the children in the school system to bring suit themselves to escape segregated schools? Or should the court order the school authorities to abandon their discriminatory placement policies altogether?

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[20] *Sloan* v. *Tenth School District of Wilson County, Tennessee,* Civ. No. 3107, M.D. Tenn., Nov. 22, 1961, 6 *Race Rel. L. Rep.* 999 (1961).

[21] 6 *Race Rel. L. Rep.* at 1000.

[22] Va. Acts Ex. Sess. 1956, ch. 70, p. 74, as amended by Va. Acts 1958, ch. 500, p. 638, as amended by Va. Acts Ex. Sess. 1959, ch. 71, p. 165.

[23] S.C. Acts 1955, No. 55, p. 83.

[24] Ark. Acts 1959, Vol. 2, No. 461, p. 1827.

[25] N.C. Laws Ex. Sess. 1956, ch. 7, p. 14.

[26] So. School News, May 1961, p. 1.

The Fourth Circuit (which, of the States having pupil placement laws, includes North Carolina, Virginia, and South Carolina) prior to 1962 placed severe limitations on parties seeking desegregation.[27] Plaintiffs had to exhaust all their administrative remedies prior to suit, and even then only individuals could secure relief.[28] Class suits were disallowed because other Negro children in the system (since they had not exhausted their administrative remedies) were not identically situated with the plaintiffs.[29] This doctrine, to say the least, encouraged the continuation of dual school systems in the States within the Fourth Judicial Circuit. But in the past year there have been measured steps in the Fourth Circuit toward the relaxation of these stringent requirements. These steps are perhaps the most significant developments in the current law of desegregation.

In the last several months of 1961, the rule of the Court of Appeals for the Fourth Circuit was rigorously applied by the lower courts, and plaintiffs were required to: (1) exhaust all their administrative remedies; and (2) bring suit for themselves only, and not for all schoolchildren affected. The case of *Jeffers* v. *Whitley*[30] is perhaps the high water mark in strict application of the Fourth Circuit rule. In this case plaintiffs brought a class action seeking an order requiring the school board of Caswell County, N.C., to prepare a plan for the desegregation of its schools. The court found that, of the eight minor plaintiffs who had requested transfers and who had attempted to exhaust their administrative remedies, three had failed to do so by not appearing at the school board hearing in person or by their parents, but rather by attorney, and that the other five, by failing to request transfers to *specific* schools, had not exhausted their remedies.

Even though the court found that the schools were completely segregated, it rejected the argument that plaintiffs were entitled to an order requiring the desegregation of the schools with the quotation from the opinion of the Court of Appeals for the Fourth Circuit in *Covington* v. *Edwards* as follows:[31]

> . . . the county board has taken no steps to put an end to the planned segregation of the pupils in the public schools of the county. . . . If there were no remedy for such inaction, the Federal court might well make use of its injunctive power to enjoin the violation of the constitutional rights of the plaintiffs but, as we have seen, the State statutes give to the parents of any child dissatisfied with the school to which he is assigned the right to make application for a transfer and the right to be heard on the question by the board. If after the hearing and

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[27] *E.g. Carson* v. *Warlick, supra,* note 15; *Covington* v. *Edwards,* 264 F. 2d 780 (4th Cir. 1959), 4 *Race Rel. L. Rep.* 278 (1959).

[28] The Eighth Circuit Court of Appeals expressed a similar requirement in *Parham* v. *Dove, supra,* note 16. However, the court did not dismiss the suit, but directed the lower court to enjoin the school board from segregative practices.

[29] *Supra,* note 15.

[30] 197 F. Supp. 84 (M.D.N.C. 1961), 6 *Race Rel. L. Rep.* 988 (1961).

[31] *Id.* at 91, 6 *Race Rel. L. Rep.* 933.

final decision he is not satisfied and he can show that he has been discriminated against because of his race, he may then apply to the Federal court for relief.

Additionally, the court condemned the plaintiffs for pursuing their suit as a class action:[32]

It is manifest that the plaintiffs have chosen to ignore the many decisions upholding the constitutionality of the North Carolina pupil assignment law, hoping that they will be successful in either this or the appellate courts in getting the law stricken from the statute books. Just as the defendant board is bound by the decision of the Supreme Court in *Brown* v. *Board of Education* [citation omitted] so are the plaintiffs bound by the court decisions prescribing procedures to be followed in cases of this type before applying to the courts for injunctive relief. A court of equity requires good faith on the part of litigants, and plaintiffs in cases of this type are no exceptions.

The court then ordered a stay of judgment to give the five remaining plaintiffs an opportunity to exhaust their administrative remedies by requesting transfers to specific schools. In a subsequent opinion[33] in this case, the court upheld the rejection by the board of three applications on the basis of transportation difficulties and on the additional ground that:[34]

It can fairly be said that what the children and their parents are still seeking is only a desegregation of the Caswell County school system rather than a protection of their own rights, and it is concluded that these plaintiffs have failed to establish by a preponderance of the evidence that they have been denied any constitutional right because of their race or color.

The court found that the other two children had been denied admission to the school of their choice by reason of their race and ordered that they be admitted to that school at the beginning of a new school year.

The District Court for the Eastern District of Virginia did not require a Negro pupil to exhaust her administrative remedies in *Warden* v. *School Board of the City of Richmond*.[35] However, this was only because the plaintiff proved that a protest would have been futile in view of the State pupil placement board's expressed segregation policy. The court pointed out that, due to a change in the composition of the board, future plaintiffs would have to exhaust all administrative remedies:

The court is of the opinion the administrative procedures set forth [in the act] are not unreasonable and must be complied with except in unusual cases.

Indeed, the next day, the District Court for the Western District of Virginia dismissed a suit involving the school system of the county of Roanoke because the plaintiffs Negro children had not exhausted their administrative remedies.[36] The plaintiffs in this case had failed

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[32] *Ibid.*

[33] *Jeffers* v. *Whitley*, Civ. No. 1079G, M.D.N.C., Dec. 29, 1961, 7 *Race Rel. L. Rep.* 22 (1961).

[34] 7 *Race Rel. L. Rep.* 22, 24.

[35] Civ. No. 2819, E.D. Va., July 5, 1961, 6 *Race Rel. L. Rep.* 1025 (1961).

[36] *Iseley* v. *County School Board of Roanoke County*, Civ. No. 1095, W.D. Va., July 6, 1961, 6 *Race Rel. L. Rep.* 1021 (1961).

to file their applications for transfer to a white school more than 60 days prior to the commencement of the school session.

The plaintiffs in both of the foregoing cases had also attempted to secure the rights of all the Negro pupils in the school district by bringing class actions. Both courts struck down the class character of the petitions and held that only the rights of the individual plaintiffs before the court were litigable. Moreover, both courts quoted the same passage from *Carson* v. *Warlick*,[37] the Fourth Circuit opinion which established this doctrine:[38]

> There is no question as to the right of the infant plaintiffs to be admitted to the schools . . . without discrimination on the ground of race. They are admitted, however, as individuals, not as a class or group, and it is as individuals that their rights under the Constitution are asserted (*Henderson* v. *United States*, 339 U.S. 816). It is the Pupil Placement Board . . . which must pass in the first instance on their right to be admitted to any particular school. They cannot enroll themselves and we can think of no one better qualified to undertake the task than the officials having that responsibility. It is to be presumed that these officials will obey the laws, observe the standards prescribed by the legislature and avoid the discrimination on account of race which the Constitution forbids. Not until they have been applied to and have failed to give relief shall the Federal courts be asked to interfere in school administration.

In January 1962, the wind changed in the Fourth Circuit. Lynchburg, Va., pupil placement procedures were challenged in a class suit. The plaintiffs proved: (1) that pupils were originally assigned to schools on the basis of race by the Lynchburg Board of Education; (2) the State pupil placement board gave these assignments rubberstamp approval; and (3) if a Negro child wanted to attend a white school, he had to request reassignment and undergo a series of tests to prove he possessed the requisite academic abilities. (White children did not have to take tests to be assigned to the white schools.) Additionally, the Negro child had to live closer to the requested white school than he did to a Negro school. (White children who were closer to a Negro school were nevertheless assigned to the nearest white school.)

The district court held that, although the plaintiffs had not exhausted their administrative remedies, they did not have to, because the remedies only perpetuated the original discriminatory placement.[39] The court commented:[40]

> Under these circumstances it would be almost a cruel joke to say that administrative remedies must be exhausted when it is known that such exhaustion of remedies will not terminate the pattern of racial assignment but will lead to a remedy only in a few given cases based on geography—a consideration which has been disregarded in the assignment of white pupils.

After recognizing that administrative remedies need not be exhausted, the conclusion follows that a class suit is proper. All the

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[37] *Supra*, note 15.

[38] *Id.* at 729, 2 Race Rel. L. Rep. at 20–21.

[39] *Jackson* v. *School Board of City of Lynchburg, Va.*, 201 F. Supp. 620 (W.D. Va. 1962), 7 *Race Rel. L. Rep.* 51 (1962).

[40] *Id.* at 621, 7 *Race Rel. L. Rep.* at 57.

Negro children in Lynchburg were in the same situation as the plaintiffs. (The prior theory was that, since administrative remedies had to be pursued, the only pupils similarly situated with a plaintiff who had exhausted his administrative remedies were other pupils who had exhausted their administrative remedies.) [41] The court ordered the school board to submit a plan whereby all pupils would be assigned to school on a nondiscriminatory basis.

In June 1962, the Court of Appeals for the Fourth Circuit in an apparent, but not express, turnabout followed the theory of the *Lynchburg* case in *Green* v. *School Board of the City of Roanoke.*[42] The facts were very similar. The Roanoke school system was divided into six attendance zones, each including elementary, junior, and senior high schools. Five of the six zones were geographical divisions of the city. The sixth zone covered the entire city and served the Negro school population. The school board assigned the children according to the zone of residence and race, and forwarded the assignments to the Virginia State Pupil Placement Board. There, they were approved as a matter of course by clerical aides. If Negro parents objected to the assignments of their children, they were required to apply to the State pupil placement board for reassignment or transfer. These applications for reassignment or transfer to a white school were subjected to several criteria not used for white pupils, since they were assigned initially to the white schools of their residential zone.

The district court had held that the plaintiffs had adequately exhausted their administrative remedies, suspending the requirement for a protest of a denial of transfer because of the nearness of the start of the school year but struck out the class action portion of the complaint, citing the same quotation from *Carson* v. *Warlick* that was quoted in the *Roanoke County* and *Richmond* cases, discussed above.

The court of appeals agreed with the district court in the exhaustion-of-remedies question, and declined to make broader comment on the validity of the protest provisions in the placement act. But on the class action question the court reversed the lower court's holding, and allowed the class action. The court did not comment on, or even cite, *Carson* v. *Warlick.*

The significance of the court's position does not lie in its condemnation of original assignments by race. It had done this in prior cases.[43] Its importance lies in the approval of a class suit to abolish discrim-

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[41] *Supra*, note 15.

[42] 304 F. 2d 118 (4th Cir. 1962).

[43] *Jones* v. *School Board of the City of Alexandria, Virginia*, 278 F. 2d 72 (4th Cir. 1960), 5 *Race Rel. L. Rep.* 399 (1960); *School Board of the City of Charlottesville* v. *Allen*, 240 F. 2d 59 (4th Cir. 1956), 2 *Race Rel. L. Rep.* 599 (1957), *cert. denied* 353 U.S. 911 (1957).

inatory practices. Even if limited to its narrowest interpretation, it holds that after one Negro child exhausts his administrative remedies, he may bring suit on behalf of all children segregated in the school system. The other children do not have to follow individually the labyrinth of administrative steps in the pupil placement act. This decision brings the Fourth Circuit, which previously permitted only individual relief, into agreement with the Fifth and Sixth Circuits in recognizing the appropriateness of class relief for discriminatory practices affecting all Negro schoolchildren in the system.

In the *Roanoke City* case, the court also found no evidence that the school board would abandon its discriminatory practices if it were allowed to continue following the procedures of the Virginia pupil placement act. Consequently, the act was held invalid as a desegregation plan for Roanoke. The school board was ordered to produce a plan or immediately desegregate all its schools. Similarly, the Fort Worth, Tex., School Board was found to have manifested an intransigent segregative policy in administering the Texas pupil placement act. The Federal district court there, in *Flax* v. *Potts*,[44] ordered not merely an abandonment of discriminatory practices, but the submission by the school board of a positive plan for desegregation. These decisions show close judicial scrutiny of school board actions and policies. And if pupil placement acts are used to continue a policy of segregation, they will not be tolerated as desegregation plans.

Thus, even in the Federal courts which continue to countenance pupil placement acts as proper desegregation measures, there appears to be judicial dissatisfaction with their administration. This has resulted in broader decrees for relief, and an increasing intolerance of State administrative procedures. The Court of Appeals for the Fifth Circuit expressed this contemporary discontent:[45]

> This court . . . condemns the Pupil Placement Act when, with a fanfare of trumpets, it is hailed as the instrument for carrying out a desegregation plan while all the time the entire public knows that in fact it is being used to maintain segregation by allowing a little token integration.

ALL DELIBERATE SPEED

The results of many judicial condemnations of pupil assignment laws are court directives to school boards to produce an acceptable desegregation plan. However, the particulars for an acceptable plan have not been defined, nor could they be. Each particular school district has unique problems. Insufficient administrative personnel,

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[44] Civ. No. 4205, N.D. Tex., Dec. 14, 1961, 6 *Race Rel. L. Rep.* 1006 (1961).
[45] *Bush* v. *Orleans Parish School Board*, Civ. No. 19270, 5th Cir., Aug. 6, 1962.

the capacity and location of schools, and transportation facilities must be considered. Indeed, the Supreme Court's directive places the burden of formulating a plan on the local school authorities. However, it also places the burden on the local board to prove that immediate full compliance would cause hardship, and that additional time is needed. The meaning of the word "hardships" is all important here, because the factors which may constitute hardship form the basis for the granting or withholding of additional time for full compliance. The Supreme Court has given some leadership. In *Cooper* v. *Aaron*,[46] the Court held that community violence may not be considered such a hardship, but beyond this guide, and the terms of the implementing decree, lower Federal courts have had to fend for themselves.

In the past year there has been a definite trend to define hardships as "equitable hardships." More particularly, if a school district has not desegregated and its neighboring districts have, it must at least catch up to their accomplishments in the first step. Any hardships entailed in the large first step were caused by the district's own unconscionable delay. Therefore, a school district cannot equitably marshal to its own advantage a hardship caused by its own failure to act.

Thus, when the school authorities of Obion County, Tenn., proposed to desegregate one grade a year, the court considered the progress of a neighboring school district, Fulton, Ky. Since Fulton had desegregated several years before, the court ordered complete desegregation.[47] The same approach is apparent in *Maxwell* v. *County Board of Education of Davidson County*.[48] There the School Board of Davidson County, Tenn., where Nashville is located, submitted a grade-a-year plan for court approval. Nashville had had the same plan in effect for several years, and had reached the fourth grade. The court, while approving the plan, required Davidson County to desegregate the first four grades immediately in order to catch up to Nashville.

Another factor in judicial considerations of desegregation plans is whether the school board has abandoned its policies of racial segregation. Indeed, this policy is the reason judicial control was necessary in the first place. Most simply, the courts require that the school authorities evince an abandonment of segregative policies. And this abandonment must be manifest in the plan itself. Thus, a proposal by the Chattanooga, Tenn., school authorities to desegregate the first three grades of several schools to be selected in the future, and to

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[46] 358 U.S. 1 (1958), 3 *Race Rel. L. Rep.* 855 (1958).

[47] *Vick* v. *Board of Education of Obion County*, Civ. No. 1259, W.D. Tenn., Dec. 15, 1961. Actually, the city of Fulton lies in two States, Kentucky and Tennessee, the Tennessee section is named South Fulton.

[48] 301 F. 2d 828 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 34 (1962).

devise further steps at a later date, was rejected as merely a promise to desegregate, and no proof of an abandonment of segregative policies.[49] Definite procedures leading to full compliance are required in plans to insure the abandonment of segregative policies.

Again, when Wilson County, Tenn. school authorities refused the court's suggestion of a grade-a-year plan, and chose to operate under the Tennessee pupil placement act, the court ordered immediate desegregation of all schools.[50] The court concluded:[51]

> In view of the fact that defendants have not requested a gradual plan, and in view of the fact that they have failed to offer a fair, reasonable, or workable plan of desegregation, or to make a prompt and reasonable start toward accomplishing such purpose, as fully shown from statements made by defendants' attorneys in open court, and as shown on the face of the plans presented by defendants, the court is of the opinion that an injunction should issue restraining segregation as a policy, practice or principle in the operation of the schools or school system in Wilson County.

Similarly, the Knoxville, Tenn., Board of Education had announced that it would continue to operate under the Tennessee segregation statutes until compelled by court order to do otherwise. When finally brought into court, the board submitted a grade-a-year plan for approval. The Sixth Circuit Court of Appeals said the board's former bad faith "does not commend itself to the court for the acceptance of a plan that provides for a minimum degree of desegregation." The board was ordered to submit a plan moving faster than one grade a year.[52]

The *Knoxville* case, and several others decided in 1962, give rise to an inference that perhaps the door is closing on grade-a-year plans. Certainly, the three States with no desegregation at all (South Carolina, Mississippi, and Alabama) are in the same position as Knoxville, and should not be able to use 8 years of intransigence as justification for minimum initial steps. In the other States where there has been some desegregation, the still-segregated districts may have to match the prior-starting districts in the State on the first step. In both situations there is precedent for denying the future use of grade-a-year plans.

The Fifth Circuit Court of Appeals formulated an accelerated version of a grade-a-year plan for Escambia County, Fla.[53] The

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[49] *Mapp* v. *Board of Education of the City of Chattanooga*, 203 F. Supp. 843 (S.D. Tenn. 1962), 7 *Race Rel. L. Rep.* 25 (1962).

[50] *Supra*, note 20.

[51] 6 *Race Rel. L. Rep.* at 1000.

[52] *Goss* v. *Board of Education of City of Knoxville, Tenn., supra*, note 7.

[53] *Augustus* v. *Board of Public Instruction of Escambia County, Fla.*, Civ. No. 19408, 5th Cir., July 24, 1962. The court of appeals also ruled that the district court should have not dismissed the portion of the original complaint dealing with teacher desegregation, and remanded the question for further consideration by the district court. In August the Federal district court in Florida enjoined two school boards from assigning school personnel on the basis of race. *Braxton* v. *Board of Public Instruction of Duval County*, Civ. No. 4598, S.D. Fla., Aug. 21, 1962; *Tillman* v. *Board of Public Instruction of Volusia County*, Civ. No. 4501, S.D. Fla., Aug. 21, 1962.

lower court had approved a plan which did not provide for the abolition of dual school attendance areas based on race. The plan did provide, however, that parents could submit applications showing their preference of schools. The school administration would "fairly consider" a parent's preference of schools in assigning pupils to schools.

The circuit court approved these provisions, but ordered a grade-a-year abolition of dual school districts based on race, beginning at grade 1. This addendum substantially transformed the original plan into a grade-a-year plan, but additionally allowed transfers of Negro pupils into formerly all-white schools *in grades above the currently desegregated grade.* The latter feature is significant when contrasted with two 1962 Sixth Circuit Court of Appeals decisions,[54] which refused lateral transfers above grades currently desegregated on the grounds that a "smooth working of a plan could be thwarted by a multiplicity of suits by individuals seeking admission to grades not yet reached in the desegregation plan." [55] The Fifth Circuit plan is also significant because it answers, at least for some children, the objection that grade-a-year plans starting at grade 1 precluded a desegregated education for pupils in grades above grade 1 at the first year of desegregation.

Validity of racial transfer provisions

Grade-a-year plans, and accelerated versions thereof, generally provide for rezoning of the school attendance areas within the particular district without regard to race. Since good-faith zoning would usually result in the inclusion of some white children in the attendance zones of the former Negro schools, "safety valve" transfer provisions have been included in these plans to allow an escape for these white children.[56]

Restrictive transfer provisions received judicial attention in the past year. These provisions provide that any child may be granted a transfer from a school in which he is among a racial minority. Previously this provision passed constitutional muster in the Court of Appeals for the Sixth Circuit,[57] but did not in the Fifth Circuit.[58] However, in the past year, most of the minority transfer provisions adjudicated have been accepted.

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[54] *Supra,* note 7.

[55] *Maxwell* v. *County Bd. of Education of Davidson Co., Tenn.,* 301 F. 2d 828, 830 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 34, 36 (1962).

[56] See *1961 United States Commission on Civil Rights Report, Education,* pp. 20–22.

[57] *Kelley* v. *Board of Education of the City of Nashville,* 270 F. 2d 209 (6th Cir. 1959), 4 *Race Rel. L. Rep.* 584 (1959), *cert. denied,* 361 U.S. 924 (1960).

[58] *Boson* v. *Rippy,* 285 F. 2d 43 (5th Cir. 1959), 5 *Race Rel. L. Rep.* 392 (1959).

The Sixth Circuit remained steadfast in approving a minority transfer provision in *Goss* v. *Board of Education of Knoxville* [59] and *Maxwell* v. *County Board of Education of Davidson County, Tennessee.*[60] In holding that the transfer provisions did not offend the constitutional rights of the plaintiffs, the court in the *Goss* case stated: [61]

> We do not think the transfer provision is in and of itself illegal or unconstitutional. It is the use and application of it that may become a violation of constitutional rights. It is in the same category as the pupil assignment laws. They are not inherently unconstitutional [case omitted]. They may serve as an aid to proper school administration. A similar transfer plan was approved by this court in *Kelly* v. *Board of Education of City of Nashville.* . . . We adhere to our former ruling with admonition to the board that it cannot use this as a means to perpetuate segregation.

A dissent from this view in a district court within the Sixth Circuit came in *Mapp* v. *Board of Education of the City of Chattanooga,*[62] decided before *Goss* and *Maxwell* were handed down. In *Mapp* the court reserved judgment on a minority transfer provision, stating: [63]

> Not only is the proposed transfer plan of questionable legality, but it is the opinion of the court that any transfer plan, the expressed or primary purpose of which is to prevent or delay the adoption or implementation of the plan of desegregation herein developed, should not be approved.

In the Fourth Circuit, a minority transfer rule was approved by a district court in Virginia in *Jackson* v. *School Board of the City of Lynchburg.*[64] And in the Fifth Circuit, a district court in Texas approved a transfer provision not tied to race, but restricted it to "when good cause therefor is shown and when transfer is practicable." The board was ordered not to effect discrimination between the races when using this transfer rule.[65]

In striking contrast to the foregoing cases, the Court of Appeals for the Fifth Circuit wrote a transfer provision into the New Orleans desegregation plan to *implement* desegregation.[66] The Orleans Parish School Board requested the right to transfer children according to the provisions of the Louisiana pupil placement law. The court allowed this use of the placement act, but went further than merely ordering the school authorities to use it nondiscriminatorily. Because

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[59] 301 F. 2d 164, 7 *Race Rel. L. Rep.* 34 (1962).

[60] 301 F. 2d 828 (6th Cir.) 7 *Race Rel. L. Rep.* 34 (1962).

[61] 301 F. 2d 164, 166 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 36, 39 (1962).

[62] *Supra,* note 49.

[63] *Id.* at 847, 7 *Race Rel. L. Rep.* at 32. The court had before it evidence showing that the same transfer provisions had "operated to minimize progress under a desegregation plan" in Nashville.

[64] *Supra,* note 39. The Fourth Circuit Court of Appeals, on September 17, with evidence before it that a minority transfer provision retarded desegregation, struck the provision from the plan of the Charlottesville, Va., School Board, *Allen* v. *School Board of the City of Charlottesville,* Civ. No. 8638, 4th Cir. Consequently, it is doubtful whether the minority transfer provision in the Lynchburg plan can stand on appeal.

[65] *Borders* v. *Rippy,* 195 F. Supp. 732 (N.D. Tex. 1961), 6 *Race Rel. L. Rep.* 746 (1961).

[66] *Supra,* note 45.

of past incidents of total withdrawal of white children from schools which were ordered desegregated, the court gave the Negro children the right to follow migrating white pupils. The order reads:[67]

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

Thus, transfer provisions are a double-edged sword, and may in the future be used to prevent "resegregation" occurrences.

The administration of court-approved plans

After a desegregation plan has been approved by a court, the court's work is far from over. The court is under a duty to retain jurisdiction over the case until full compliance with the plan has been effected. In three cases in the past 12 months, the courts have found considerable disparity between desegregation plans as originally approved and as subsequently administered.

In *Dove* v. *Parham*,[68] before the District Court for the Eastern District of Arkansas, plaintiffs objected to the application of a desegregation plan which provided for: (1) assignment of first-grade Negro pupils to a white school of their choice if they made a score of average or better than the students in the school on qualification tests; and (2) allowed lateral transfers in grades above the first grade only when such pupils were making satisfactory academic progress in the school which they had been attending. The court upheld the denial of lateral transfers by the school board by finding that the school board policy was not unreasonable in refusing transfers "to a new school of faster curriculum pace [of] students who were not doing too well in a school to which they were already acclimated and in which, presumably, they were well adjusted."

The assignment complaint arose because, under the existing procedures, no Negro students were actually admitted to the white school in issue. In approving the plan the previous year, the court had anticipated substantial numbers of applicants to the white school. The prediction was wrong. Of 77 Negro pupils, 22 tested above average, but none of those pupils applied for admission to the all-white school. In fact, the only two applicants were far below average.

The court decided that, in view of the small number of Negro applicants, desegregation would not be brought about by the existing plan.

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[67] *Ibid.*

[68] 196 F. Supp. 944 (E.D. Ark. 1961), 6 *Race Rel. L. Rep.* 971 (1961).

The plan (previously approved) was revised to exclude academic criteria. The court commented:[69]

> When the number of applicants at any particular time is substantial, the school officials may properly employ assignment criteria so as to select out of the group the particular students most likely to advance [the] . . . overall desegregation program. . . . On the other hand, where . . . the number of Negro applicants is extremely small, the problem of selection is different, if it exists at all, and the school officials must take care that they do not use assignment criteria, devised to meet problems of selection, as, in effect, an exclusionary device which, intentionally or unintentionally, preserves compulsory segregation.

In the New Orleans desegregation case, *Bush* v. *Orleans Parish School Board*,[70] the court was confronted with bald disobedience to a court-formulated plan. The district court had ordered that, beginning in September 1960, all children entering the first grade could choose to attend the nearest formerly white or formerly Negro school.

The school board subsequently assigned all first-grade pupils according to race, and made Negro pupils pass a series of tests in order to transfer to white schools. In April 1962, the district court, after recognizing the categorical noncompliance of the school board, and the inequality of the Negro schools, ordered the first six grades completely desegregated. In May this order was modified, and complete desegregation of only first grade was ordered the following September, with a grade a year thereafter.

On appeal, the second order was changed to allow every child in the first three grades to choose to attend the nearest formerly all-white or formerly all-Negro school. This, in effect, achieved desegregation of a grade a year from the date of the 1960 order. The court also ordered the abandonment of dual attendance areas based on race. This was to be done in September 1963—first and second grades; in September 1964—the first five grades; and a grade a year thereafter. The appellate court also permitted the school board to use the Louisiana pupil placement act, the use of which had been suspended by the district courts. The court suggested it might be employed to implement desegregation, and thus should not be suspended during the transition period.

The significance of the latest order of the Fifth Circuit in the *New Orleans* case perhaps lies in the fact that it came 3 years late and in such a disorganized manner. It certainly points up to other courts that constant surveillance is needed, and that a plan to desegregate is not enough in and of itself.

In *Allen* v. *School Board of the City of Charlottesville*,[71] the district court found that the school board was administering a court-approved plan in a manner clearly contrary to its express provisions.

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[69] *Id.* at 950, 6 *Race Rel. L. Rep.* at 975.

[70] *Supra*, note 66.

[71] 203 F. Supp. 225 (W.D. Va. 1961), 6 *Race Rel. L. Rep.* 1011 (1961).

The original plan directed the school authorities to assign children to schools without regard to race. However, the school authorities assigned all Negro students to the traditional Negro high school. If they wanted to attend the formerly white high school, they had to meet academic qualifications not imposed on white children as a condition of admittance. The court ordered *free choice* of high schools to all students. Moreover, the court was not sympathetic with the administrative hardships this would create, observing, "It may create some problems, but, if so, it can only be said that the original source of these troubles lies in the discriminatory practice heretofore existing." [72]

Thus, in the administration of court-approved plans, the only hardships acceptable as bases for additional time are equitable hardships. If the school authorities are dilatory, or actually contumacious in the administration of plans, the courts will disregard resultant hardships.

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[72] *Id.* at 229–30, 6 *Race Rel. L. Rep.* at 1015. On appeal the district court's decision on this issue was affirmed, but the district court's decision upholding a minority transfer provision was reversed. *Allen* v. *School Board of the City of Charlottesville,* Civ. No. 8638, 4th. Cir., Sept. 17, 1962.

CIVIL RIGHTS U.S.A.

Public Schools: Southern States

1962

KENTUCKY

By Laurence W. Knowles

A Report To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

In collecting material for this report the author personally interviewed many school administrators, guidance counselors, and teachers. Some of their observations are included where they seemed necessary to an understanding of the desegregation process. They represent the considered judgment of professional persons working in the public school systems discussed.

The author wishes to extend his sincere gratitude to all the Kentucky school personnel who contributed graciously of their time and knowledge to this report. It is hoped that the report reflects their professional dedication to improve and equalize educational opportunities for all Kentucky schoolchildren.

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JULY 1, 1962.

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Part I. Kentucky

Introduction

Kentucky is not a Northern nor a Southern State. Committed to neither side during the Civil War, it nevertheless fathered the Presidents of both the Union and the Confederacy. The two sons of its Congressman, Breckinridge, became officers of field rank in the same war, but in different camps.

This division of tempers remains. The Bluegrass country and southwestern Kentucky are the Kentucky of Henry Clay and John Hunt Morgan—of southern mind and mores. Quite a different sentiment is found in Louisville and Jefferson County. Still another set of attitudes exist in the isolated mountain districts of eastern Kentucky. These opposing temperaments course through every advance and setback experienced in school desegregation in Kentucky.

Desegregation of Kentucky schools began in 1955 with a few scattered districts. However, in 1956 the big step came. In that year the late Omer Carmichael, then superintendent of public schools in Louisville, opened the schools to all children without regard to race. After a year of planning, speaking to civic groups, and generally keeping a hand on the community pulse, Dr. Carmichael had concluded that Louisville was ready for desegregation.[1] The success of the move is now history, as is the praise, both national and international, which attended it. In one stroke well over a third of Kentucky's Negro school population was permitted to attend school with white children.

Since 1956 there has been steady, although measured, progress in school desegregation. But Kentucky is still far from complete school desegregation. In 1962 about half of Kentucky's Negro students attended all-Negro schools. However, the patterns establishing this proportion are not monolithic. In fact, in several instances, Negroes have chosen to attend all-Negro schools, and to this extent no official action maintains segregation. Where there has been official action, the patterns of segregation range the whole breadth of the segrega-

[1] See Carmichael and James, *The Louisville Story* (1957).

tion-desegregation horizon. For example, some school districts have desegregated their high schools, but still maintain their segregated elementary school system. Other school districts have desegregated their elementary schools, but send Negro high school students to a public Negro boarding school. Still other districts maintain separate systems for Negroes and whites, but allow Negroes to transfer to the white schools. And there are school districts which forbid any Negro child to attend school with a white child.

Louisville and Jefferson County are considered first and separately because they contain a major portion of the Negro population in Kentucky. Following is a survey of the patterns of segregation which exist in the State as a whole. A conclusion and a statistical appendix complete the report.

The Louisville Public School System

Louisville, a flourishing industrial center and the only large city in Kentucky, is located on the southern bank of the Ohio River some 90 miles below Cincinnati. The bridge which has linked Louisville to southern Indiana for many years is a tangible reminder that if Louisville was ever a typical southern city it may no longer be considered so. As an important port for river trade from its beginnings, Louisville had early ties with the South and adopted many southern traditions and customs, including the separation of the races in most aspects of life.

Louisville's public schools were organized and operated on a racially separate basis as required by State law until the school year 1956–57. The complete, voluntary desegregation of all its schools in the fall of that year is a well-known success story. How does desegregation look there after 6 years of operation? Has it produced biracial schools throughout the city or does school segregation persist due to factors other than law? Has it equalized educational opportunity for all children? These are the questions which will be considered in this report.

In 1960, Louisville had a total population of 390,639, of whom 71,315, or about 18 percent, were Negro. The proportion of Negroes in the public school population is, however, almost double this percentage—approximately 35 percent—due principally to the number of white pupils enrolled in parochial schools. The parochial schools of Louisville do not exclude Negroes but there are many more white than Negro Catholics in this city.

The total public school enrollment in the school year 1961–62 was 48,063 pupils, of whom 16,789 were Negroes. These pupils attend the city's 73 elementary, junior, and senior high schools. The factors which tend to create a large degree of segregation in the schools, in spite of a completely nondiscriminatory organization of the school system and a free transfer or enrollment policy, seem to be different in the three classes of schools. They will, therefore, be considered separately.

ELEMENTARY SCHOOLS

The city is zoned geographically into attendance areas for each of its 54 elementary schools which house a total of 28,096 pupils, including 9,867 Negroes (35 percent). There is no apparent gerrymander of boundary lines to create segregation in the schools, but nevertheless almost one-half of the schools are almost all white or all Negro in enrollment. In 14 schools Negro pupils are a minority of 2 percent or less, and, conversely, in 8 schools whites are in the same small proportion.

A distinct racial division in housing, creating separate white and Negro residential areas in the city, seems to be the principal cause of the substantial segregation at the elementary school level. Where proximity to school is the only consideration in fixing the boundary lines for school attendance areas, as in Louisville, schools placed in appropriate spots geographically take on the racial complexion of the neighborhood served.

The movement of Negroes from rural to urban areas, and of whites from the city to the suburbs, is seen in Louisville, as in most American cities today. Numerically, since school desegregation in 1956, there has been an increase of 4,779 Negro pupils in the public schools as compared with a decrease of 2,557 white pupils. Proportionately, the Negro school population was 10 percent greater in 1961–62 than in 1956–57. The Negro residential areas, of necessity, have been expanding to meet the housing needs of the increased population. As the boundaries of the Negro residential areas are broken, the periphery becomes a transitional area, turning from white to Negro over a period of several years.

The elementary schools adjacent to or located in a transitional housing area reflect the community change.[2] For example, in one school the white enrollment has decreased from 32 to 6 percent in 2 school years; in another, a white majority of 52 percent has been reduced to

[2] See app. A.

a minority of 25 percent in the same period. This resegregation trend is due primarily to the increase in the Negro population and changing housing patterns. But Louisville's free-transfer rule plays its part also.

As part of its desegregation plan, Louisville adopted a rule permitting any child, white or Negro, to transfer out of the school of the zone of his residence to any other school of the same grade level in the city which could accommodate him, upon the written request of his parents. Parents of white children at the elementary school level begin to request transfer of their children when the school ratio tips to a Negro majority. The increase in white transfers is precipitous when the white percentage in a school sinks below 30 percent.

This transfer-exodus pattern runs through the entire Louisville school system, from elementary through senior high school. In one respect, however, it differs in elementary schools. In general, elementary schools do not completely polarize; some white children stay even when they are in a small minority. At the higher levels the minority transfers, leaving the school wholly segregated. The primary reason a few white children remain in a neighborhood elementary school which has become largely Negro seems to be social. The elementary school child is colorblind although his parents are not. Parents make the decision to transfer the elementary child; he does not ask for it. His social group is comprised of neighborhood children and he prefers to be in school with his afterschool playmates, whatever their color. Consequently, if his parents do not feel strongly about the racial complexion of the school, he stays; the child himself does not become the moving force for transfer. These currents reverse themselves at the junior and senior high levels.

New elementary schools generally are placed in biracial areas when the school population is burgeoning. This does not appear to be a conscious official policy to produce a racial balance in the schools but a direct response to population demands. As housing in an area becomes racially mixed, the older residents without school-age children leave. These homes are purchased by Negro families with young children. The white families with young children are relatively immobile and remain. Thus, the elementary school population increases in transitional neighborhoods and calls for a new school. The newest school in such a neighborhood has a Negro-white enrollment of 447–446 and half the faculty is Negro.

JUNIOR HIGH SCHOOLS

Louisville has 13 junior high schools serving a student body of 12,193, of whom 38 percent are Negroes. Again almost half of the schools

are substantially white or Negro in enrollment; three are over 99-percent Negro, and three are over 99-percent white. Seventy percent of all Negro junior high school students go to the three Negro schools.[3]

Junior high, like elementary school students, are originally assigned by geographical school areas,[4] and they have the same right to transfer out of the school of the zone of residence to any junior high school in the city which is not overcrowded ("closed"). The rub is that most of the biracial schools near the Negro schools are closed to transfers. The result in one school area is that the Negro students must travel out of their own attendance zone, across an adjacent zone, to a third attendance area, a distance of 3 miles across town, to attend the nearest open *biracial* school (actually the nearest open school is another all-Negro school). This transportation is at the students' expense. There are two racially mixed junior high schools within walking distance, but these are "closed."

The transfer program has another thorn in it. At least one administrator feels that Negro transfer students who become discipline problems in biracial schools are discriminatorily transferred back to the Negro school of their zone of residence.[5] Moreover, there are instances of Negroes living in the zones of biracial schools who were "offered the opportunity" to transfer to a Negro school when they became discipline problems, on the ground that they would be happier "among their own kind." On the other hand, white students who are resentful of Negro students have also been asked to transfer.

The junior high schools tend to polarize much more than elementary schools for two reasons, both relating to the age group represented. At the junior high level, a child's social group changes from the neighborhood play group he enjoyed in elementary school to a racially homogeneous dating group. The white junior high child does not want to remain in a school which does not include a substantial number of his own social circle. By reason of his age also he is more mobile than an elementary child, and can attend school much farther from home. As a result, if the racially mixed school does not provide a substantial

[3] See app. B.

[4] There appears to be a gerrymander of one Negro junior high school attendance zone. In 1956, in the original integration process, the zone of the white junior high school added so many Negroes to the enrollment that the school was overcrowded. The nearby Negro junior high school had empty classrooms. To relieve this situation, the school board (with the approval of several representatives of the Negro community) redrew the attendance areas of the two schools. The line was drawn along the street which divides the Negro community from the white. The Negro community was placed in the Negro junior high district. This boundary line remains.

[5] Transfer revocation statistics in the 1961–62 school year do not support this suspicion on their face. In this period there were six white students and four Negro students transferred back to the schools in their zones of residence. However, these statistics do not reflect the comparative degrees of bad conduct of Negro and white students, which is a basis for revocation of transfers. (Truancy is the only other basis.)

social group for the white child in the minority in the school, he transfers. The school is emptied of white students and remains so.

This does not hold true for Negro students. Even when there are only a few Negro children in a biracial school, several of them will remain. There is no lessening of the pressures on the child to migrate to a school in which his social group has larger representation. The Negro children, like the white children, want to leave. However, among some Negro parents there is a strong desire to send the child to a racially mixed school. A desire to teach a child to "get along with white folks" motivates some Negro parents to keep him in a largely white school, even though the child objects. Other Negro parents believe that the education provided in a predominantly white school is better than that offered in a Negro school. The wish to see the child prove himself in competition with white children also influences the Negro parents' decision.[6]

For these reasons the predominantly Negro junior high school is apt to become all Negro, but in the predominantly white school, a few Negroes will remain.

SENIOR HIGH SCHOOLS

Louisville has 6 senior high schools serving 7,500 students, 26 percent of whom are Negroes. The Louisville system allows each student free election of senior high schools at the end of the ninth year of junior high.[7] Among the high schools, one is a trade school and the remainder are college preparatory or comprehensive high schools. Seventy-three percent of the Negro students attend one high school, Central, the predesegregation Negro high school in Louisville.[8] There was one white student in this high school in 1961–62.

The pattern of choice of high schools by Negroes appears to be determined mainly by their junior high school attendance. Thus, if the Negro student has attended one of the three Negro junior high schools, the odds are over 3–1 that he will attend the Negro high school, Central. Seventy-six percent of the graduates of the three Negro junior high schools who continue in school choose to attend Central. On the other hand, if a Negro student has attended a racially mixed junior high school, there is a better than a 3–1 chance that he will attend a racially mixed high school rather than Central.[9]

These contrasts become even more meaningful in the light of the distance of the various schools from the homes of the Negro students.

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[6] From interviews with guidance counselors and administrators.

[7] There are a few program and geographical limitations on the election of high schools. See app. C.

[8] See app. D.

[9] See app. E.

The length of the journey to school appears to have little relation to the choice of high school. Nor does the economic burden of transportation seem to make any substantial difference. (Louisville does not provide school transportation.) In fact, the only reported instances of transportation costs as a determinative factor in the choice of high schools are where the costs encouraged desegregation. It was the observation of an administrative official in one all-Negro junior high school that the students who did not choose Central fell into two groups; those with above average abilities, and those who could not afford the carfare.

The inference is strong that Negro high school students prefer biracial education only if they have experienced it before. If a Negro student has not received his formative education in biracial schools, the chances are he will not choose to enter one in his more mature school years.

Most Negro students who do attend racially mixed high schools choose those having a substantial Negro enrollment. Again, there is the desire to be part of a social group within the school. If there is not a sizable Negro enrollment in a high school, the Negroes do not choose it.

The trade (or vocational) school, Ahrens, must be treated apart. One might expect Negroes to gravitate to manual arts training. However, less than 5 percent of the student body of this school is Negro. The reason lies in the backdrop of the complete segregation in postschool employment opportunities. Ahrens trains students for the skilled trades, an area in which many local labor unions refuse to accept Negro apprentices.[10] Moreover, employers have refused to hire Negro graduates, fearing trouble with white employees if they do. The Negro students who want to enter a trade are thus pushed by the community into traditional trades for Negroes. Courses in these trades are offered at Central, the Negro high school. Thus Central attracts the trademinded student with such offerings as tailoring, beauty culture, and tearoom service.

There is still an accounting to be made for the Negroes who choose to attend Central High School. The choice of Central by those who attended Negro junior high schools has been discussed. These students do not desire to trade a known social group for the unknown factors of biracial situations for the first time at this level.

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[10] From an interview with an administrator of Ahrens. His views are substantiated by a statement of the head of the U.S. Department of Labor, Bureau of Apprenticeship and Training, in Kentucky: "Only a handful of Negroes" are among the approximately 1,000 persons enrolled in the apprenticeship programs in the Louisville area.

In the employment area generally, a survey of the 1960 graduates of five Louisville high schools revealed that over a quarter of the graduates of the Negro high school were unemployed, whereas the *average* of the five high schools was 10 percent unemployed (The Louisville Times, Jan. 19, 1962).

The motivations of Negroes who attended racially mixed junior high schools to return to a racially homogeneous school seem to be various.[11] The principal motive of Negro girls is the large social horizon existing at Central. Again, leadership opportunities for girls are chiefly in social activities, such as cheerleading, reigning as a dance queen, and sorority life. The male students, however, have additional motives. There is an understandable identification by the Negro community with Central's outstanding athletic achievements. The Negro athlete who represents Central wears the community garlands. Some athletes, who could play on the first team at other high schools, choose Central, and a place on the second team there.

College scholarship opportunities are another factor affecting both boys and girls. When Louisville first desegregated its schools the academically talented Negroes chose to attend the older Louisville high schools of high scholastic reputation. Several years have passed and the trend has reversed, although not completely. The Negro community feels that the racially mixed high schools favor white students in scholarship recommendations. This undercurrent is quickened by the fact that in several of the racially mixed schools no Negro has received an academic scholarship. On the other hand, Central has a history of liaison with southern Negro colleges and other schools which offer scholarships for Negroes. As a result, there has been a return of some academically talented Negro students to Central. Not all have returned, but many. The Negro parent in the upper income bracket, who can afford to send his child to college, generally prefers a racially mixed and a more prestigious high school education over a chance of a scholarship to a Negro college.

Central has suffered from desegregation.[12] It was and is Louisville's Negro high school, but it no longer gets all of the best Negro students. A substantial number of talented Negro students (scholastically, athletically, and musically) do not choose Central. Negro educators believe that talented Negro students are encouraged to attend integrated schools. Students with an outstanding talent are more readily accepted by white students. Insofar as students at Central have been deprived of an opportunity to associate with very talented students, Central has suffered.

SCHOLASTIC AND SOCIAL PROBLEMS

As borne out by previous studies of Negroes in Louisville schools, they show no identifiable lack of scholastic potential. Most teachers inter-

[11] From interviews with administrators and guidance counselors.

[12] Central's dropout rate is the highest in the city, 29.0 percent in 1960–61.

viewed reported no difference between Negro and white performance in school. Those who do see a small difference are careful to attribute it to the generally lower socioeconomic background of the Negro pupil.

In one formerly all-white school zone and neighborhood, the first Negroes to move in were from the upper socioeconomic strata of the Negro community. Their children reflected this cultural background. As a result, in the beginning years of the transition, the average Negro student did better scholastically than the average white student. After a cross section of the Negro community settled in the neighborhood the initial superiority of the Negro students leveled out.

The fact that the first Negroes in the school were scholastically superior to the white students served to retard the exodus of white teachers. Any initial prejudice the white teachers may have had was compensated for by the satisfaction of teaching more responsive classes. In other schools, even where Negro students make up 93 percent of the student body, white teachers stay if the students achieve well scholastically. Teachers do not seem to leave Louisville schools when Negroes enroll, unless they are poor students.

Several school officials observed that Negro children were more prone to be absent and tardy than white children. This was explained as part of the struggle of the child with his environment. This environmental taproot is said also to explain the resentment by some Negroes of white authority in the school and the racially-based student friction which sometimes appears.

There are various estimates of the proportion of discipline problems caused by Negro students. The only conclusion possible from the conflicting reports is that there is no identifiable difference between the races in deportment. Several schools which employ Negro faculty members enlist them to aid in the discipline of Negro children. Negro students who resent white authority or white students have been advised to transfer to a racially homogeneous school.

In the initial years of desegregation, the Louisville schools abandoned informal school dances. There has been a cautious return to these, based on favorable experience. Members of the different races do not dance together; school principals would discontinue the dances again if this occurred. Negroes are well represented at dances if they comprise a substantial portion of the student body; if they are a small minority, they do not identify with the school's social functions, and do not attend.

Club activities depending upon parental support were discontinued in one high school when some parents objected to Negro participation. Similarly, other clubs depending upon community facilities have been affected. For example, one school will abandon its bowling program if Negroes are not permitted in the bowling alleys. Swimming

activities were also threatened until a YMCA revised its policies and permitted Negro participation.

Lunchrooms serve all pupils enrolled in the school although the pupils show a marked tendency to divide racially in the lunchroom. Lack of common social interests seems to be the cause, since Negro and white students having a common interest, such as athletics or music, eat together.

Parental participation in the PTA is about equal between the races. At this time, after several years of integration, Negro parents are no longer hesitant to put forward opinions, both within the PTA structure, and at the school.

NEGRO TEACHERS IN THE LOUISVILLE SYSTEM

Louisville did not assign Negro teachers to classrooms having white students until 3 years after pupil desegregation.[13] There has been a continuing increase of the Negro teachers appointed on faculties of biracial schools since that time and there are now over 80.[14] No white teachers have joined previously all-Negro faculties. Negro students in these schools continue to be taught only by Negro teachers.

The Negro teachers average more postgraduate degrees than white teachers, and the facile observation "but from Negro colleges" is not true in many cases. However, there is no Negro teacher assigned to a high school other than Central, the predesegregation Negro high school, although over 500 Negroes attend other high schools in the city. One reason suggested by some observers is that school officials believe that the older students would resent Negro teachers. Another is the traditional opinion that Negro teachers, despite their formal educational achievements, are inferior.

The situation in junior high schools is little different. There are eight Negro teachers on integrated junior high school faculties. Five are women, several of whom teach "special" classes, and three male

[13] The average salary for teachers in the Louisville system is $5,510, approximately $550 less than the national average. However, the average age of Louisville teachers is over 45 years, much higher than the national average. This means that a larger proportion of Louisville teachers receive maximum salaries than the national average. Thus, the Louisville salary scale must be much lower than a comparison to the national average indicates. Negro teachers average higher incomes than white teachers. This is because Negro teachers on the average have more hours of postgraduate study than white teachers. Postgraduate study affects salary more directly than any other factor except years of service.

[14] Negro teachers, at the initial stage of teacher desegregation, were very hesitant to accept appointments to white faculties. A "feeler" letter asking certain Negro teachers if they wanted to serve on previously all-white faculties received negative responses. The following year Negroes were appointed to white faculties.

teachers. It has been suggested that the paucity of male Negro teachers in the high schools is due to a fear of bringing them into personal contact with white female pupils. In fact, two of the male Negro teachers in the junior high schools teach the nonsensitive courses of manual arts to boys.

The remaining Negro teachers, an overwhelming majority, teach in predominantly Negro and biracial elementary schools. Many, if not most, of these are the transitional schools, and as has been mentioned, change quickly in their racial composition and become almost all-Negro schools. One teacher believed there is an unwritten policy to appoint Negro teachers when the percentage of Negro students in a school passes 50 percent.

The easiest initial placement of Negro teachers in a non-Negro school is in the new elementary school. There is no incumbent white faculty there to resist the appointment. For example, two new schools opened in 1961–62 with very substantially integrated faculties. It is suspected that the newness of the facilities served to attract white teachers, even though the student body was largely Negro, and the faculty would be biracial.

Negro teacher desegregation in Louisville has hurt the education of Negro children at the all-Negro schools. Originally, to ease the acceptance of Negro teachers in the white schools, the best Negro teachers were chosen for transfer. This practice has continued. One teacher in a Negro school received a national award for excellence in his specialty and was transferred to an all-white faculty the following year. Thus, teacher desegregation, like pupil desegregation, has resulted in an educational setback for pupils remaining in all-Negro schools.

Negroes are not high in the hierarchy of school administration in Louisville. In the board of education offices there are two Negroes. One is an assistant supervisor of music studies, supervising only Negro schools. The other Negro is in charge of mimeographing. She is assisted by one part-time worker. There are no Negro secretaries or clerks.

In answer to an allegation of personnel discrimination, the school superintendent stated that 11 school principals and five assistant principals in the system were Negroes.[15] He failed to mention that they headed only Negro personnel.

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[15] So. School News, May 1962, p. 18.

The Jefferson County System

Jefferson County, excluding Louisville, has a population of 120,308. The Negro population is less than 10 percent of this figure. Most of the Negroes live in the areas suburban to Louisville and work in the city; only a few are scattered throughout the county.

Prior to desegregation in 1956, Jefferson County maintained a number of one-room elementary schools for its sparse Negro population and sent its Negroes of high school age to the Negro high school in Louisville, or to Lincoln Institute in the adjoining county. After desegregation, the one-room Negro elementary schools were gradually abandoned, the nearest white elementary school absorbing the Negro pupils.

Two segregated situations still exist. One small segregated school still handles grades 1–3 for Negroes, but grades 4–6, formerly included, have been transferred to the neighboring white elementary school. This physically poor Negro school is maintained for the lowest grades because the nearby white school does not have room for the children. The other segregated system is in Jeffersontown, where both a white and a Negro elementary school, grades 1—8, operate. Transfer of the Negro children from the Negro school to the physically superior white school now would cause some overcrowding. The school board, therefore, wants to wait until the town's population justifies the building of a new school to replace both existing schools. Until the new school is built, Negroes are expected to be assigned to attend the segregated school.

There is space in one new elementary school in the county to absorb all of the Negroes now attending the segregated schools nearby. But to attend this school the Negro children would have to be bussed past other biracial schools. The school administration feels this would look like segregation (passing the nearest desegregated school to go to another), although the receiving school enrolls both races. It will not be done.

There is one Negro elementary school in Jefferson County that is not the result of official segregation, but of geography. The school abuts a Negro suburban development where the majority of Negro elementary pupils in the county live. Built prior to desegregation in 1956, it is a superior structure, handling grades 1 to 9.

Negro high school students in Jefferson County are scattered among several formerly white schools, and do not compose more than 11

percent of any student body. There are several schools with less than 15 Negroes in student bodies of over 1,300. In the latter schools the dropout rate among the Negro students is very high. In other schools enrolling a substantial number of Negro students there is no Negro dropout problem.

Negro students, when in a very small ratio in a formerly white school, do not participate in school social activities and their parents do not attend PTA meetings. On the whole, it may be said that identification with the school as "their school" is lacking. On the other hand, when a substantial number of Negro students are enrolled, they seem to identify with the school and its functions; dances and PTA meetings are well attended in that case. In one school a Negro girl was elected to be a cheerleader of the student body of 1,400 white students.

There is a wide gap in the socioeconomic background of the average white child and the average Negro child in Jefferson County schools. This is reflected in the generally poorer scholastic performance of the Negro students. Moreover, one school administrator observed that the Negroes who have attended the two segregated elementary schools were not as well prepared for high school as those who attended biracial elementary schools.

Some schools in the Jefferson County system employ a track system for assignment to classes. Experience shows that most Negroes gravitate toward the lower track levels. One high school, after abandoning racial designation on registration cards, has resumed the practice. It was found that, in the absence of racial information, lower track classes had topheavy Negro ratios. Now Negroes are given "every break" in track classification to avoid an overly high concentration of Negroes in some classrooms.

The Negro teachers from the one-room schools which have been closed were transferred to the faculties of the remaining Negro schools. To date no Negro teacher in this county has lost his livelihood as a result of desegregation.

On the other hand, there are no Negro teachers teaching white children in Jefferson County. Moreover, there has been no announcement by the school board of any plan for teacher desegregation. Some school administrators believe that the present training programs for Negro teachers will produce much more capable teachers than in the past, and predict that the new generation of Negro teachers may be found qualified for placement on white faculties.

Other Kentucky School Districts

Of the approximately 43,000 Negro pupils in Kentucky public schools, approximately 43 percent live in Louisville and Jefferson County, which have already been discussed. The remaining 57 percent (about 25,000) are widely scattered throughout the State. Some of Kentucky's 120 counties have no Negro population at all, and in others it is very small.

There are 209 school districts in Kentucky, 120 county districts, and 89 independent systems. There is no Negro school population in 54 of these 209 districts.[16] The remaining 155 districts occupy every calibration on the segregation-desegregation yardstick. Some of the biracial school districts operate Negro high schools; others never have provided in-district education at this level for Negroes. Some have absorbed all Negro high school students into the formerly white schools but still maintain segregated elementary schools; a few have abandoned segregation at all levels. Some school districts still operate segregated schools at all levels, but have adopted desegregation policies permitting Negroes to apply for transfer to white schools. Therefore, the segregation-desegregation patterns in Kentucky school districts in the school year 1961–62 at the high school and elementary levels will be considered separately. In addition, the following will be discussed: Lincoln Institute, a public boarding school for Negro students in Shelby County; the effect of school desegregation on Negro teachers; and the policies and actions of the State board of education. A summary concludes the text of the report.

DESEGREGATION AT THE HIGH SCHOOL LEVEL

Districts operating Negro high schools

The 31 Negro high schools in Kentucky are, for the most part, very inferior to the corresponding schools for white students. The State board of education's most recent evaluation of all high schools in the State placed seven of these Negro high schools although accredited in the lowest classification; i.e., temporary. This rating is applied to schools which offer 18 or less high school courses. Of the seven non-

[16] In many districts which report an all-white population, there are several families with Negro blood. They live in areas of such picturesque names as "Turkey Knob" and "Hen Cliff." The children of these families are not segregated in education.

Negro schools given this classification, five will be closed next school year. However, none of the Negro schools will close.[17]

Districts continuing to operate Negro high schools generally feel that they are not yet ready for desegregation. Although in some instances there is no pressure from the Negro residents, the immobility may not be laid at the feet of Negro acquiescence in all cases.[18] For example, in 1955, faced with the Supreme Court decisions, one school board adopted this resolution which is recorded in the minutes:[19]

> Within the limits of human endurance . . . we will proceed as rapidly as possible to set up a plan to secure the widest possible participation of all our citizens in finding the answers to this problem that will be fair and just to each and every person in our community.

Seven years have passed. No further action has been taken by the board and the Negroes still attend segregated schools.

Another county has four high schools; three for white pupils and the fourth for Negroes. A new consolidated high school is under construction to which the students of the three white high schools will be transferred and those schools will be closed. The Negro high school, however, will not be closed but will be maintained "as long as practical."

Many pillars support the continuation of dual school systems. The principal one is probably political. In a substantial number of Kentucky counties the school system is the largest "industry." It offers the prestige and purse positions in the community. Few administrators in these systems seem to want to risk their jobs to attempt voluntary desegregation which the community does not want. Although school boards are not monolithically segregationist, giving public support to desegregation is thought to be impolitic in the absence of pressure to act affirmatively.

As an economic matter, the maintenance of two systems is expensive, especially at the high school level. In cases where the community has been convinced of the drain on the school budget resulting from segregation, desegregation has been accepted. The minutes of one school board give prohibitive costs as the reason for abandoning their Negro high school program in June 1962.[20] Another district plans the same course of action in the fall of 1963 on the same grounds.

If school authorities can place the responsibility for desegregation on some issue other than concern for the education of Negroes, they are willing to close their separate schools. If responsibility for the

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[17] Seven other Negro high schools were listed as "emergency" schools, which means that they offer between 18 and 24 high school courses.

[18] For example, Negro citizens have appeared before the boards of education of Jessamine and Ballard Counties, only to be told that the communities were not ready for integration.

[19] Caldwell County Board of Education, minutes of Sept. 2, 1955.

[20] Providence Board of Education, minutes of March 1962.

move can be ascribed to economic exigencies, a threatened suit, or orders from the State board of education, there appears to be little resistance to desegregation in Kentucky districts.

Districts without Negro high schools

In many Kentucky school districts the Negro school population totals less than 100 students, the high school population less than 25. In these districts the cost of building and staffing a Negro high school would be prohibitive. State accreditation of and financial aid to high schools is contingent upon the offering of at least 12 courses and an enrollment of not less than 100 students. Many districts cannot meet these requirements; they do not have enough Negro students. Consequently, before the Supreme Court decision in 1954, if there was a Negro high school within commuting distance,[21] the Negro pupils were bussed daily to that high school.[22] Some have continued this practice; others have accepted the Negro high school students in their white high schools.

Where segregation remains there is complete interdependence in the network. Several districts must support each other in the operation of such a segregated system. Very few of the urban areas have a sufficiently large Negro population to justify a Negro high school without the tuition students. If the rural districts stopped sending their Negro students there, most would be forced to close. On the other hand, if the urban district closed its Negro high school and transferred its students to its white high school, the rural districts would have no alternative but to put their Negro students in white high schools. As suggested earlier, cost rather than the illegality of segregation is the usual justification by the district making the first move. One district absorbed the Negro students into its white high school in 1955 to avoid the financial burden of tuition and transportation costs. Another district, however, still pays $10,000 per year to keep 16 Negro high school students out of its white high school.

After one district withdraws from the arrangement, the other districts shift the responsibility for integration to the initiator and readily take their own Negro students into their white schools. When Owensboro closed its Negro high school in June 1962, Ohio County, which has sent its Negro students there for many years, was forced to plan to open its white high schools to its Negro pupils in September.

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[21] Most of the Negro high schools in the State are located in independent urban school districts. These districts generally have more Negro students than the county districts in the surrounding area. With the assurance that adjacent rural districts will pay tuition to a centrally located Negro school to provide education for their Negro students, the building and operation of a Negro high school has been economically feasible.

[22] Where distance made daily commuting impractical, many districts formerly offered, and a fair number continue to offer, Negro youth an opportunity to attend Lincoln Institute as boarding students. Lincoln Institute is considered hereinafter.

On the other hand, the follow-the-leader aspect of this situation favors a continuance of the status quo. Officials in many districts state that they are waiting for others in the partnership to act first. The school board minutes of one district operating a Negro school reflect the responsibility felt toward its partners in segregation to continue maintaining its Negro high school.[23] "[The board of Education] . . . feels an obligation to the Boards of Education of Bath, Montgomery, and Nicholas Counties which have made our Du Bois High School possible by transporting their students here for many years."

Lincoln Institute

There are many school systems operating segregated elementary schools, but no Negro high school. These systems are also beyond commuting range of the nearest Negro high school. These districts send their Negro high school pupils to Lincoln Institute.

Originally a private institution, Lincoln has been under State control for several years.[24] It is a boarding school of 440 Negro children, grades 9–12, with an annual budget of over $300,000.

The plant is old, but impressive and well kept. It has over 500 acres of campus; the buildings are on a hill a quarter of a mile from the entrance. A 450-acre training farm adds to the rural atmosphere.

Lincoln is an all-Negro school. Thirty-five school districts scattered all over the State have contractual arrangements with Lincoln for sending their Negro students there.[25] During the school year 1961–62, 18 districts were represented by students at Lincoln.[26] A number of these districts do not accept Negroes to their own white high schools. Other school district give Negroes a choice of attending the local high school or Lincoln.

The Negro students who choose to attend Lincoln have several

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[23] Mount Sterling Board of Education, minutes of Aug. 16, 1955.

[24] The history of Lincoln Institute is a history of segregation in Kentucky. In 1856 Rev. John G. Fee founded Berea, a school for poor Negroes and whites. The school was placed on a ridge dividing the whites living in the mountains and the Bluegrass area where the Negros lived. Cassius Clay donated the land for this purpose. Reverend Fee's efforts were suspended during the Civil War when he was driven out of Kentucky for his desegregation activities. He returned after the Civil War and continued his efforts to establish biracial education. Then the Kentucky Day Laws were adopted in 1904. These laws required racial segregation in all schools, public and private. Berea fought these laws to the Supreme Court of the United States only to have the laws upheld. The only Kentuckian on the Court, Justice Harlan, dissented, maintaining the laws were unconstitutional.

Berea then, recognizing its duty to the Negro students, established Lincoln Institute in Shelby County. The establishment was accompanied by cross burnings and mob action. Teachers slept with their guns and had to import food from the other counties to survive. Since then Lincoln has grown to be an honored member of the community.

[25] The State support per pupil is paid to Lincoln instead of to the local school district.

[26] Many of the remaining contracting districts have no Negro students of high school age. These districts maintain the contracts in the event they have Negro students of high school age in the future.

identifiable reasons for doing so.[27] Of course, the attraction of a boarding school colors every choice. But for some it is a choice of Lincoln or no high school education;[28] the white schools where they live are closed to them.

Many students, who could enroll in local high schools, do not do so principally because of their desire to attend a school in which they will not be a microscopic minority. In many counties there are often less than 30 scattered Negro families. Lincoln offers these students social horizons far beyond the local high schools. The subject offerings at Lincoln also attract some students. The curriculum there is realistically oriented to Negro job opportunities in Kentucky. For example, Lincoln offers prenursing courses, and maintenance engineering, as well as building trades. In fact, the introduction of terminal training courses is being considered by Lincoln to meet the needs of rural Negroes who do not go to college. These courses would attempt to prepare a student completely for a trade or skill. Lincoln is also attractive to some because of its rapport with Negro colleges and its past record of obtaining academic scholarships for Negroes. Six scholarships have been awarded to 1962 graduates.

The worst that may be said about Lincoln is that it provides a vehicle for some school districts to maintain segregation. Students who live in districts where they have a real choice of a desegregated high school or Lincoln are in a more favorable position than the white students of these communities.[29] Where no such local opportunity is offered, the Negro is in a less-favored position.

If a Negro student needs special attention because of low motivation and poor academic performance in school, he receives that needed attention at Lincoln. The student-teacher ratio (17–1) at Lincoln is much lower than the State average. The introduction of white faculty members is contemplated for next year.

A critical judgment of Lincoln's role should include several considerations: the recognition of the value of facilities such as Lincoln's for all underprivileged children; the acknowledgment of the need it

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[27] Lincoln Institute campaigns vigorously to attract students from districts which give students a choice between local high schools or Lincoln Institute. One indicium of Lincoln's success is the Shelbyville Independent School District. There, 75 percent of the Negro pupils choose to attend Lincoln, even though it entails a bus trip of several miles daily (Shelbyville's desegregated high school is within walking distance). Similarly, the Shelby County Board of Education wrote letters to all Negro parents in the district, asking whether they preferred to send their children to Lincoln Institute or the local white high school. The response was unanimously in favor of Lincoln.

[28] Kentucky's compulsory school attendance law requires children to remain in school to age 16. When it is enforced against Negro students who can attend Lincoln, they receive some high school education.

[29] Lincoln is open to white high school students who wish to attend it, but no white student has attended Lincoln.

fulfills for those still denied admission to their local high school; and the question of the propriety of State-supported segregation, even by choice, which cannot be ignored.

DESEGREGATION OF ELEMENTARY SCHOOLS

All biracial school districts in Kentucky had established Negro elementary schools by 1954 even though many did not have Negro high schools. Many Negro elementary schools were, and are, small because of the small Negro population. Migration to the cities has forced the closing of the smallest of these schools, and the opening of the doors of white schools followed in these cases.

State-forced closing of Negro schools

Since 1954, more than 80 rural Negro elementary schools have been closed. To qualify for State financial support an elementary school must have the approval of the State board of education. The State board does not give accreditation to elementary schools having less than eight teachers. These schools are only "approved" for State aid on a year-by-year basis. The State board also conducts studies of these schools, and, unless they are "isolated," recommends a building program designed for consolidation into a single operation. Threatened with the loss of State aid, the local school boards generally adopt the State board's recommendations. One school district, segregated in the past, will place all of its elementary school pupils, white and Negro, in two consolidated school buildings in September 1963, as a consequence of the State board's recommendations.

Since the justification for the classification as "isolated" is reevaluated yearly, there is reason to believe that there will be continued desegregation by consolidation in Kentucky's rural school districts.

Segregated schools continued

The economic justification for taking Negro students into the local school, which is operative at the high school level, operates to a much lesser degree at the elementary school level, so long as loss of State aid is not threatened.

In districts where the white elementary schools could absorb the Negro elementary school population, the financial benefit resulting from closing the Negro school is not great enough to make it persuasive. A 1-teacher, 1-room, 30-pupil school is not an expensive operation.[30]

[30] The discontinuance of four Negro elementary schools in one county this coming year is expected to save only $20,000.

Consequently, where school authorities consider moral and legal reasons insufficient cause to desegregate schools, and the State board has not withdrawn State aid, segregation persists.

In other districts the capacity of the white elementary schools is not great enough to absorb the enrollment of the Negro school. Here, another way must be found to break the pattern of segregated elementary schools. Geographic districting of all schools without regard to race would effect little change and create a new problem. Most small Kentucky cities contain small Negro communities and unlike Louisville, these communities are stable. The Negro elementary school is, of course, located in the Negro residential area. Geographic school attendance area lines for the Negro school could be drawn around the Negro residential area and be defended logically. But in most cases a few white children living on the periphery would probably be closer to the Negro school than the nearest white school. The school board's problem in these cases is the white periphery. To except the white periphery would be an obvious gerrymander; to include it would be to require white children in minority numbers to attend the traditionally Negro school. The third choice, to do nothing, has been the solution in many school districts in this position in Kentucky. The pre-1954 policy is retained; white children are assigned to white schools and Negro children to Negro schools.[31]

There has been very little vocal objection by Negro communities, either urban or rural, to the continuation of segregation in elementary schools. Fear of economic or other reprisals may exist but is not the sole reason for this acquiescence. The Negro school is the closer to home. Integration in many cases has been attained at the high school level, substantially unburdening the conscience of many citizens, white and Negro. A crucially important deterrent to objection by the Negro community is concern for Negro teachers. The Negro elementary school is the last refuge for Negro teachers in Kentucky. The Negro teachers displaced by the closing of the Negro high school have been moved to elementary schools according to their years of service. The elementary school thus is the last local employment possibility for the oldest and most respected members of the Negro community. Both the Negro teachers and the Negro community feel that if the Negro school were closed the teachers would be dismissed. These opinions do not lack a confirmation in the experience of other communities.

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[31] Several school districts have made no effort to build new schools to accommodate pupils of both races. For example, the Barren County Board of Education minutes of March 1956 give lack of classroom space as a reason for not desegregating their elementary schools at that time. Negroes still attend separate schols. Similarly, in April 1956 the Mount Sterling Board of Education decided not to desegregate the elementary schools "until more room is made available through a building program"; the Negro elementary school is still in operation.

Before a Negro community will object to segregated elementary schools something more than mere segregation must exist. A suit to desegregate the elementary schools of one Kentucky district was filed May 17, 1962, by a NAACP attorney. But school segregation did not precipitate the action. The Negroes were denied the use of the public park in the city and the backwash from this dispute spilled over into the school arena.

Again, if the Negro elementary schools are substantially inferior, Negro parents will complain, but they do not seek integration. Instead, repairs and remodeling are sought for the Negro school. In 1957, in one district, a Negro committee approved the building of a new $485,000 Negro elementary and junior high building. There was a general understanding the desegregation would begin sometime in the future. It has not taken place. In another district this year, Negro parents requested repairs and new additions to the Negro elementary school. They were given first priority. Thus, segregation at this level continues without complaint.[32]

DESEGREGATION BY POLICY ONLY

Some districts operating both white and Negro schools have made a slight concession to the Supreme Court's ruling that compulsory racial segregation in the schools violates the 14th amendment by giving Negro students initially assigned to a Negro school the right to apply for transfer to another school. In many instances this policy is not known to the Negro community; in others it is of public record, if not publicized. The right is not exercised in either case.

Where the board's decision is an informal agreement, the reason for not publishing it is the familiar political one. School authorities do not want to be held responsible by the electorate for initiating desegregation. The authorities want the Negro applicants to appear to be responsible, and to bear whatever community reaction may result. Thus, in these communities the Negroes must take the initiative to be admitted to other than the Negro school.

Another group of segregated districts has decisions to accept Negro pupils in their white schools recorded in the school board's minutes.

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[32] A combination of Negro acquiescence and lack of space is reflected in the April 1962 minutes of the Bath County Board of Education:

". . . due to our present crowded classroom conditions, and until we can complete a new elementary school building in Owingsville, Ky.; and due also to the completely happy situation of our Negro population in their present school surroundings, Bath County schools shall . . . continue as segregated schools until the crowded classroom conditions are relieved and removed, and until Bath County Negroes shall request integration, at which time all grades will be integrated."

The minutes usually state that Negro pupils may enroll in any school in the district. A few boards require the Negro pupils to apply for a transfer. The most stringent requirement is that Negro pupils make application to the superintendent's office, such application to be judged "in the light of the individual case." These policy statements have been matters of public record for several years. Most of the resolutions were passed between 1955 and 1958. Yet no Negro has attended a white school in these districts.

These districts continue to maintain separate school systems. Moreover, substantial capital outlays have been made to improve the Negro school facilities.[33] These investments are made on the expectation that, if the facilities provided are superior, Negroes will not take advantage of the transfer provisions.

Although generally these free-transfer rights are not exercised, there is reason to believe that, if they were, the Negro facility would soon be abandoned. The experience is this: Once a pupil transfer plan is utilized by Negroes, the flow of students is in one direction only (i.e., out of the Negro and into the white schools). The maintenance of duplicate facilities then loses its value, and segregation falls to economic considerations. As a result, in districts where the existing white schools could absorb the Negro school population, the first substantial number of Negro transfers to white schools would signal the end of a dual system, and a closing of the Negro schools.

In other school districts, a functioning transfer system would precipitate an overcrowding of the existing white schools.[34] For these districts, a transfer policy has no value as an intermediate device in the abandonment of dual facilities. They will maintain segregated schools until an all-accommodating new school is built. Then the Negro facilities will be closed and the Negroes transferred to the new school.

NEGRO TEACHERS

When Kentucky school districts close their Negro schools the school administration is faced with the problem of what to do with the Negro teachers. Generally, the Negro teachers are dismissed. Only 37 Negro teachers from 80-plus Negro schools which have been closed since 1954 have been transferred to the white schools.

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[33] In Simpson County an investment of $120,000 was made in improvements in the Negro high school in the 1961–62 school year.

[34] Several districts assert that they cannot, under present conditions, absorb the Negro high school students. For example, Warren County sends 90 Negro students to a Negro high school in another district. Absorption of the Negro students in the existing high schools would aggravate the severe overcrowding (several are already operating on double sessions). The Negro students are the only students sent to another district.

White and Negro teachers are treated equally under the Kentucky tenure laws. After 6 years of teaching in one district, a teacher must be granted tenure and, thereafter, may be dismissed only for cause. Many districts, upon closing their Negro schools, had to decide what to do with Negro teachers on tenure. In a two-step process these districts concluded (1) that more teachers were not needed in the remaining schools, and (2) upon review of the qualifications of all teachers in the system, that the Negro teachers were the least qualified.

These decisions are regulated by statutes which give preference to teachers who have continuing contracts and greater seniority. If qualified, they must be absorbed in the remaining schools. In dismissing teachers with tenure, administrators decide, in effect, that recent college graduates, with little experience, are qualified teachers, and the older, more experienced, Negro teachers are not.

The grounds for wholesale dismissal of Negro teachers are tenuous. Several of the teachers released may have been the low performers in the system, but dismissal of all Negro teachers on the grounds of incompetency is questionable. School authorities, anticipating future problems in dismissing Negro teachers on tenure, have now taken a different approach. The present strategy is to avoid giving any more Negro teachers tenure. The tactics are several. The boldest measure, employed by one district, was to offer a teacher a series of 2-year contracts. The school authorities explained to him that he merited tenure, but they preferred he accept the 2-year contracts. Wanting the job, he did. Another practice is to dismiss Negro teachers before tenure is attained, and hire other Negro teachers. One district, which will close its Negro high school in 1963, gave nine Negro teachers notice of dismissal at the beginning of the 1961 school year. They have been permitted to remain at the Negro high school until it closes.

When a school board has several Negro teachers to consider, a pattern appears. Wherever possible, the Negro teachers on tenure are absorbed into the system, and the remainder of the Negro teachers are released—even though vacancies may exist in the schools.

In general, the small Kentucky school districts do not have the problem of absorbing the Negro school administrators who in other States have suffered more than Negro teachers in the desegregation process. The Kentucky Negro school principal is almost always a qualified teacher also. Consequently, these administrators are treated as teachers in the absorption process.

Most school authorities assume that desegregation of pupils and faculties in the same year would meet with strong community resistance. These attitudes persist even though there have been outstanding examples of successful mergers of Negro faculties and students

simultaneously in the State. If the Negro teachers are not taken into the system when the Negro students are absorbed, they are not employed later. The Negro teacher cannot wait several years until school authorities consider the time appropriate for teacher desegregation; instead, they leave the community and look for other positions.

Many Negro teachers who are placed on formerly all-white faculties are given nonsensitive positions. In one district, which is closing its Negro elementary school this year, the Negro teacher has been assigned as a roving teacher, substitute teacher, and textbook custodian. She will not suffer a cut in pay. In another school district, which is closing its elementary school this year, one Negro teacher was retained in the system as librarian for elementary schools. The principal and another teacher in the Negro school were released.

Transitional, nonsensitive placement of Negro teachers does ease community acceptance of them. But in some instances these transitional positions become permanent, and the Negro teachers do not ever reach the classroom again. There is little complaint by the Negro teachers, because the special assignments are easier than classroom duties. Some white teachers, however, resent the assignment of these desirable jobs to Negroes.

In summary, it may be said that teacher desegregation in Kentucky (except for Louisville) has been negative to date. The Negro teachers who have been placed on formerly all-white faculties are there only because the school authorities could not dismiss them without difficulty. In the districts where Negro teachers have been transferred to a white school there is little evidence of a policy of nondiscrimination in future hiring. Since most of the incumbent Negro teachers are middle aged or older, the total number of Negro teachers may be expected to diminish as these teachers retire. The tragedy of this situation is that talented young Negro teachers are not settling in Kentucky, and those to whom Kentucky is home are leaving the State.

THE STATE BOARD OF EDUCATION

The State board of education has limited, but strong, powers over the school districts in the State. New buildings, and improvements on existing structures, must be approved by the State board of education. Similarly, a substantial part of the operating budget of school districts is distributed by the State board. The State board controls the pocketbook of the school districts.

The State board has used this purse power to encourage desegregation in several ways. Perhaps the greatest influence, in terms of the

number of pupils desegregated, is the policy of threatening discontinuance of State aid to any nonisolated school having less than eight teachers. This policy has forced almost 100 small Negro schools to close. A related power, which has continuing significance, is the power of the State board to classify a school as isolated or nonisolated. If a school is classified as isolated, it does not come within the minimum teacher proscription on State aid.

Formerly, many small Negro schools were classified as isolated, and received State aid. However, as road construction progressed, the State board showed little hesitancy in reclassifying the small Negro school as nonisolated, and no longer appropriate for State aid. The resultant economic threat to the individual school district generally forced the closing of the Negro school. The future importance of this reclassification device is magnified as the road construction program in Kentucky continues. There is every reason to expect a continuation of this process.

The State board's policy regarding the approval of new school construction has encouraged desegregation. The policy is simple; the board merely requires that every new building provide classroom space for all students in the district. The strategy is clear; after the construction of the new building (with unused classroom space in it), the economic burden of operating a separate Negro school is clearly presented to the local district. Moreover, Negro leadership is encouraged to press for desegregation by the physical facilities of the new school. This factor is especially important in school districts which have rested their segregation policies on the premise that the absorption of the Negro students would result in severe overcrowding.

The accreditation policy of the board is also used to improve Negro education. The board has consistently given inferior schools for Negroes a low rating. Such a rating, or the threat of removal of accreditation, has at least caused local districts to improve the conditions in the Negro schools, and in some cases to close them. Similarly, the local Negro communities are stirred to action when their schools consistently receive low ratings.

The foregoing procedures are all within the express powers of the State board. The board has gone further and tried to bring about desegregation by moral persuasion. It has done more than publicize its desegregation policy. In April 1962, the State superintendent of education sent letters to 49 segregated school districts requesting their plans for desegregation. The results indicated that over 40 districts had not contemplated any active desegregation measures. The board then detailed six State supervisors to interview the school authorities in each district personally. The supervisors' findings, reported in June 1962, were not encouraging. But this effort

points up the active and strong position the Kentucky State Board of Education has consistently taken to encourage desegregation. Indeed, one district cited the board's most recent action as one reason behind its desegregation in the fall of 1962.

The State board is now at a crossroads. The supervisors' reports have indicated that persuasion and current economic and accreditation policies are not sufficient to bring about desegregation in the remaining segregated school districts. The board is aware that firmer steps must be employed or many Kentucky schools will continue segregation policies.

Two possibilities have been suggested: (1) that the board refuse to approve construction of new schools in districts where segregated instruction exists; (2) that the board penalize segregated districts by making segregation a demerit in State accreditation.

In summary, the State board of education has encouraged local initiative to desegregate, by both economic and moral persuasion. It has not forced desegregation in any district. The still-segregated districts are the more recalcitrant in the State, and more action by the State board will be needed to bring about desegregation in these districts.

THE PRESENT AND THE FUTURE

Community attitudes toward school desegregation in Kentucky have changed in the last 8 years. Local tempers have moved from firm resistance to an acceptance of desegregation as inevitable. But, despite this favorable change, segregation still exists.[35] The situation has resolved into a problem of finding someone to initiate desegregation activity.

Local school administrators are not willing to risk the political unpopularity which would fall to them if they initiate desegregation. Even in the school districts which will accept Negro applicants in white schools there is little publication of the policy, and no encouragement of Negro applicants. Here again, to give any support to desegregation is thought a politically unwise act.

Negro parents and community leaders have been hesitant to request desegregation. The fear of economic or other reprisals, perhaps justified 8 years ago, still carries over, even though the climate of the community may have changed. Negro teachers, high in the respect of the Negro community, generally have not furnished leadership in school desegregation.

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[35] See app. F.

National organizations dedicated to securing equal rights for Negroes have not undertaken positive programs for school desegregation in Kentucky. Limited resources have restricted these organizations to investigating and processing complaints which must first be brought to their attention. Consequently, here also the responsibility for taking the first step rests on the local Negro communities.

The judgment of whether there is or is not a moral duty on local Negro leaders to initiate desegregation activities in the face of official inertia is open to inquiry. But the pragmatic observation that a substantial amount of segregation will probably continue if they do not is clear.

Assuming Negro leadership is forthcoming, what resistance will be encountered? There is no one answer. The problems vary according to the levels of segregated schools maintained by individual school districts.

In the districts which operate Negro high schools the problems are manifold. If a high school is new, or a serviceable building, the school administration does not want to close it. On the other hand, white parents would object strenuously to sending their children to the traditionally Negro school. The only desegregation which would be politically feasible in this case would be sending some Negro students to the all-white high school, and retaining enough Negro children in the Negro high school building to operate it.

Several districts have used the following technique. The Negro high school program is abandoned, and the Negro high school students are transferred to the formerly all-white high school. But the Negro high school building continues to furnish the first 8 years of Negro education. This practice avoids the problem of placement of Negro high school teachers. The Negro high school teachers of tenure status are transferred to the first eight grades, and the incumbent teachers there, when not on tenure, are dismissed. Future closings of Negro high schools will probably follow this pattern.

In districts which do not operate Negro high schools, but send their students to another district, the problems are fewer. Once several Negroes are admitted to the local high school, the economic burden of transporting the remaining Negroes out of the district usually forces the abandonment of the practice. The school boards in these districts are not faced with the problems of Negro school buildings or of Negro teachers. Once their high schools become biracial, the reason for transporting the Negro students to another district fails and economic considerations prevail.

In districts which have desegregated their high schools, but have retained segregated elementary schools, the problems are similar to the problems of districts which still have Negro high schools. Both

are faced with the question of what to do about Negro teachers and Negro school buildings. The solution of closing the Negro high school and retaining the Negro elementary school has been discussed above. If there are only Negro elementary schools, there can be no avoidance of the issue of the Negro teacher and school building. The technique in the past has been to close the Negro school building and release most of the Negro teachers. However, some progress has been made in the retention of Negro teachers in the last several years.

In the districts which have made decisions (publicized or unpublicized) to accept Negro applicants to their traditionally all-white schools, the practical problem is the lack of Negro applicants for transfer. Negro leadership is especially important in these districts, since officially desegregation has been accepted. Here only the combined inertia of the school administrations and the Negro community supports the dual system.

APPENDIX A

Some Louisville Elementary Schools in Transition [1]

School	Enrollment					
	October 1959		September 1960		September 1961	
	White	Negro	White	Negro	White	Negro
Brandeis	292	152	275	230	234	335
Foster	244	519	179	619	52	697
Parkland	213	191	178	245	115	346
Prentice	123	68	120	77	99	91
Salisbury	143	322	119	352	40	354

[1] From "Report on the Status of Desegregation in the Louisville Public Schools on September 27, 1961," published by the Louisville Department of Education, Oct. 16, 1961.

APPENDIX B

Racial Composition of Louisville Junior High Schools in School Year Beginning September 1961 [1]

School	Year erected	White	Negro	Percent Negro
Southern	1927	1,084	0	0
Gottschalk	1955	926	7	.7
Highland	1926	679	8	1.2
Barrett	1931	722	31	4.1
Western	1926	966	79	8.5
Eastern	1910	806	144	15.2
duPont Manual	1934	716	142	16.5
Shawnee	1929	885	262	23.7
Parkland	1930	805	262	25.3
Manly	1892	768	348	31.2
DuValle	1954	9	961	99.0
Jackson	1928	0	489	100.0
Russell	1891	0	1,094	100.0
Total		8,366	3,827	31.4

[1] From "Report on the Status of Desegregation in the Louisville Public Schools on September 27, 1961," published by the Louisville Department of Education, Oct. 16, 1961.

APPENDIX C

Limitations on Selections of Louisville Senior High Schools

Theodore Ahrens Trade High School.—Students living within the Louisville school boundaries who have completed the ninth grade and who desire to obtain training in the basic skills and knowledge of a specific trade or occupation may apply for entrance to Ahrens. The program is organized to serve primarily those students who expect to complete high school and to enter a trade or other occupation upon graduation.

J. M. Atherton High School.—Students living within the Louisville school boundaries east of Shelby Street may attend Atherton High School. Programs of study include college preparatory, general academic, and business education.

Central High School.—Students living within the Louisville school boundaries may attend Central High School. It is a comprehensive high school and the programs of study include college preparatory, general academic, fine arts and music, business education, vocation and trade training.

Du Pont Manual High School.—Students living within the Louisville school boundaries and planning a preengineering program for college or a general technical program may attend duPont Manual High School. Girls living east of 14th Street, north of Broadway, or east of 18th Street, south of Broadway, and east of Shelby Street, may enroll in a college preparatory, general academic, basic or business education program.

Louisville Male High School.—Students living within the Louisville school boundaries and planning to take a college preparatory program, and boys who plan to take Reserve Officers' Training Corps may attend Louisville Male High School. Pupils living east of 14th Street, north of Broadway east of 18th Street, south of Broadway, and west of Shelby Street may enroll in any of the courses offered.

Shawnee High School.—Students living west of 14th Street, north of Broadway, or west of 18th Street, south of Broadway may attend Shawnee High School. Shawnee is a general high school. Programs of study include college preparatory, general academic, and business education.

APPENDIX D

Racial Composition of Louisville High Schools in School Year Beginning September 1961 [1]

School	White	Negro	Percent Negro
Atherton High	929	6	0. 6
Ahrens Trade	1, 071	47	4. 2
duPont Manual	1, 712	89	4. 9
Shawnee High	908	150	14. 4
Louisville Male	934	230	19. 8
Central High	1	1, 478	99. 9
Total	5, 555	2, 000	26. 5

[1] From "Report on the Status of Desegregation in the Louisville Public Schools on September 27, 1961," published by the Louisville Department of Educaton, Oct. 16, 1961.

APPENDIX E

Choice of Central High School by Negro Students in Junior High Schools [1]

School	Percentage of Negro students in the school	Percentage of Negro students choosing Central [2]
Southern	0	0
Gottschalk	. 7	0
Highland	1. 2	0
Barrett	4. 1	35. 4
Western	8. 5	21. 8
Eastern	15. 2	29. 4
duPont Manual	16. 5	16. 5
Shawnee	23. 7	4. 7
Parkland	25. 3	33. 1
Manly	31. 2	42. 3
DuValle	99. 0	70. 9
Jackson	100. 0	65. 9
Russell	100. 0	87. 3

[1] Based on tentative selections as of May 29, 1962.

[2] Since records by race of each class are not kept, this figure was arrived at by taking one-third of the Negro enrollment in each junior high school, and positing that as the number of Negro students in each class.

APPENDIX F

Status of Desegregation in Kentucky by School Districts October 1961 [1]

	Number of Districts [2]	Percentage
Districts with no Negro school population	54	25. 9
Districts with no schools attended solely by Negroes	58	27. 9
Districts operating elementary and high schools attended solely by Negroes	31	15. 0
Districts operating elementary schools attended solely by Negroes and sending Negroes out of the district to high school	25	12. 0
Districts with biracial high schools and maintaining elementary schools attended solely by Negroes	40	19. 2
Total	208	100. 0

[1] Excluding Louisville.

[2] From "Educational Bulletin, Kentucky School Directory 1961–1962," published by the Kentucky Department of Education, October 1961.

CIVIL RIGHTS U.S.A.

Public Schools: Southern States

1962

NORTH CAROLINA

By Richard E. Day

A Report To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

The report on the progress of desegregation in the public schools of North Carolina, submitted herewith, is the result of legal research and personal interviews with interested North Carolinians, including school officials and white and Negro community leaders, during the 1961–62 school year. The reporter operated under a special contract with the U.S. Commission on Civil Rights, which contained no conditions or instructions as to form or content of the report, other than the understanding that it was to be as complete, factual, and informative of the local stiuations covered as possible, within the limits of available time.

Having first acquired residence in North Carolina in September 1961, the reporter was a newcomer to the problems of public school segregation and desegregation in Southern States in general, and in North Carolina in particular. It is hoped that this fact promoted objectivity uninfluenced by preconceptions. In part, the report is based upon hearsay and opinion. Although effort was made to substantiate asserted facts, the reporter admits to the possibility of error and takes responsibility for any that there may be.

Individual acknowledgment of indebtedness to all those who aided the reporter in gathering and preparing the material for the report would be lengthy. Therefore, a general, but deep-felt, thanks is extended to each person who cooperated with the reporter in fitting together the pieces of the North Carolina public school desegregation puzzle.

RICHARD E. DAY,
University of North Carolina School of Law,
Chapel Hill, N.C.

AUGUST 1, 1962.

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Part 2. North Carolina

Introduction

A backward look over the 8 years following the Supreme Court's historic *School Segregation* decision of May 17, 1954,[1] reveals a vacillating pattern of evolution from a period of confused resistance, through periods of procrastination and gradualism, to token desegregation of some of North Carolina's public school systems. Statistically, North Carolina has made little progress in desegregation. Less than one-tenth of 1 percent of the State's Negro pupils in 11 communities have been enrolled in schools with white pupils. In 162 school districts a dual system of segregated schools continued to operate. In spite of this apparent poor showing, the fact remains that a start has been made and, more importantly, recent developments indicate that the rate of desegregation may soon become less deliberate in many communities. This report will attempt to present the major events during this evolution in a manner that will not merely disclose the approaches used, but will also be helpful to others who must undertake to revise the State's traditionally dual public school system to meet the requirements of the *School Segregation Cases.* It should be pointed out that the efforts of American Indians living in several North Carolina counties to secure admission to public schools reserved for white pupils is not dealt with in this report.

REACTION TO SCHOOL SEGREGATION CASES

North Carolina, like other Southern States, reacted strongly to the *School Segregation Cases.* The prevailing view was that the Supreme Court by "shifting its position" had wrecked the State's public school system. Maintaining a dual system of schools is necessarily a costly operation. North Carolina was proud of its public schools and the

[1] *Brown* v. *Board of Education of Topeka,* 347 U.S. 483 (1954), 1 *Race Rel. L. Rep.* 5 (1956).

progress it had made during the years preceding the May 17 decision.[2]

Individual reaction ran the gamut from approbation to vilification. While Gov. William B. Umstead expressed disappointment in the May 17 decision, he avoided rash action and immediately asked the University of North Carolina's Institute of Government, at Chapel Hill, to make a study of the problem. The result of this special study is embodied in a 206-page report published by the institute in August 1954.[3] The stated purpose of this report was to review the *School Segregation Cases* "and the legal problems presented by some of the proposals for preserving the substance of separate schools within the framework of this decision."[4] The report presented arguments for and against various proposals, and suggested three possible courses of action for North Carolina:[5]

1. It can take the course that the Supreme Court has made its decision—let it enforce it; and meet the Court's efforts to enforce it with attitudes ranging from passive resistance to open defiance.
2. It can take the course that the Supreme Court has laid down the law, swallow it without question, and proceed in the direction of mixed schools without delay and in unthinking acquiescence.
3. It can take the course of playing for time in which to study plans of action making haste slowly enough to avoid the provocative litigation and strife which might be a consequence of defying the decision, avoid the possibility of friction and strife which might be a consequence of precipitate and unthinking acquiescence, and yet make haste fast enough to come within the law and keep the schools and keep the peace.

There was never any serious thought given to the second choice of "unthinking acquiescence." The only question was whether to put the initiative on the Court, with "passive resistance" or "open defiance," or to "play for time." As it turned out, the last course of action was adopted, with overtones of "passive resistance."

Heeding the advice of the institute's report, Governor Umstead immediately appointed an 18-member advisory committee (including 3 Negro members) under the chairmanship of Thomas J. Pearsall, 1947 speaker of the North Carolina House of Representatives. Each member of the committee got a copy of the institute's report.[6]

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[2] An indication of the State's progress is found in the fact that during the 12 years between 1940 and 1952 Negro school property in North Carolina increased in value by 318.2 percent, from a total of $15,154,892 to $63,391,987, whereas white school property increased at a rate of only 176 percent from $103,724,982 to $287,262,871. Current expense for Negro pupils during the same period increased by 462.09 percent, from $24.05 to $135.38 per pupil, while white per-pupil current expense rose only 285.04 percent, from $41.19 to $158.73. See So. School News, Sept. 1954, p. 10.

[3] "A Report to the Governor of North Carolina on the Decision of the Supreme Court of the United States on the 17th of May 1954," Institute of Government, the University of North Carolina, Chapel Hill (August 1954).

[4] *Id.* at 1.

[5] *Id.* at ii–iii.

[6] So. School News, Dec. 1954, p. 11.

THE PUPIL ASSIGNMENT ACT

The first report of the Governor's advisory committee expressed the conclusion "that the mixing of the races forthwith in the public schools throughout the State cannot be accomplished and should not be attempted." [7] With the institute's alternative of "unthinking acquiescence" discarded, the committee recommended that the State try to find means of meeting the requirements of the *School Segregation Cases* within its present school system rather than consider the abandonment or material alteration of that system. It recommended to the North Carolina General Assembly that a special advisory commission be appointed to study the problems and recommend legislation. As for interim action, prior to the Supreme Court's implementation decision, the committee recommended that the general assembly enact legislation to transfer complete authority over enrollment and assignment of pupils in public schools and over schoolbuses to the county and city boards of education throughout the State. This report and recommendation were presented to the assembly with the approval of newly inaugurated Gov. Luther Hodges.[8]

The general assembly quickly adopted the recommendations and established a continuing advisory committee on education under Chairman Pearsall. In April 1955, a pupil assignment statute was enacted [9] which, without any mention of race, transferred "complete authority" for the enrollment and assignment of pupils from the State Board of Education to local city and county school boards. The avowed purpose of this legislation was to make the 173 school administrative units severally the party to any future litigation, thereby avoiding involvement of the State as a defendant, so that one lawsuit would not be binding upon all units. The only criteria set out in the statute to guide the local boards in pupil assignment were the "best interest" of the child, "orderly and efficient administration" of schools, the "effective instruction" of the pupils, and "the health, safety, and general welfare" of the pupils. The statute provided for requests for reassignment, and for local administrative and judicial appeals by individual applicants whose transfer requests were denied.

North Carolina did not have to wait long to discover the effectiveness of its pupil assignment act. In an action commenced prior to the May 17 *School Segregation Cases*, Negro children in North Carolina had sought to obtain equal educational facilities in the town of

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[7] So. School News, Feb. 1955, p. 14.

[8] *Ibid.*

[9] 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).

Old Fort, as well as general injunctive relief and a declaratory judgment as to their rights. The Federal district court dismissed the action following the May 17 decision on the ground that the relief sought had become inappropriate. On appeal, the Court of Appeals for the Fourth Circuit agreed with the district court that the *School Segregation Cases* "unquestionably" made the relief sought, regarding the provision of a separate school for Negro children, inappropriate. However, the appellate court said that the district court should have given consideration to the request for a declaratory judgment and injunctive relief on the basis of the plaintiffs' rights to attend school in Old Fort on a nondiscriminatory basis.[10] In remanding, the court of appeals instructed the district judge to consider the newly enacted State pupil assignment act, and stated that its administrative (as distinguished from judicial) procedures should be fully exhausted before the Federal court intervened. According to the court:[11]

> . . . where the State law provides adequate administrative procedure for the protection of such rights, the Federal Courts manifestly should not interfere with the operation of the schools until such administrative procedures have been exhausted and the intervention of the Federal Court is shown to be necessary.

In a report to the Governor, the Pearsall committee stated that this decision placed North Carolina in an "enviable" position and that it had no further recommendations at that time.[12]

The "enviable" position reported by the Pearsall committee became even more "enviable" from the segregationists' viewpoint under subsequent court interpretation and application of the pupil assignment act. The courts continued to reiterate the requirement that plaintiffs must exhaust their administrative remedies provided by the act and that rights must be asserted as individuals, not as a class before applying to a Federal court for relief.[13] In denying the right of a

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[10] *Carson* v. *Board of Education of McDowell County*, 227 F. 2d 789 (4th Cir. 1955), 1 *Race Rel. L. Rep.* 70 (1956).

[11] *Id.* at 790, 1 *Race Rel. L. Rep.* at 71.

[12] So. School News, Feb. 1956, p. 12.

[13] *Carson* v. *Warlick*, 238 F. 2d 724 (4th Cir. 1955), 2 *Race Rel. L. Rep.* 16 (1956), *cert. denied*, 353 U.S. 911 (1957); *Covington* v. *Edwards*, 165 F. Supp. 957 (M.D.N.C. 1958), 3 *Race Rel. L. Rep.* 1144 (1958), *aff'd*, 264 F. 2d 780 (4th Cir. 1959), 4 *Race Rel. L. Rep.* 278 (1959), *cert. denied*, 361 U.S. 840 (1959); *Holt* v. *Raleigh City Board of Education*, 164 F. Supp. 853 (E.D.N.C. 1958), 3 *Race Rel. L. Rep.* 917 (1958), *aff'd*, 265 F. 2d 95 (4th Cir. 1959), 4 *Race Rel. L. Rep.* 281 (1959), *cert. denied*, 361 U.S. 818 (1959); *McKissick* v. *Durham City Board of Education*, 176 F. Supp. 3 (M.D.N.C. 1959), 4 *Race Rel. L. Rep.* 864 (1959); *Jeffers* v. *Whitley*, 197 F. Supp. 84 (M.D.N.C. 1961), 6 *Race Rel. L. Rep.* 988 (1961); *Morrow* v. *Mecklenburg County Board of Education*, 195 F. Supp. 109 (W.D.N.C. 1961), 6 *Race Rel. Rep.* 722 (1961); *Wheeler* v. *Durham City Board of Education*, *Spaulding* v. *Durham City Board of Education*, 196 F. Supp. 71 (M.D.N.C. 1961), 6 *Race Rel. L. Rep.* 733 (1961). *Cf. McCoy* v. *Greensboro City Board of Education*, 283 F. 2d 667 (4th Cir. 1960), 5 *Race Rel. L. Rep.* 1027 (1960), *reversing* 179 F. Supp. 745 (M.D.N.C. 1960), 5 *Race Rel. L. Rep.* 75 (1960); *Griffith* v. *Board of Education of Yancey County*, 186 F. Supp. 511 (W.D.N.C. 1960), 5 *Race Rel. L. Rep.* 1030 (1960); *Vickers* v. *Chapel Hill City Board of Education*, 196 F. Supp. 97 (M.D.N.C. 1961), 6 *Race Rel L. Rep.* 728 (1961).

class action, the courts recognized an enforced integration-segregation dichotomy and emphasized that the Supreme Court's *School Segregation Cases* did not require integration in the schools, but only prohibited enforced segregation.[14] To exhaust his administrative remedy under the act, the courts have required the plaintiff (1) to show that he did not ask for reassignment merely for the reason that he desires to attend desegregated schools;[15] (2) to indicate specifically the school he desired to attend with reasons for the request for reassignment;[16] and (3) to present himself at the board's hearing in person, or by his parent or guardian, to answer questions by the board.[17] After the plaintiff has alleged and proved that he has exhausted his administrative remedy in "good faith," he then has the burden of proving by a preponderance of evidence that his request for reassignment was denied by the local board on the basis of race, thus denying him his constitutional rights.[18] Even where relief is granted, its individual nature has left unaffected the board's assignments of other Negro students.[19]

THE PEARSALL PLAN

On April 5, 1956, the Pearsall committee issued its long-awaited report outlining its recommended course of action to meet the school segregation problem.[20] The committee seized the opportunity to criticize the *School Segregation Cases*, noting that the Court's "shifted position suddenly stopped steady and healthy progress" in the State's race relations.[21] According to the report, "racial tensions are mounting in North Carolina every day." Nevertheless, the report recognized

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[14] See following decisions, *supra*, note 13: *Wheeler* v. *Durham City Board of Education*, *Spaulding* v. *Durham City Board of Education*; *Covington* v. *Edwards*; *McKissick* v. *Durham City Board of Education*; *McCoy* v. *Greensboro City Board of Education (rev'd on other grounds)*; *Jeffers* v. *Whitley*.

[15] See following decisions, *supra*, note 13: *Jeffers* v. *Whitley*; *Wheeler* v. *Durham City Board of Education*, *Spaulding* v. *Durham City Board of Education*. *But see McCoy* v. *Greensboro City Board of Education*.

[16] See following decisions, *supra*, note 13: *Jeffers* v. *Whitley*; *Wheeler* v. *Durham City Board of Education*, *Spaulding* v. *Durham City Board of Education*; *McKissick* v. *Durham City Board of Education*.

[17] See following decisions, *supra*, note 13: *Holt* v. *Raleigh City Board of Education*; *Jeffers* v. *Whitley*; *McKissick* v. *Durham City Board of Education*; *Wheeler* v. *Durham City Board of Education*, *Spaulding* v. *Durham City Board of Education*.

[18] See following decisions, *supra*, note 13: *Jeffers* v. *Whitley*; *Morrow* v. *Mecklenburg County Board of Education*; *Vickers* v. *Chapel Hill City Board of Education*.

[19] See following decisions, *supra*, note 13: *Griffith* v. *Board of Education of Yancey County*; *McCoy* v. *Greensboro City Board of Education*; *Vickers* v. *Chapel Hill City Board of Education*; *Wheeler* v. *Durham City Board of Education*, *Spaulding* v. *Durham City Board of Education*.

[20] "Report of the North Carolina Advisory Committee on Education," Raleigh, N.C. (Apr. 5, 1956); 1 *Race Rel. L. Rep.* 581 (1956).

[21] *Id.* at 3, 1 *Race Rel. L. Rep.* at 581.

that "the decision of the Supreme Court of the United States, however much we dislike it, is the declared law and is binding upon us." Noting that the State's school system could not be preserved as such, because it is "inherently a segregated system," the committee concluded that "our problem is, rather, to build a new system out of the Supreme Court's wreckage of the old." [22]

The report had as its thesis the theory that segregated schools could be continued through voluntary racial preference.[23] The report expressed the opinion that the people of North Carolina would not support mixed schools, and concluded that before they would give support to the pupil assignment act, they might— [24]

> . . . need to be assured of escape possibilities from intolerable situations—assured first that no child will be forced to attend a school with the children of another race in order to get an education and assured, second, that if a public school situation becomes intolerable to a community, the school or schools in that community may be closed.

To this end, it proposed changes in the North Carolina constitution and implementing legislation to provide a safety valve to permit such escape. The report recommended that a special session of the general assembly be called during the summer of 1956 to consider submitting to the people of the State the question of changes in the constitution which would provide (1) tuition grants for any child assigned against his wishes in a school in which the races are mixed, such grant to be available for education only in nonsectarian schools "and only when such child cannot be conveniently assigned to a nonmixed public school";[25] and (2) authority for any local unit to disband by majority vote the operation of the public schools in that unit.[26] These two provisions are generally referred to as the "Pearsall plan." The committee felt that "such changes will give to the people in North Carolina the confidence and assurance which are necessary in order to aid the rebuilding of our school system." [27]

On June 19, 1956, Governor Hodges issued a proclamation calling an extraordinary session of the North Carolina General Assembly to consider the public school measures recommended by the Pearsall committee report.[28] On July 23, 1956, the Pearsall committee submitted an additional report containing detailed proposed legislation to implement the recommendations made by the April 5 report.[29] The pro-

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[22] *Id.* at 3, 1 *Race Rel. L. Rep.* at 582.

[23] *Id.* at 7–8, 1 *Race Rel. L. Rep.* at 584. Voluntary school segregation had been advocated by Governor Hodges. See So. School News, Sept. 1955, p. 14.

[24] Report, *supra*, note 20, at 9, 1 *Race Rel. L. Rep.* at 585.

[25] *Id.* at 9–10, 1 *Race Rel. L. Rep.* at 585.

[26] *Id.* at 10, 1 *Race Rel. L. Rep.* at 585.

[27] *Ibid.*

[28] 1 *Race Rel. L. Rep.* 728 (1956).

[29] "Report of the North Carolina Advisory Committee on Education," Raleigh, N.C. (July 23, 1956).

posed amendments and bills contained in this report were the result of joint efforts of the committee, the Governor's office, the attorney general's office, the office of the superintendent of public instruction, and members of the general assembly. The thoroughness of the advance preparation is evident from the fact that the legislation proposed was adopted in the shortest special session in the history of the State. The lameduck general assembly convened at noon July 23 and adjourned at 4:44 p.m., July 27, 1956.[30] The North Carolina voters approved the proposed amendments to the State constitution on September 8, 1956, by a 4–1 vote. The amendments were favored in all the State's 100 counties, in some by as much as 10–1. Closest voting was in Durham County, where the proposal carried by an 8–5 margin. The total vote, 471,657 for the amendments and 101,767 against, was the largest for a special election in the State's history. Governor Hodges termed the results "gratifying," and stated that he believed the adoption of the amendments would help to forestall "more extreme" legislative action.[31]

The purpose of the "local option" provision, as stated in the statute, is to recognize that "our people in each community need to have a full and meaningful choice as to whether a public school, which may have some enforced mixing of the races, shall continue to be maintained and supported in that community." [32] The statute provides for the calling of an election on closing schools within a "local-option unit." [33] A "local-option unit" is defined as (1) any county or city school administrative unit, or (2) the combination of two or more administrative units in whole or in part, or (3) any convenient and reasonable territorial subdivision within an administrative unit which includes within its boundaries one or more "public schools." [34] "Public schools" are defined to include elementary, junior and senior high schools, and "union schools." [35] "Union schools" are schools which embrace a part or all of the elementary and high school grades.[36] "Elementary schools" include the elementary portion of a union school,[37] and "high schools" include the high school portion of a union school.[38] A "junior high school" is a school which embraces not more than the first year of high school with not more than the upper two elementary grades.[39] The act provides that any child living within a local-option unit which has elected to close shall not be entitled as a matter of right to

[30] So. School News, Aug. 1956, p. 16.
[31] So. School News, Oct. 1956, p. 7.
[32] N.C. G.S. 115–261 (1956, Ex. Sess., ch. 4).
[33] N.C. G.S. 115–260 (1956, Ex. Sess., ch. 4).
[34] N.C. G.S. 115–262(2) (1956, Ex. Sess., ch. 4).
[35] N.C. G.S. 115–262(3) (1956, Ex. Sess., ch. 4).
[36] N.C. G.S. 115–262(3)(c) (1956, Ex. Sess., ch. 4).
[37] N.C. G.S. 115–262(3)(a) (1956, Ex. Sess., ch. 4).
[38] N.C. G.S. 115–262(3)(b) (1956, Ex. Sess., ch. 4).
[39] N.C. G.S. 115–262(3)(d) (1956, Ex. Sess., ch. 4).

attend any other public school, but may receive a tuition grant under the education expense grant provisions of the act.[40]

Thus far, the local option "safety valve" of the Pearsall plan has never been opened. The fact that this provision of the Pearsall plan has not been utilized, of course, does not mean that the legislation has not served a purpose. It is generally felt by school authorities, as well as by leaders of opposing integration and segregation factions, that the Pearsall plan has had a moderating effect on the activities of both proponents and opponents. The local-option provision placated segregationists by providing for the closing of public schools after a simple majority vote of the patrons of the unit involved. On the other hand, the integrationists may have been deterred from pressing too hard and bringing about the closing of schools rather than their integration. This possibility was clearly implied in the Governor's statewide proclamations prior to and subsequent to the enactment of this legislation, in the Pearsall committee report, and the legislation itself.

The tuition-grant provisions of the Pearsall plan provide a similar safety valve on an individual basis.[41] The act states the legislative policy and purpose of this provision to be that "our people need to be assured that no child will be forced to attend a school with children of another race in order to get an education." [42] The act provides for such a tuition grant to be made available to any child assigned to a mixed school against the wishes of his parent or guardian. The qualifications include the requirements that (1) the child cannot reasonably or practicably be reassigned to a segregated public school; and (2) such grants shall be available only for education in a "recognized and approved" private nonsectarian school.[43]

The act provides for a State tuition grant equal to the per-student cost of education in the public schools throughout the State during the preceding school year.[44] The State grants are to be made available from funds provided by the general assembly.[45] So far, the general assembly has not allocated any funds for this purpose. The act also enables the local administrative unit to levy a tax for local expense grants. These tuition grants from local tax or nontax funds would be available, in addition to the State grant, the total amount never to exceed the actual expenses for the private education of the child.[46]

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[40] N.C. G.S. 115-265 (1956, Ex. Sess., ch. 4).
[41] N.C. G.S. 115-274 through 115-295 (1956, Ex. Sess., ch. 3).
[42] N.C. G.S. 115-274 (1956, Ex. Sess., ch. 3).
[43] N.C. G.S. 115-275 (1956, Ex. Sess., ch. 3).
[44] N.C. G.S. 115-276 (1956, Ex. Sess., ch. 3).
[45] N.C. G.S. 115-283 (1956, Ex. Sess., ch. 3).
[46] N.C. G.S. 115-286 (1956, Ex. Sess., ch. 3).

The State's first and only application for a tuition grant under the Pearsall plan produced some amusing sidelights. During the 1961–62 school year Chapel Hill became the first school district in the history of the State to have no school without Negro children in attendance. In a heated meeting, the Chapel Hill School Board decided to grant the request of a disgruntled parent for a tuition grant to enable him to send his two elementary school daughters to a private all-white school in nearby Durham, since it was unable to reassign them to a segregated public school. Several conferences between the Chapel Hill school officials and the State department of education were required to establish the procedure for applying for the aid. Since there was no local money available for tuition grants, Chapel Hill sent the request, as approved, to the State board of education. The amount involved, based on the average cost per child in public schools of the State during the previous year, would have been less than $200 for each child. The problem of where to get the money was avoided when the State department of education reported unfavorably on the qualifications of the private school in which the children had been enrolled. The private school failed to meet the State requirement of a 6-hour school day. Some of the lower grade children in the school left by 12 noon; all of them left by 1 p.m. Otherwise, the inspection team was "favorably impressed" and said that the school had a good program.

Experiments and Experiences in Desegregation

While the courts had held that the pupil assignment act and the Pearsall plan were "not unconstitutional on their face,"[47] many lawyers and State officials studying the 1955 and 1956 legislation were convinced that some desegregation was essential to avoid the possibility of having the statutes declared unconstitutional in administration, with resulting court-enforced desegregation. Col. W. T. Joyner, of Raleigh, attorney and vice chairman of the Pearsall committee, expressed this view in 1956 in an address before the North Carolina Bar Association when he said that the Pearsall plan made the assumption there would be some racial mixing in the schools.[48] According to Colonel Joyner: [49]

> . . . some mixing in some of our schools is inevitable and must occur. I do not hesitate to advance my personal opinion and it is that the admission of less than 1 percent, for example, one-tenth of 1 percent, of Negro children to schools heretofore attended only by white children, is a small price to pay for the ability to keep the mixing within the bounds of reasonable control.

Expanding on this thesis, Colonel Joyner related: [50]

> One of the nightmares which besets me on a restless night is that I am in a Federal court attempting to defend a school board in its rejection of a transfer requested by a Negro student, when a showing is made in that court that nowhere in all of the State of North Carolina has a single Negro ever been admitted to any one of more than 2,000 schools attended by white students.

These fears were buttressed by the holding of the Court of Appeals for the Fourth Circuit which overturned the Virginia Pupil Placement Act on the ground it was backed up by inflexible segregation laws and practices which made it unconstitutional in its application.[51]

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[47] *Carson* v. *Warlick*, 238 F. 2d 724 (4th Cir. 1956), 2 *Race Rel. L. Rep.* 16 (1957), and cases cited *supra*, note 13.

[48] So. School News, Aug. 1957, p. 5.

[49] *Ibid.*

[50] *Ibid.*

[51] *School Board of the City of Newport News* v. *Atkins, School Board of the City of Norfolk* v. *Beckett*, 148 F. Supp. 430 (E.D. Va. 1957), 2 *Race Rel. L. Rep.* 46 (1957), *aff'd* 246 F. 2d 325 (4th Cir. 1957), 2 *Race Rel. L. Rep.* 808 (1957), *cert. denied*, 355 U.S. 855 (1957).

THE FIRST STEP

The fears of those sharing Colonel Joyner's views were alleviated when, in 1957, the State's 3 largest cities assigned a total of 12 Negroes to previously all-white schools, thereby effecting the first integration in the State's public school history. The school boards of Charlotte, Greensboro, and Winston-Salem met in their respective cities simultaneously, July 23, 1957, and made the assignments without discussion. Charlotte admitted 5 Negro children, rejecting about 40 transfer requests; Greensboro admitted 6 Negroes, denying 7 transfer requests; and Winston-Salem granted 1 transfer request, rejecting 3.

The joint action of the three boards followed secret joint sessions in hotels and restaurants at which their mutual school problems were discussed. Although communications media were not generally aware that the meetings were being held, local newspaper and other media leaders attended some of the joint meetings preceding the concerted action by the three school boards. The purpose of inviting this select group of media representatives was said to be to solicit their advice and cooperation. The tone of the local editorials preceding the action of the boards created a favorable climate for the boards' announcements. Editorials following the action were also generally complimentary.

The general reaction to this initial token integration was that it was a step forward in preserving the segregated school system throughout the State. As expressed in an editorial in the Raleigh Times: [52]

> . . . [What the boards] have done will make it possible for schools and areas where integration is surely not possible or even feasible to continue completely separate schools. This action has been taken for the benefit of the whole school system of the State, not just for the benefit of the 12 Negro children involved.

Similarly, the Charlotte News said: "The Charlotte City School Board has acted to preserve the schools. It has acted to prevent massive court decree integration." [53]

The reaction to the simultaneous integration in the three cities was not entirely complimentary. Proponents of desegregation were not satisfied with the token effort. Segregationists denounced the action as a step toward mixing the races. Some persons attending the board meetings, including representatives of the segregationist "Patriots of North Carolina, Inc.," raised their voices in strong dissent. Legal action was unsuccessfully attempted by white segregationists in Charlotte and Greensboro to block the integration in those cities.[54]

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[52] So. School News, Aug. 1957, p. 5.

[53] *Ibid.*

[54] So. School News, Sept. 1957, p. 15; *Applications for Reassignment of Pupils*, 101 S.E. 2d 359 (N.C. 1958), 3 *Race Rel. L. Rep.* 174 (1958).

This pilot integration was accomplished with relative peace, in spite of small, but vociferous, opposition. The 11 Negro children enrolling in the previously all-white schools in the 3 cities encountered minor harassment, often instigated by segregationists which included members of the Ku Klux Klan, Patriots, and White Citizens Council, spurred on by imported segregationists such as John Kasper. The most publicized incident occurred at Charlotte's Harding High School where Dorothy Counts, 15, one of four Negro children assigned there, appeared to attend first-day classes. This girl was the target for shouts, epithets, spitting, pebbles, small sticks, and paper balls. This harassment continued until she withdrew from school on September 11 to attend a private boarding school in Philadelphia. The remaining 10 students continued in school without any major incidents.

While Charlotte, Greensboro, and Winston-Salem continued their token integration on an individual reassignment basis, schools elsewhere in the State remained segregated until 1959. In that year, token integration by individual reassignment at selected schools was undertaken in four additional localities—Durham, High Point, Wayne County, and Craven County. In 1960, Chapel Hill, Raleigh, and Yancey County joined the swing to token integration, followed in 1961 by Asheville.

CHAPEL HILL

The Chapel Hill School Board was the first North Carolina school board to adopt a plan designed when fully implemented to bring about complete desegregation of schools by initial assignment of all pupils geographically. This, however, did not occur until 1961. Events in 1959 and 1960 prepared the way for this action.

The Chapel Hill School District includes the contiguous towns and suburbs of Chapel Hill and Carrboro. There are approximately 15,000 people in the district, plus about 9,000 students in attendance at the University of North Carolina. The school population of 3,850 is composed of 2,750 white and 1,100 Negro pupils. Chapel Hill is more typically a university town than southern, comprised principally of university faculty and middle-income business people. Carrboro, on the other hand, is a typical southern blue-collar town. Most of the Negro population is concentrated in an area falling partly in each town. The remaining Negro families live around the periphery of both communities. There are very few middle-class, and no economically wealthy, Negroes in the area. Most are service, custodial, or household workers.

Although there was an unsuccessful request for transfer in 1958, perhaps the beginning of desegregation in Chapel Hill occurred in July 1959. A Negro boy, named Vickers, applied for reassignment for the 1959–60 school year to the fifth grade in the Carrboro Elementary School on the ground that this white school was much nearer his home than the Negro elementary school in which he was enrolled. In denying the application at its August meeting, it was stated that:[55]

> . . . the Board having . . . ascertained that the applicant . . . has been attending Northside [Negro] Elementary School for five years . . . and that said minor applicant has made satisfactory educational progress, and it not having been made to appear that the reassignment requested will be for the best interests of the child, it is hereupon determined that the request for reassignment be denied.

The sole Negro board member and Dean Henry Brandis of the University of North Carolina Law School were the only members who voted in favor of reassignment. Dean Brandis resigned from the board in protest following the vote, terming the board's action "both legally and morally indefensible."[56] He also stated the opinion that the Negro applicant's family "should not have been placed in a situation in which they can vindicate the child's constitutional right only by going to a Federal court."[57] Vickers subsequently appealed the board's denial of his application to the Federal district court.

At the same meeting, the board adopted a policy paving the way for desegregation in 1960:[58]

> The basic policy of the board is to receive applications by parents for reassignment of individual students. Each such application will be considered on its merits. Subject to limitation of space, applications for reassignment of prospective first grade pupils, based upon geographical proximity, will ordinarily be granted unless circumstances in the individual case make such action inadvisable.

Following this policy, the board voted unanimously, on June 27, 1960, to accept 3 of 12 applications for reassignment by Negro pupils for the first grade of previously all-white Estes Hills Elementary School, which had a total enrollment of 400 pupils. Requests for transfer to the white junior high school were denied. Included in the latter was the application of the Vickers boy, whose case from the prior year was then pending in the district court. The complaint in the case was then amended to seek admission to the white junior high school.

During the winter of 1960–61, a vigorous campaign culminated in the election of three school board members pledged to support desegregation on a grade-a-year plan beginning at the first grade with

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[55] *Vickers* v. *Chapel Hill City Board of Education*, 196 F. Supp. 97, 99 (M.D.N.C. 1961), 6 *Race Rel. L. Rep.* 728, 729 (1961).

[56] So. School News, Sept. 1959, p. 16. The chairman of the board had indicated that if he were called on to break a tie, he would have voted in favor of reassignment.

[57] So. School News, Oct. 1959, p. 14.

[58] So. School News, Sept. 1959, p. 16.

initial assignments on a geographic basis. Their election gave the board a five to two majority in favor of desegregation on a gradual, but positive, basis. It would be hazardous to guess how much credit for this change in the board's composition and position should be attributed to the effect of Dean Brandis' dramatic resignation the year before, but it was generally believed to have been a major factor in forcing the issue. During the school board campaign the three successful candidates advanced Dean Brandis' thesis that forcing the Negro to apply for his rights placed an undue burden on him.

The incumbent board delayed making assignments for the next school year until the newly elected members took office on July 1, 1961. Before the first meeting of the new board, a policy of geographic initial assignment had been worked out, but not without some dispute as to the boundaries for attendance areas. The zones originally proposed by the superintendent placed more Negro children in the Carrboro school, where there was the most vigorous opposition to desegregation, than in any other white school. Under the original plan it was estimated that about 26 Negroes would have been assigned to the first grade at Carrboro, 6 to Estes Hills, and 4 or 5 to Glenwood. Because of the strong opposition in Carrboro, the board instructed the superintendent to redraw the boundaries to distribute the Negro pupils in a manner more acceptable to the communities concerned. Under the revised zoning map adopted by the board, 24 Negro children were assigned to the first grade of Glenwood, 10 to Estes Hills, and only 8 to Carrboro. The complaints from Carrboro subsided, but residents of the other school areas affected spoke of gerrymander and a decline in property values.

Other desegregation action was taken by the board in a series of meetings in the summer of 1961. Applications of two Negro children for reassignment to the white junior high school were granted; one was rejected. Later, another Negro child, newly moved to the Chapel Hill district was reassigned to the white junior high school. Two Negro children of new graduate students living in Victory Village (university housing) were assigned to the third and fourth grades in Glenwood Elementary School, which was attended by all white children of that age living in the Village.

Thus, Chapel Hill by a series of actions assigned all first grade pupils in the district to the school of the zone of residence according to a single attendance area map, all elementary school children, white and Negro, living in the university owned and operated Victory Village, to the Glenwood School, and granted individual applications for reassignment to pupils above grade one. This multiple approach lessens the hardship inherent in a grade-a-year plan.

The district court finally ruled on August 4, 1961, that the Vickers boy should be reassigned to the eighth grade in the white junior high school, stating that: [59]

> The evidence . . . establishes that the minor plaintiff was denied reassignment to the Chapel Hill Junior High School because of his race. He had every right to be assigned to Carrboro Elementary School for the 1959–60 school term. He lived much nearer the Carrboro Elementary School than the school to which assigned. Many white children of the same grade living in his area were assigned to the Carrboro Elementary School .... If the minor plaintiff had been accorded his constitutional rights in 1959 he undoubtedly would have been transferred to the Chapel Hill Junior High School for the 1960–61 school term.

As expected all the white pupils assigned to the first grade of the Negro Northside Elementary School requested and were granted transfer, leaving the Negro schools the only segregated schools in the district. All but two of the Negro children assigned to the Carrboro school requested and received transfers back to the Negro school. Only 4 of the 10 Negro children assigned to Estes Hills first grade enrolled there; 20 of the 24 at Glenwood enrolled in that school's first grade.

During the period between the board's actions and the opening of school in the fall of 1961, the board encouraged and received support for its program in its meetings to counteract vocal opposition represented. With the air thus cleared, there were no difficulties whatsoever during the opening of school. The police were readily available, but not visibly present. Protests and threats received by board members before the board's final action subsided. The principals were assured that the board would support them in disciplinary actions, which in fact were virtually nonexistent—no incidents were reported.

For the first time in the history of the State, no school within a school district was without a Negro pupil. There was no all-white school within the district to which students whose parents demanded that right as provided by State law could be reassigned. This gave rise to the first application in the State for a tuition grant as provided in the Pearsall plan. As already noted, the application was denied on a technicality.

Once desegregation was accomplished, the superintendent and members of the board found that it was no longer a problem. The continuing problems of finance, space, and facilities again came to the fore. These have been acute in Chapel Hill. Following the defeat at the polls of a proposed State bond issue to aid schools (believed by many to be a reaction to the imposition of an unpopular sales tax on food), the board found itself in financial trouble. As a last resort, concerned citizens campaigned to raise money to help pay a portion of local salary supplements which teachers had been led to believe they would receive. Following petitions by the citizenry, a special local election was held

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[59] *Vickers* v. *Chapel Hill City Board of Education*, 196 F. Supp. 97, 101 (M.D.N.C. 1960) 6 *Race Rel. L. Rep.* 728, 732 (1961).

on a proposed property tax increase to assist in financing the growing school burden. This proposal was defeated at the polls in May 1962. One of the purposes of the school tax proposal was to equalize facilities, such as libraries and science equipment and laboratories between the Negro and predominantly white high schools. It was hoped also that some of the disparities between the schools, such as in vocational guidance counselors, might be corrected. Members of the board have indicated that there is a need to improve education in the Negro schools as one step in the final equalization of education for Negroes. It is recognized that token integration, whether on attendance area basis or pupil assignment or both, cannot alone guarantee such equality.

In the spring of 1961, before the board's adoption of geographic initial assignment, plans had been nearly completed for construction of a new Negro elementary school to replace eight substandard rooms in the existing Negro school. Money had also been appropriated to remodel the present Negro elementary school. It was debated whether it might not be better to build a new elementary school in a white neighborhood now served by the Glenwood school, with an addition to the Negro elementary school as a temporary stopgap. But the majority of the board and the community, particularly the Negro community, felt the original plans should be completed. The new school was expanded to 12 rooms and is expected to be ready for occupancy in the fall of 1962. It is planned to replace the elementary rooms to be torn down at the old Negro school and to house there all Negro seventh graders, presently attending the Negro junior-senior high school. The completion of this new school is expected to have a noticeable effect on integration in Chapel Hill. First of all, attendance areas will have to be redefined to take care of the initial assignment of students to the new school. It is expected that, although the majority of students will be drawn from the Negro elementary and junior high school, thereby relieving their crowded conditions, some resegregation will result by drawing Negroes presently within the Glenwood area to the newly established school zone.

The experience of 2 years of desegregation in Chapel Hill has shown that a disturbing portion of Negro children attending desegregated schools have failed to keep pace with their white classmates. In an effort to avoid resegregation by such students, the board adopted the policy that a student failing his work at an integrated school would not be admitted to the next higher grade at the Negro school if he transferred there. But the question remains as to how to raise the achievement of Negro pupils disadvantaged by their home background and lack of motivation. Inadequate job opportunities, outside of the custodial positions, are generally credited with giving the Negro little reason to pursue education. On the other side of the coin, it is clear that in order to push for nondiscriminatory job opportunity, there

must be a ready pool of Negroes qualified for higher skilled jobs. Thus far, school programs in Distributive Education ("D.E."), and Diversified Occupations ("D.O."), have not been of much help in preparing Negroes for the occupations included in these programs due to the limited job opportunities for Negroes in the community. One result of this state of affairs, which generally prevails throughout the State, is that Negroes receiving advanced education usually move out of the State to seek or accept better jobs.

Recognizing this "chicken or egg" problem, the Chapel Hill School Board hopes the program in the new seventh grade Negro school will help. It is planned to make this a model school with emphasis upon education for Negro job opportunities. Development of supervised study halls, strengthened guidance counseling, and an improved vocational education program fitted to the opportunities in the area for which Negro youth could qualify are all part of the plan as now anticipated. If a qualified Negro cannot be found to carry out such a program in the Negro schools, the board may employ a white principal to carry it out. If this should happen, Chapel Hill would have the first integrated faculty (other than part-time instructors) in the State. Individual board members have expressed the hope that, during the transition period while the mandate of the Supreme Court is being carried out, the particular needs of the Negro child and the Negro school will be met. There is no doubt that the Chapel Hill Board of Education will meet the educational needs of the white child, to the best of its ability. It is news when a school board feels the same obligation to the Negro children it serves.

Chapel Hill's experience with its initial assignments of Negro children to predominantly white schools continues to be watched closely by other school boards throughout the State. Following Chapel Hill's lead, the school boards in Durham and Asheville have adopted geographical initial assignment plans which will take effect with the opening of school in the fall of 1962. Charlotte has undertaken a limited plan of initial assignment on a geographical basis for certain designated schools within its district, and Greensboro has made initial assignments of Negro children to a predominantly white school without notice or publicity.

DURHAM

Prior to the 1959–60 school year, Durham maintained its schools on a completely segregated basis by making initial assignments to schools in its system on the basis of separate Negro and white attendance area maps. This dual system of segregated schools consisted of 1 Negro and 1 white senior high school; 1 Negro and 4 white junior high schools; and 7 Negro and 10 white elementary schools.

Pressure for desegregation of the Durham schools began with peti-

tions to the Board of Education of the City of Durham in 1955 and 1956 requesting it to prepare a plan for desegregating the city schools. The board took these requests under advisement, but no action ensued. In 1957, the board denied the requests of nine Negro children for transfer to white junior and senior high schools, and again assigned all pupils on a segregated basis. Two of the children appealed the board's final action to the Federal district court in *McKissick* v. *Durham City Board of Education.*[60] No Negroes filed application for transfer in 1958, while the McKissick case was pending before the court.

On August 4, 1959, the board made its initial assignments for the coming school year in the usual manner. Thereafter, within the time provided by the State Pupil Assignment Act, the board received a record 225 transfer applications from Negro pupils requesting reassignment from Negro schools to which they had been assigned to schools attended by white children. In special meetings on August 25 and 28, 1959, the board considered these applications and granted transfers to two Negro students to Durham High School, and two each to Brogden Junior High School, Carr Junior High School and East Durham Junior High School, all theretofore attended solely by white students. The two reassigned to East Durham Junior High School were later reassigned to a Negro school when they moved to another residence on the day before the school term began. The *McKissick* case was decided against the plaintiffs on September 4, 1959, on the ground that they had not exhausted their administrative remedies.[61] However, because one of the plaintiffs had shown that in fact she lived nearer the white high school than the Negro high school to which she had been assigned, the court deferred entry of judgment to allow her time to exhaust her administrative remedy.[62] Subsequently, on September 17, 1959, the board reassigned this plaintiff to Durham High School. This court action brought the total number of Negroes assigned to formerly all-white schools in Durham to seven.

Following timely appeals by the applicants, the board held hearings on September 21, 1959 (19 days after the school term had begun on September 2, 1959), and affirmed its action rejecting all other requests for reassignment. The board gave no reason for its denial of applications for reassignment to the white junior and senior high schools, but gave the following as its reasons for denying the requests for transfer to white elementary schools: [63]

(1) elementary schools to be built shortly will relieve materially the crowded conditions in a number of schools, and

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[60] 176 F. Supp. 3 (M.D.N.C. 1959), 4 *Race Rel. L. Rep.* 864 (1959).
[61] *Ibid.*
[62] *Ibid.*
[63] *Wheeler* v. *Durham City Board of Education, Spaulding* v. *Durham City Board of Education,* 196 F. Supp. 71, 76 (M.D.N.C. 1961), 6 *Race Rel. L. Rep.* 733, 737 (1961).

(2) changes in the pattern of school population make it unwise and perhaps impossible to transfer numbers of elementary pupils at the present time.

On April 29, 1960, a class action, *Wheeler* v. *Durham City Board of Education*,[64] was instituted on behalf of 163 of the children whose transfer request had been denied in 1959. The complaint requested the court to enjoin the board from assigning plaintiffs to any school other than the one to which they would be assigned if they were white, from operating a biracial school system, from maintaining a dual scheme of school zones based on race, and from assigning teachers, principals and other personnel on the basis of race of the children assigned to the school. It requested, in the alternative, that the board be ordered to present a complete desegregation plan, including abolition of dual racial zones and elimination of other alleged racial discrimination.[65]

On August 1, 1960, while the *Wheeler* case was pending, the board again made its assignment of students for the 1960–61 school year on the basis of the dual white and Negro zone maps. Following the initial assignments, 205 Negro children filed applications for reassignment from the all-Negro school to which they had been assigned. On August 24, 1960, the board approved seven applications of Negro students: three to Durham High School and two each to Borgden Junior High School and Carr Junior High School. The remaining applications for reassignment were denied. The board stated that the denials were necessary:[66]

. . . in order to best promote the orderly and efficient administration of the public schools of this unit, the effective instruction of children subject to assignment by the Board, and the health, safety, and general welfare of such children, and each of them, and for the proper utilization of the physical facilities presently available.

The school term began on August 30, 1960, and, on September 12, 1960, suit was filed in *Spaulding* v. *Durham City Board of Education*,[67] on behalf of 116 of the Negro children (some of whom were also plaintiffs in the pending case from the previous year) whose requests for transfer had been denied. The complaint in *Spaulding* contained a request for relief similar to that in *Wheeler* (the earlier case). On the same day suit was filed in *Spaulding*, the board held a hearing and affirmed its previous action.

The *Wheeler* and *Spaulding* cases were consolidated for trial and were decided by the district court on July 20, 1961.[68] After restating the Fourth Circuit rule against class actions and the need of the individual plaintiffs to exhaust their administrative remedies under the

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[64] *Wheeler* v. *Durham City Board of Education, Spaulding* v. *Durham City Board of Education*, 196 F. Supp. 71 (M.D.N.C. 1961), 6 *Race Rel. L. Rep.* 733 (1961).

[65] *Ibid.*

[66] *Id.* at 76, 6 *Race Rel. L. Rep.* at 737–738.

[67] *Supra*, note 64.

[68] *Ibid.*

pupil assignment act, Judge Stanley ruled that the plaintiffs who did not attend the board hearings, or were not represented in such hearings by one of their parents or guardians, had not exhausted their administrative remedies and therefore were entitled to no relief. The court directed the school board to reconsider each request of plaintiffs who had exhausted their administrative remedies, with instructions to base each individual decision "on definite criteria and standards applicable to white and Negro children alike," and to report to the court the action taken as to each, with reasons.[69]

In its discussion of the board's actions, the court condemned: (1) the use of dual attendance areas based on race; (2) its practice of publishing assignments in the local paper "so late as to make it practically impossible for pupils desiring reassignment to pursue their administrative remedies prior to the openng of school;" and (3) its failure to adopt or apply any criteria or standards equally to whites and Negroes.[70] The court did not, however, enjoin the continuance of such practices generally or issue a decree enjoining the Durham school board from these practices. It merely ordered the board to report the "criteria or standards" followed in reconsidering particular applications and "any action it has taken with reference to the future use of dual attendance area maps, and any action taken with reference to notifying pupils and parents of initial assignments." [71] The variance between the breadth of the court's condemnations and its order may lie in the fact that in North Carolina such suits were not then recognized as class actions and "the court is limited to the protection of the individual rights of those plaintiffs who exhausted their administrative remedies prior to the institution of the actions." [72] In addition, the court evidenced solicitude for the local board under the pupil placement act and the desire to let the board solve its problems with minimum court intervention. This was implicit in the court's finding that the board had made "a significant and good faith start toward desegregating the schools" at the beginning of the 1959–60 school term.[73]

Whatever the reasoning behind the court's action, the board did make changes in the procedures criticized by the court: (*a*) Beginning with the end of the 1960–61 school year, the board made individual assignments for the coming year on the pupils' report cards, rather than waiting until later to publish the assignments in the local paper; (*b*) the dual attendance area maps were dropped, and a single map drawn up for the initial assignment of pupils to the first grade on a

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[69] *Id.* at 83, 6 *Race Rel. L. Rep.* at 743.
[70] *Id.* at 81, 6 *Race Rel. L. Rep.* at 741–42.
[71] *Id.* at 83, 6 *Race Rel. L. Rep.* at 743.
[72] *Id.* at 81, 6 *Race Rel. L. Rep.* at 741.
[73] *Id.* at 82, 6 *Race Rel. L. Rep.* at 742.

geographical basis beginning with the 1962–63 school year; and (*c*) the following criteria were adopted for use in consideration of applications for reassignment:[74]

(1) The relation of residence location of the pupil to the school to which the pupil will be assigned or seeks reassignment to another school;
(2) The proper and most effective utilization of the physical facilities available and the teacher load in the school as well as the total enrollment in the school;
(3) Academic preparedness and past achievement of the pupil;
(4) Factors involving the health and well-being of the pupil;
(5) Physically handicappd pupils;
(6) Bona fide residence in the administrative school unit;
(7) Morals, conduct, deportment, and attendance record of pupil seeking assignment or reassignment; and
(8) Efficient administration of the schools so as to provide for the effective instruction, health, safety, and general welfare of the pupil.

On reconsidering the applications of the plaintiffs in the *Wheeler* and *Spaulding* cases, the board granted six of the requests for transfer which it had theretofore denied: five to Durham High School and one to Fuller Elementary School. The assignment of the Negro pupil to the Fuller school was the first desegregation of Durham's elementary schools.

In addition to the requests for reassignment considered by the board on remand in the *Wheeler* and *Spaulding* cases, the board had 133 appeals before it from Negro students seeking transfers to desegregated schools for the 1961–62 school year. All of these appeals were denied, 127 on the ground that they were submitted on "unauthorized forms." The so-called unauthorized forms were exact reproductions of the board's forms prepared by Negro leaders for parents who reportedly had not been able to secure the board's printed forms.[75] The remaining requests on "official" forms were denied because the board found insufficient geographical reason for the transfers.

The new pupil assignment map was approved by the board on May 14, 1962, for use in assigning pupils for the 1962–63 school year. In all 6 elementary grades, it is estimated that approximately 250 to 300 Negro pupils live in the area of formerly white elementary schools. A motion by R. N. Harris, the Negro member of the board, to apply the map to all elementary school children, and to junior and senior high school students as well, failed for lack of a second. The board adopted a resolution making the map applicable only to first-grade pupils who are entering school for the first time. It has been estimated that by so limiting the application of the map, only about 50 Negro children will be affected. The actual number taking ad-

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[74] *Wheeler* v. *Durham City Board of Education*, Supplemental Opinion (M.D.N.D., filed Apr. 11, 1962), at p. 4.

[75] Transfer request forms were obtainable only by an individual parent, or other person with a power of attorney from the parent, calling at the superintendent's office to obtain forms for his own children, and no others. See appellants' brief, p. 18, footnote 3 (4th Cir., No. 8643).

vantage of the opportunity to enroll in a desegregated school is expected to be less than this. Attorneys for the plaintiffs in *Wheeler* and *Spaulding* have indicated that they intend to amend their appeal to the Court of Appeals for the Fourth Circuit to include an attack on the map as too limited in application and gerrymandered so as to maintain substantial segregation in Durham's public schools.

The initial desegregation of Durham's public schools was relatively peaceful. Principals and teachers cooperated to make it as uneventful and normal as possible. There was no segregation in the lunchrooms, gym classes, band, chorus, or elsewhere. Photographers were present at each school on opening day, but there was no violence whatever. Two incidents were reported which went beyond name calling. A few days after school opened at Carr Junior High School, a white boy knocked a tray from a Negro boy's hands in the cafeteria line. The offender was suspended from school for 1 week. The same white boy got into trouble after returning to school, but not with the Negro student, and was suspended from school indefinitely. The same Negro boy was chased down the corridor about 3 days after the cafeteria incident; the following day one of his pursuers struck him as he was entering school. The white offender had been truant from school during the opening week and had frequently been in trouble the previous year. He was promptly suspended. He was allowed to return to school later, but was suspended again for additional misconduct. Aside from these incidents caused by "chronic troublemakers," there were no major incidents due to desegregation reported.

ASHEVILLE

Perhaps the quietest and least noticed desegregation in the State was that in Asheville, a western North Carolina mountain resort city with a population of about 60,000. Its total school enrollment consists of about 9,825 students—7,016 white and 2,809 Negro. Like Durham, and other North Carolina school districts, Asheville previously had operated a segregated system with two school zone maps for its separate white and Negro schools. Prior to desegregation it maintained one white high school (grades 10 through 12); one Negro high school (grades 9 through 12); two white junior high schools (grades 7 through 9); no Negro junior high schools; seven white elementary schools (five with grades 1 through 6, and two with grades 1 through 7); and four Negro elementary schools (two with grades 1 through 6, one with grades 1 through 7, and one with grades 1 through 8). A new Negro high school is under construction, which is expected to be complete for the beginning of the 1963–64 school year. When the

new school is completed, it is planned to convert the present Negro high school into a Negro junior high school.

Asheville received its first applications from Negro pupils for transfer to its all-white schools for the 1961–62 school year. The board granted 5 of the 11 transfer requests received on the basis of a decision to desegregate the first 3 grades of its elementary schools on a request-for-reassignment basis. The 5 Negro pupils were granted their request for reassignment to the first and second grades at previously all-white Newton Elementary School, which had a total enrollment of 325 pupils. No requests were received for transfer at the third-grade level. Requests for transfer at higher levels were denied pursuant to the board's resolution to limit its initial desegregation to the first three grades.

Perhaps the most unusual aspect of Asheville's initial experiment in desegregation was the almost total blackout of publicity. A local TV station reportedly had assigned a cameraman to cover the opening day of school. According to the report, representatives of the board talked to station officials, locally and in New York, in an effort to dissuade them from publicizing desegregation. The board also talked to members of the press to convince them not to take pictures or publicize Asheville's initial desegregation effort. On the day school opened, no TV camera appeared and no reporters or news photographers covered the scene. The usual coverage of opening day at school appeared in news media, without pictures or comment on the enrollment of the Negro pupils in formerly all-white Newton Elementary School. There was no trouble, no crowd, nor anything unusual. Police were alerted, drove by, and generally remained ready—but inconspicuous. Desegregation was smooth and uneventful, with no incidents reported.

On May 15, 1962, the Asheville School Board followed up the success of its first move by passing a resolution to make initial assignments or reassignments of students in grades 1 through 6 according to a new school attendance area map, which replaced its dual white and Negro maps as to those grades. As finally adopted, the new map applies to the first three grades only for the 1962–63 school year, with its extension, possibly at the rate of three grades a year, anticipated for following years if it proves workable. Under the new plan, pupils who are presently attending a school outside the attendance area which they live may continue to do so. But pupils in the first three elementary grades will be assigned, or reassigned, according to residential attendance areas. No pupil attending an Asheville public elementary school in the first three grades for the first time during the 1962–63 session will be assigned to an elementary school other than the one located within the attendance area in which he lives.

As in the case of Chapel Hill and Durham, the Asheville map will result in token desegregation only. It is estimated that about 30 Negro pupils will be eligible to attend formerly white elementary schools under the new plan. The board also adopted a minority-race provision which permits anyone assigned to a school in which his race is the minority to transfer to another school in which his race predominates. This provision is expected to result in the transfer of any white pupil assigned by residence to a predominantly Negro school to a white school as in Chapel Hill.

CHARLOTTE-MECKLENBURG

The Charlotte and Mecklenburg County School Districts merged on July 1, 1960, making by far the largest school system in North Carolina. For the school year 1962–63 it expects to enroll 65,827 pupils, more than one-third of them Negro. Prior to the merger, there had been no desegregation in the county schools. The Charlotte city board continued its policy of token desegregation started in 1957 by its approval of transfer of 5 out of 41 requests by Negro pupils. In 1958, the city board approved 2 out of 23 Negro transfer requests and rejected all 8 requests received in 1959. The newly merged boards approved 1 of the 4 requests received in 1960, and 26 out of 37 received in 1961. There was a total of 27 Negro students enrolled in desegregated schools in the Charlotte-Mecklenburg system during the 1961–62 school year: 15 at Bethune Elementary; 3 at Derita Elementary; 5 at Dilworth Elementary; 3 at Wesley Heights Elementary and 1 at Meyers Park High School. The remaining schools in the system were segregated during the 1961–62 school year (63 all-white and 32 all-Negro schools).

In 1957, when Charlotte was embarking on its initial experiment in token desegregation, the county board denied the requests of 27 Negro children for transfer from the all-Negro Torrence Lytle school to all-white Derita Elementary-Junior High School. The board rejected the appeals by 16 of the students with an explanatory statement in which it noted its problem of providing classroom space for its growing population. Referring to the initial desegregation in Charlotte, Greensboro, and Winston-Salem that fall, the board also expressed the belief "that it would be wise to await the experience of these three systems, and to attempt to apply it to the peculiar situation of Mecklenburg County." [76] These students who had previously requested transfer attended Torrence Lytle school during the 1957–58 school year and were assigned there again for the 1958–59 school year. Ten of the Negro pupils again requested reassignment for 1959–60, but

[76] 2 *Race Rel. L. Rep.* 1040, 1041 (1957).

were again denied. Suit was filed on behalf of eight of these Negro students on February 10, 1959, in *Morrow* v. *Mecklenburg County Board of Education*,[77] alleging that they should have been admitted to the white schools requested (seven to Derita Elementary-Junior High School and one to North Mecklenburg High School) because they lived closer to them than to the all-Negro school they attended.

Judge Warlick dismissed the complaints on June 15, 1961. By that time several of the plaintiffs had finished the grades available at the school to which they sought reassignment. The court ruled that it had no power to determine whether they were entitled to be reassigned to any school other than the one to which they had applied. As to the other plaintiffs, the court accepted the board's argument that "distance from a school has never been a determinative factor in the assignment of pupils because of the extensive use of buses throughout the State."[78] The court noted that the students were transported by bus to the Negro school under a State law providing transportation for students who live more than 1.5 miles from junior high school. Bus service would not have been provided had they been assigned to the white school, which was 1.5 miles from their homes. The court also ruled that, although plaintiffs had exhausted their administrative remedies, they did not have a right to bring a class action since it was not shown that others had been denied reassignment after an exhaustion of their administrative remedies. Attorneys for the Negro plaintiffs indicated that they planned to appeal, but filed 12 days after the 30-day time limit. Since no reasonable excuse was presented for the delay, the appeal was dismissed. While the delay has been attributed to an oversight on the part of plaintiffs' attorneys, it was stated that the Negro leaders felt they had a "better case."

The "better case" concerned the April 1961 decision of the board to convert old Harding High School, an all-white school on the border of Charlotte's downtown business district, into an all-Negro junior high school. On August 18, 1961, the board assigned approximately 800 Negro students to the old Harding High School, which had been renamed Irwin Avenue Junior High School. These students had tentatively been assigned to all-Negro Northwest Junior High School, along with about 900 other Negro students. The former white student body and faculty at old Harding were transferred to a newly completed high school in the Ashley Park section of west Charlotte, taking the name of Harding High with them. Dr. R. A. Hawkins, a Negro dentist and leader of a Negro group called the Westside Parents Council, had sought to obtain desegregated assignments at old Harding. Many Negroes felt the board's action was doubly insulting because it was

[77] 195 F. Supp. 109 (W.D.N.C. 1961), 6 *Race Rel. L. Rep.* 722 (1961).
[78] *Id.* at 114, 6 *Race Rel. L. Rep.* at 725.

from Harding that Dorothy Counts withdrew in 1957 because of harrassment.

Following the board's conversion of old Harding high, Dr. Hawkins urged parents to reject assignments to the school renamed "Irwin Avenue." Many Negroes followed his advice and returned to the board more than 300 letters requesting reassignment. When school opened on August 30, 1961, Dr. Hawkins led pickets at the Irwin Avenue school and urged students to go to Northwest Junior High School, where they had been assigned originally. There was no violence, but a great deal of confusion resulted at Northwest High when about 500 unexpected students started gathering on the grounds. When told by the principal of Northwest that they could not enroll there unless they applied for and were granted requests for transfer, 366 of the students filed applications with the board requesting transfer from the Irwin Avenue school to Northwest Junior High School. The board granted 17 transfer requests and denied the remaining 349, noting that they had not been filed within the 10-day period provided under the State pupil assignment act. Notwithstanding this fact, the chairman of the board's pupil assignment committee stated that each application was considered individually, was found to be without merit, and would have been denied even if received on time.

During the 2 weeks of the boycott, attendance at the Irwin Avenue Junior High School never exceeded 393 out of the approximately 800 Negro students assigned there. The boycott was finally called off 24 hours after the mayor's committee on community relations passed a resolution calling for its end and urging Negroes and the board to exercise "mutual confidence and cooperation." The mayor's committee also authorized the appointment of a permanent subcommittee on public education to assist any group or agency in the community on racial problems in education. Dr. Hawkins was one of the appointees to this subcommittee. He denied relationship between his appointment and the termination of the boycott, claiming that he felt that they had proved their point.

At the time of the boycott, the board had plans for completing a new Negro junior high school to relieve overcrowding in the Northwest Junior High School area. The Negroes had not been assured that this plan was going to be carried out by the board. It was felt a failure in communications contributed to the Harding incident. Following the boycott, the board assured Dr. Hawkins' group that the new school would be built by the following school year. To avoid future misunderstandings due to lack of information, the board set up "school advisory committees" made up of school patrons from the various schools. The board now contacts the school's committee when-

ever it plans action which affects a committee's school. The board has since made its 1962–63 assignments to the new Negro junior high school—tentatively called Statesville Avenue school—drawing students from both Irwin Avenue and Northwest Junior High Schools.

The Charlotte-Mecklenburg Board of Education broadened its experiment in desegregation at a called meeting on June 1, 1962. At a special breakfast meeting the preceding Monday, May 28, the board, following its practice established prior to its initial desegregation in 1957, met with the editors of the two local newspapers and TV representatives to feel them out on community readiness for the steps contemplated for the coming school year. As might be expected, the opinions were not unanimous. One editor felt that the people were ready for general geographical desegregation. After the Irwin Avenue school question was discussed, it was decided to continue segregation there, because it was felt that the community was not ready for anything more. The board did, however, adopt a complicated scheme which included for the first time desegregation by initial assignment, rather than only by request for reassignment.

One facet of the board's plan involves the drawing of single attendance areas for two desegregated elementary schools—Bethune and Sedgefield—and the assignment of all students, white and Negro, living within the respective zones to those schools. As a result, of a total enrollment of 640 students, 4 Negroes (2 in the first grade, 1 in the fourth, and 1 in the fifth) have been assigned to Sedgefield Elementary School. Bethune has been transformed from a predominantly white school to a predominantly Negro school, with its makeup under the 1962–63 assignments being as follows:

White children	61
Negroes presently enrolled	15
Negroes from Parks Hutchison (Negro elementary school)	261
Negroes from Fairview (Negro elementary school)	95
Total students assigned to Bethune for 1962–63 school term	432

While the Bethune school appears to be desegregated under the assignments for the 1962–63 school year, it in fact can be expected to be all-Negro when the school opens in the fall if the 61 white pupils follow the pattern established elsewhere and transfer to white, or predominantly white, schools. Even prior to the official action by the board at its June 1 meeting, the white faculty at Bethune had requested and received transfer to other schools in the system. The board plans to replace the runaway faculty with Negroes.

In addition to the geographical assignments to Sedgefield and Bethune Elementary Schools, the board assigned one Negro pupil who is graduating from Dilworth's seventh grade to Sedgefield Junior

High School. Dilworth is a feeder school for Sedgefield Junior High. Similarly, two Negro students living in the Myers Park High School attendance area were assigned there.

Faced with the question of what to do with 40 Negro students living on an isolated Negro street within the Dilworth Elementary School zone, the board adopted an option plan. These students were requested to indicate, prior to the board's assignments on June 1, whether they would prefer to attend the all-Negro Isabelle Wyche school, or the desegregated Dilworth school; 24 of the 40 chose Dilworth. The board, at its June 1 meeting, assigned the 24 students to Dilworth. This "optional" area was established for this year only and is subject to change. At the present, Dilworth is underutilized, whereas Isabella Wyche is overcrowded. These optional areas based on a preference survey have been used before, but in the past always gave a choice between two white or two Negro schools. In fact, such a choice was given to white students living in two areas for the 1962–63 school year. In a press conference following the June 1 meeting, the chairman of the pupil assignment committee indicated that the drawing of some desegregated school attendance areas was not necessarily the beginning of a trend. Instead, he stated that the board may make more use of the option area plan based on preference surveys.

Assuming that the Bethune school remains desegregated, rather than all-Negro, the total number of Negro pupils in the Charlotte-Mecklenburg School District assigned to desegregated schools on an initial assignment basis for the 1962–63 school year is as follows:

Bethune	356
Sedgefield Elementary	4
Sedgefield Junior High School	1
Myers Park High School	2
Dilworth	24
Total	387

Should the 61 white students request reassignment from Bethune, as expected, the total figure would be 31 Negro students initially assigned to desegregated schools for the 1962–63 school year. Added to this figure is the present returning enrollment (one Negro student at Myers Park High School, 3 at Wesley Heights Elementary School, 4 at Dilworth school, and 3 at Derita school), giving a total enrollment of 42 Negro students in desegregated schools for the 1962–63 school year. If Bethune were included in the list of desegregated schools, the 15 students presently enrolled there would bring the total to 413 Negro students. Impressive as the latter figure may be, as already indicated, it can be expected that Bethune will in fact be all-Negro, leaving only 42 Negro students enrolled in 6 desegregated schools.

GREENSBORO

Greensboro has approximately 22,250 students, about 30 percent of whom are Negro. The Greensboro School Board has continued its token desegregation on a request-for-reassignment basis, established in its initial desegregation in 1957. The board granted 6 of the 12 transfer requests received from Negro students in 1957, 2 out of 19 received in 1958, both of the 2 received in 1959, the 1 received in 1960, and 8 out of 15 received in 1961. There were 15 Negro students enrolled in desegregated Gillespie Park Elementary and Junior High School during the 1961–62 school year. In addition to the eight Negro transfer requests granted in 1961, five remained from the previous year. The other two students were first graders assigned there initially, without requesting a transfer from an initial assignment to a Negro school. This was the first such initial assignment made by the board, and occurred at the time of Chapels Hill's publicized plan of geographical initial assignment. This practice has again been followed by the board, with three entering Negro children assigned to the first grade at Gillespie for the 1962–63 school year. The board announced its initial assignments by listing the names of students and the school to which they had been assigned, without indication as to race. Apparently, no notice has been taken of the initial assignments of Negro children to the Gillespie school. Each of the five Negro students assigned there over the past 2 years live near the school, which is in a changing neighborhood.

Through the assignments made in 1959, the board held meetings with the local press in an effort to gain their cooperation, as was done prior to the initial desegregation in 1957. Since 1959, the board has merely announced its assignments in public meetings, without comment. As is customary elsewhere in the State, the board has held executive sessions to discuss and determine the action to be taken at the public meetings. The board has not called the attention of the press to its initial assignments of Negro children on the theory that it would be better to avoid publicity which perhaps would create opposition.

An example of the use of the State pupil assignment act to frustrate desegregation is found in *McCoy* v. *Greensboro City Board of Education*,[79] sometimes referred to as "the case of the disappearing school." To relieve the overcrowded condition of the Washington (Negro) Elementary School, the board established a branch in a separate building on the campus of the Caldwell (white) Elementary School. Four

[79] 179 F. Supp. 745 (M.D.N.C. 1960), 5 *Race Rel. L. Rep.* 75 (1960), *rev'd*, 283 F. 2d 667 (4th Cir. 1960), 5 *Race Rel. L. Rep.* 1027 (1960).

minor plaintiffs brought a class action on February 10, 1959, seeking a declaratory judgment of their rights to attend city schools without racial discrimination and an injunction restraining the board from refusing to assign them to the Caldwell school "or such school as plaintiffs would attend if they were white." [80]

On May 26, 1959, before the suit came to trial, the board adopted a resolution combining the branch with the Caldwell school for the 1959–60 school year. The parents of all children at both schools were notified of this action. Subsequently, the board received and granted (1) applications for transfer from the all-white children at Caldwell, and (2) transfer requests from all of the white teachers at Caldwell. The white faculty was replaced by a Negro principal and seven Negro teachers. The end result was that the Caldwell school was transformed from a white school, as it had been during the 1958–59 school year, to a Negro school for the 1959–60 school year. Although the minor plaintiffs were assigned to the school named as their choice, they still found themselves in a segregated Negro school.

The district court dismissed the complaint on the ground that having been admitted to the school of their choice, minor plaintiffs had not thereafter filed application for reassignment and therefore had not exhausted their administrative remedies under State law.[81] The Court of Appeals for the Fourth Circuit reversed and remanded the decision with instruction to the district court to retain jurisdiction "so that the board may reassign the minor plaintiffs to an appropriate school in accordance with their constitutional rights and so that the plaintiffs, if these rights are improperly denied, may apply to the court for further relief in the pending action." [82] The court condemned the board's action on the ground that "although the colored children gained admission to a superior building, their desire to attend an integrated school was completely frustrated." [83] As to exhaustion of administrative remedies, the court said: "It is well settled that administrative remedies need not be sought if they are inherently inadequate or are applied in such a manner as in effect to deny the petitioners their rights." [84]

District Judge Stanley following the instructions on remand, ordered the board to reassign the minor plaintiffs "to an appropriate school in accordance with their constitutional rights," and retained jurisdiction for plaintiffs to apply for further relief "if these rights are improperly denied by the board." [85] The court further ordered

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[80] 179 F. Supp. 747, 5 *Race Rel. L. Rep.* 77.
[81] 179 F. Supp. 745 (M.D.N.C. 1960), 5 *Race Rel. L. Rep.* 75 (1960).
[82] 283 F. 2d 667 (4th Cir. 1960), *Race Rel. L. Rep.* 1027 (1960).
[83] *Id.* at 669, 5 *Race Rel. L. Rep.* at 1029.
[84] *Id.* at 670, 5 *Race Rel. L. Rep.* at 1029–30.
[85] *McCoy* v. *Greensboro City Board of Education*, Civ. No. C–26–6–59, May 12, 1961, 6 *Race Rel. L. Rep.* 721, 722 (1961).

plaintiffs to advise the board within 10 days to which school or schools they desire to be reassigned for the 1961–62 school year.[86] One of the plaintiffs was promoted to the seventh grade at the end of the 1957–58 school year and was enrolled in all-Negro Lincoln Junior High School for the 1959–60 school year. This plaintiff did not file any further application for reassignment and made no request, after remand, to be reassigned to a different school for the 1961–62 school year. The three remaining students requested reassignment to Brooks Elementary and Kaiser Junior High Schools—white schools on the opposite side of Greensboro. The board rejected these requests as unreasonable, since there were both Negro and white schools nearer their homes than the ones selected. All were reassigned to already desegregated Gillespie Elementary and Junior High School. The three minor plaintiffs did not report to Gillespie when the 1961–62 school year began, but returned to Caldwell and Lincoln Junior High School. The board declined to take any action to compel the students to attend Gillespie, and the students made no application for further relief.

RALEIGH

Raleigh had a total enrollment of approximately 15,000 students in its public schools during 1961–62—about one-third of whom were Negro. The first effort to desegregate the Raleigh public schools began with an application by a 15-year-old Negro boy for transfer from all-Negro Ligon Junior-Senior High School to all-white Needham Broughton High School for the 1957–58 school year. The request for reassignment was based on the grounds that (1) the white school was more than 2½ miles closer to his home, (2) the white school offered a fuller academic and extracurricular program, and (3) the transfer would remove the stigma of racial segregation. The board denied the application and affirmed its action following a hearing at which the applicant did not appear personally, but by his lawyer who had a power of attorney to represent him.

Suit was filed on behalf of this applicant on August 9, 1957, in *Holt* v. *Raleigh City Board of Education*.[87] On September 17, 1958, the district court dismissed the complaint on the ground that plaintiffs had failed to exhaust their administrative remedies under the pupil assignment act. Judge Stanley ruled that plaintiffs should have appeared personally at the board's hearing on the transfer re-

[86] *Ibid.*

[87] 164 F. Supp. 853 (E.D.N.C. 1958), 3 *Race Rel. L. Rep.* 917 (1958), *aff'd*, 265 F. 2d 95 (4th Cir. 1959), 4 *Race Rel. L. Rep.* 281 (1959), *cert. denied*, 361 U.S. 818 (1959).

quest, since the pupil assignment act contemplates an opportunity for the board to interview the applicant regarding the reasons given for the request for reassignment. The Court of Appeals for the Fourth Circuit affirmed this decision on March 19, 1959, and the Supreme Court declined, without comment, to review the holding in October 1959. No other requests for reassignment were filed with the board during 1958 and 1959, while the *Holt* case was pending. The board continued to assign students on the basis of its dual attendance area maps—one for white and one for Negro pupils.

Raleigh desegregated its public schools for the first time in September 1960, with the approval of a Negro boy's request for reassignment to all-white Murphey Elementary School. This student's father, then secretary of the Raleigh NAACP, had also sought reassignment of two of his older children to white schools, but the board denied these requests. The Murphey school, in downtown Raleigh two blocks from the Governor's mansion, was attended by Governor Sanford's two children.

On June 1, 1961, the parents of 66 Negro students in Raleigh filed suit, in *Hunter* v. *Raleigh Board of Education*,[88] to test the constitutionality of the State pupil assignment act. None of the plaintiffs attempted to follow the administrative procedures outlined in the act to obtain a reassignment. Plaintiffs contended that the act uses race as its "controlling standard" and that the Raleigh Board of Education purposely assigns children to schools under a policy of maintaining a racially segregated school system.

The only Negro board member had been advocating that Negro students should be allowed to transfer schools without being required to appear before the board and be subjected to questioning as to "why" they desired to transfer. He was particularly concerned about the board's practice of requiring Negro students in certain areas to walk, or be bused, past white schools to attend an all-Negro school farther from their homes. After the *Hunter* suit was filed, the board suggested to the Negro member that he submit a list of those Negro students who desired to change schools. The Negro board member then discussed the problem with two Negro ministers. They, in turn, talked to parents and reported back the names of those students who were interested in being reassigned to all-white schools for the 1961–62 school year. Some of the Negro students reportedly declined to go to a white school even though it was nearer to their homes than the Negro school to which they had been assigned. As a result of this private survey, the board, on its own motion, reassigned three Negro students to all-white Needham Broughton High School and five Negro students to all-white Daniels Junior High School for the 1961–62

[88] Civ. No. 1308, E.D.N.C.

school year. In another action, the board granted the transfer request of a second Negro student to the Murphey Elementary School, but denied an application by this student's stepsister for transfer to white Needham Broughton High School. These actions brought the total 1961–62 enrollment of Negro students in formerly all-white schools to 10. The *Hunter* suit has not been pressed since the board made these reassignments.

WINSTON-SALEM

Winston-Salem has a total school enrollment of better than 22,000 students, of whom about 30 percent are Negro. The Winston-Salem School Board has continued its practice of token desegregation upon a request-for-reassignment basis, as established in its initial desegregation of 1957. The board granted one of the four transfer requests received in 1957, three of eight received in 1958, all four received in 1959, the two received in 1960, and the seven received in 1961. Total Negro enrollment in desegregated schools during the 1961–62 school year was 15, with 14 enrolled in Easton Elementary School and 1 in R. J. Reynolds High School. The board follows a policy of granting requests for reassignment which are based on geographical convenience.

In addition to the desegregation as a result of reassignment, the board operates an advanced placement program on a desegregated basis. Under this program, each high school screens its students for enrollment in special courses in English, social studies, chemistry, and biology. These advanced courses are given four mornings each week at Reynolds High School. Students selected from each of the three white and three Negro high schools return to their own schools following the class periods at Reynolds. The screening of students is done by the sending school, and all schools have been represented during the 3 years the program has been in operation. Students completing the program in one of the selected subjects may take an advance placement test and receive college credit.

Beginning with the 1962–63 school year, a new distributive education program for Negro students will be undertaken. The purpose of this program is to prepare Negro students in grades 9 through 12 for careers through supervised work experience in various retail businesses. The program is basically for students who cannot or do not want to go to college, but desire to obtain jobs in merchandising. The participants go to school part of the day and work at a retail store part time. The teacher-coordinator uses the work experience as a basis for classwork. The program is being under-

taken at the instance of local retail merchants who requested the program. The board had operated such a program for white students for short periods in the past, but abandoned it each time for lack of interest and personnel. (The contrast with Chapel Hill, where the job opportunities needed for the program are not available, should be noted.)

HIGH POINT

The city of High Point enrolled approximately 11,500 students during the 1961–62 school year, about 34 percent of whom were Negroes. The High Point Board of Education early adopted the "wait and see" approach to desegregation. The board rejected the request of a committee of Negro leaders in 1958 to adopt a plan for desegregation voluntarily, stating that it would wait for applications for reassignment under the pupil assignment act. The board received its first applications for transfer in the spring of 1959. It is said that when one Negro parent called the superintendent requesting information on the procedure for requesting transfer of her children to a white high school, the superintendent attempted to dissuade her. In fact, the board did not even have reassignment request forms printed at that time. When the board received its first requests for transfer from 13 Negro students in 1959, it had to furnish the applicants forms hastily obtained from Greensboro, substituting High Point's name. The board rejected all but two of the requests, one for Ferndale Junior and one for Ferndale Senior High School. The board again had 13 requests for transfer in 1960, and granted 5—2 to Ray Street Elementary School, 2 to Ferndale Junior High School and 1 to Ferndale Senior High School. The board granted 6 of the 10 requests for transfer it received in 1961—3 each to Ferndale Junior and Ferndale Senior High School. The two Negro students who attended the Ray Street Elementary School during the 1960–61 school year were transferred to all-white Montlieu Elementary School because the former was destroyed by fire in 1961.

At the school board meeting on April 25, 1962, the interracial ministerial alliance asked the board for a public statement of its desegregation policy. At that same meeting, the board discussed the boundaries for a new elementary school to be opened in September 1962. The sole Negro board member charged that the attendance map, as drawn by the superintendent and board chairman, gerrymandered about eight Negro students out of the school's attendance zone by a crooked line excluding approximately three city blocks in which Negroes lived. The chairman was absent from this meeting; only the superintendent expressed opposition to the motion to straighten this line so that these

Negro students would be within the new school's attendance area. The board adopted the map as drawn, with the exception of the portion alleged to be gerrymandered, awaiting information as to the number of students involved.

At the board's next meeting, a special executive session called by the chairman for May 15, the chairman and the superintendent presented a new map with the gerrymandered line straightened—but in such a manner as to still exclude the Negro students. Two of the board members who favored including the Negro students within the school's zone were absent from this meeting. One was out of town; the other was asked by the chairman to represent the board at another function taking place at the same time. When the Negro board member insisted that some plan be adopted to admit Negro students into desegregated schools on an initial assignment basis, the chairman is reported to have responded "you pick the students and we'll assign them." Unlike the Negro board member in Raleigh, however, he refused this offer by the chairman on the basis that it represented no "plan." When asked about the request by the ministerial alliance for a public statement of the board's desegregation "policy," the chairman replied that it "needs no answer." At last report, increasing criticism was being directed toward the board's chairman and the superintendent for the practice of closed meetings.

YANCEY COUNTY

Yancey County is typical of 17 mountain counties in North Carolina in which the desegregation problem is one of traditional attitudes rather than Negro-white population ratios. The county has a total population of just over 14,000 people which includes less than 150 Negroes. Of the approximately 4,000 students in the county school system, only about 30 are Negroes. Since the Supreme Court's school desegregation decision in 1954, the county has had trouble trying to provide for the education of its relatively small Negro student population, without desegregating its white schools.

Following the *School Segregation Cases*, the county continued to bus 10 or less Negro high school students 80 miles round trip each day to Asheville for their education. Negro elementary pupils attended an old one-teacher, one-room school served by neither a road nor inside plumbing in Burnsville. The Negro families, living on the outskirts of Burnsville, had protested the rundown, inadequate condition of the Negro elementary school even before the school desegregation decisions. In 1953 the county had purchased a site for a new school but objections of the Negro residents to its location delayed

building. During the summer of 1958, a Yancey County Superior Court Grand Jury recommended that the Negro elementary school be condemned as "not only inadequate but unsafe and unsanitary for elementary school children." [89] On September 19, 1958, the Negro elementary school was closed by order of the State Board of Education on the ground that the operation of an eight-grade elementary school was unjustified because only seven students were enrolled. A boycott by most Negro parents protesting the inadequacies of the school and the denial by the local board of their requests to send their children to school in Asheville had reduced enrollment. As a consequence of the closing of the county's Negro elementary school, 21 Negro elementary pupils age 6 to 12 joined the Negro high school students in their 80 mile round-trip to Asheville to attend Negro schools there. These children had to leave Burnsville at 6:30 in the morning and ordinarily were not home until around 5:30 in the evening.

As a result of negotiations with the board, the parents of these children agreed that they would attend the Asheville schools for the 1958–59 school year in return for the board's promise to build them a new school by September 1959. However, for political and economic reasons, the board did not keep its promise. The county had gone heavily in debt in the summer of 1958 to complete two new white high schools at a cost of about $425,000 each. As a result, the Negro parents' attitude changed; they were no longer satisfied with a promise of a new segregated school, but demanded that their children be admitted to the county's white schools. In June 1959, Negro parents requested reassignment of 27 children to local white schools. The board denied the requests in August, and announced that the children would again be assigned to the Asheville schools for the 1959–60 school year. When school began in late August, the Negroes refused to allow the children to go to Asheville. To provide some schooling for the children, a group of volunteers—mostly from Asheville—organized the Burnsville education project and began to raise money to finance a makeshift private elementary school in Burnsville. The Negro children began attending classes in the basement of a church outside of Burnsville on September 21, 1959. Two teachers were secured for the school's 24 students—5 in the first grade, 2 in the third, 4 in the fourth, 3 in the fifth, 4 in the sixth, 3 in the seventh and 3 in the eighth. The seven Negro high school students were placed in a Methodist boarding school in Asheville.

On November 11, 1959, suit was filed in the Federal district court,[90] on behalf of 27 Negro students, alleging that their requests for trans-

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[89] *Griffith* v. *Board of Education of Yancey County*, 186 F. Supp. 511, 514 (W.D.N.C. 1960), 5 *Race Rel. L. Rep.* 1030, 1031 (1960).

[90] *Griffith* v. *Board of Education of Yancey County*, 186 F. Supp. 511 (W.D.N.C. 1960), 5 *Race Rel. L. Rep.* 1030 (1960).

fer had been denied solely because of their race. The suit, financed and tried by the NAACP, attracted national attention because it showed the hardship inflicted on a small group of Negro children due to southern tradition. Its publicity value was not lost on the NAACP. For example, in December 1959, that organization ran a full-page ad in the New York Times picturing a Negro child sleeping in a bus seat, with the caption "Eighty miles in 11 hours—that's a long school day for a six-year-old."

By late 1959, following the filing of suit, the county commissioners and the board of education had decided to build a new Negro school in Burnsville . In March 1960, the State board of education agreed to lend the county $30,000 to build the school. While the majority of the county's white residents were in favor of the project, support was not unanimous. A white housewife at the Celo community, a unique philosophical cooperative of about 50 persons on Celo Mountain, about 5 miles from Burnsville, brought a taxpayer's suit against the Yancey Board of Education to restrain it from spending money for the Negro school.[91] State Superior Court Judge Patton denied the petition, however, and ruled that the board had acted in good faith in making its plans for the new Negro school.[92]

On April 6, 1960, a school site was purchased and bids for the construction were let on May 6, 1960. The new Negro school was completed in the summer of 1960. It is a small brick and cinderblock building, having one large room which can be divided in half by movable partitions. In addition there are two restrooms, an office and supply room, and a "kitchen" which contains a sink. Two teachers were employed. The board assigned all of the county's Negro children to the new school for the 1960–61 school year, without regard to age or grade. Following this assignment, the plaintiffs were permitted to amend their complaint to seek a temporary restraining order and permanent injunction enjoining the board from assigning all of the minor plaintiffs to the new Negro school solely on account of their race. Only four Negro children registered at the new school when it opened in the fall of 1960. The others—17 in the elementary grades and 8 in high school grades—again boycotted the segregated school. Under the auspices of the Burnsville education project, the elementary classes were reinstated in the basement of the local church. The high school students enrolled in boarding schools—the boys at a school in Camden, S.C., and the girls at the Allen High School in Asheville.

The boycott was a short-lived project. On September 12, 1960, Judge Warlick held that, as a matter of law, the board had no au-

[91] So. School News, Aug. 1960, p. 9.
[92] *Ibid.*

thority to assign the minor plaintiffs to schools outside of Yancey County and concluded "that the refusal to admit these plaintiffs to the public schools in Yancey County comes about by reason of their race and color." [93] The court ordered the board to assign the eight high school plaintiffs to one of the two high schools within the county. After recognizing the overcrowded contitions of the white elementary schools, the court instructed the board to reconsider its assignments of the 17 Negro elementary pupils, giving— [94]

consideration to the location of these schools, the distances involved, so as to provide for the orderly and efficient administration of such schools, and provide for the effective instruction, health, safety and general welfare of the pupils assigned to such school.

On October 3, 1960, the board assigned the Negro high school students to the previously white high schools for the 1960–61 school year—four to Cane River and four to East Yancey High School. All of the elementary grade pupils were again assigned to the new Negro elementary school. The desegregation of the high schools was smooth and uneventful. Two of the Negro boys at each high school made the football squad. However, the Negro parents still objected to the board's refusal to desegregate the elementary grades. This, they argued, perpetuated a second-rate education for their children. One Negro family refused to send two daughters to the new Negro elementary school and enrolled them as boarding students in a private boarding school in Asheville for the 1960–61 school year.

The fight to desegregate the elementary schools in Yancey County continues. On July 11, 1961, the board received requests for reassignment of seven Negro students for the 1961–62 school year. The board granted the three requests for assignment to its high schools—two to East Yancey and one to Cane River High School, but denied four elementary school requests. The denials of the elementary school requests were appealed, and a motion for further relief filed in behalf of the one remaining elementary school plaintiff in the *Griffith* case is still pending.

CRAVEN AND WAYNE COUNTIES

Craven and Wayne Counties have voluntarily desegregated the schools which serve children of military personnel stationed in the area. Both of these counties are in the predominantly rural eastern one-third of the State where the Negro population is the highest. Of the approximately 8,000 students in the Craven County School District, which

[93] *Supra*, note 90, at 517, 5 *Race Rel. L. Rep.* at 1034.
[94] *Supra*, note 90 at 518, 5 *Race Rel. L. Rep.* at 1034–1035.

does not include New Bern, the county seat, about 35 percent are Negro. Negroes make up about 40 percent of Wayne County's school enrollment of approximately 12,000 students, excluding the separate school district of Goldsboro, the county seat.

In March of 1959, the Wayne County Board of Education set aside Meadow Lane Elementary School, in operation for the first time during the 1958–59 school year, exclusively for children of personnel at the Seymour Johnson Air Force Base. Three Negro pupils attended the school at various times during the last 2 months of the 1958–59 school year. This policy has continued to the present, with an enrollment of 25 Negro students during the 1961–62 school year.

At the instance of the District School Committee of the Havelock School District, the Board of Education of Craven County passed a resolution on July 13, 1959, which stated a willingness to cooperate with authorities of the Marine Corps Air Station at Cherry Point "to provide appropriate relief for such hardship cases that result from assignment of certain children of military personnel to schools 18 to 20 miles distant from the Air Station."[95] The "certain children" were those of Negro military personnel who were excluded from the white schools in Havelock, the community nearest the base. According to the resolution, the assignment of the Negro children is not automatic, and is "subject to the qualification of such children to meet the reasonable requirements to be specified by the district principal and the local school committee."[96] Since the initial desegregation in 1959 dependents of Negro personnel have attended school with white dependents. During the 1961–62 school year West Havelock Elementary School had 14 Negro pupils out of a total enrollment of 955 students; Graham Barden Elementary School, enrolling 705 pupils, had 19 Negroes; and 2 Negroes attended Havelock Junior High School with some 400 white students. Except for dependents of military personnel, all students attending these three schools are white.

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[95] 4 *Race Rel. L. Rep.* 785 (1960).
[96] *Ibid.*

The Outlook for the Future

If the past is prolog, a totally desegregated statewide public school system is not likely in North Carolina in the foreseeable future, unless forced by court decrees. The North Carolina Pupil Assignment Act, as interpreted and applied by the courts to date, has presented an insurmountable barrier to anything more than token desegregation. Indeed, there is still the possibility that a local community might have such strong feelings about segregation that it would choose to open the yet untested "safety valve" of the Pearsall plan, and close a local school to avoid its forced desegregation. A new constitutional problem would then arise.[97]

The most difficult step in the process of desegregating schools is the first. In the 11 North Carolina communities which have experienced desegregation so far, there has been a great deal of preliminary interplay between the forces supporting segregation and desegregation, tempered by the so-called moderates, or gradualists. In complying with the Supreme Court's mandate to proceed "with all deliberate speed," the Federal district judges in North Carolina have taken the position of mediator. They have been so solicitous of local boards' problems of readjustment that desegregation in the State has been more deliberate than speedy.

Even in communities which desegregated voluntarily, the prevailing attitude of school officials is one of containment. Desegregation, not a result of court decree, has been undertaken with an eye to preventing a court order for action on a broader scale. Many instances of Negro pupils being reassigned to previously all-white schools may be attributed to the fear that denial of a persistent parent might lead to unwanted litigation. Even desegregation on a geographical assignment basis has resulted in token desegregation. Boundary lines for attendance areas have been so drawn that only a limited number of Negro children are initially assigned to previously white schools. In

[97] Federal courts have already held that the 14th amendment is violated by the closing of a public school within a school district, *James* v. *Almond*, 170 F. Supp. 331 (E.D.Va. 1959), 4 *Race Rel. L. Rep.* 45 (1959), *appeal dismissed by stipulation*, 359 U.S. 1006 (1959), or a school district within a State, *Hall* v. *St. Helena Parish School Board*, Civ. No. 1068, E.D. La. 1960, 5 *Race Rel. L. Rep.* 654 (1960), while other schools in the district or State are open.

addition, the few white children living in the attendance area for the Negro school are, by State law, given the right to transfer to a white school, or, if none is available, receive a tuition grant to attend a State-approved, nonsectarian, private school. While the tuition grant provision of the Pearsall plan has not as yet been successfully invoked (nor its legality determined), the local boards have freely granted requests by white pupils to transfer from Negro schools to attend the school of their choice. The result has been that the Negro schools have remained 100 percent Negro, even where initial assignment is geographic, with token desegregation of some white schools.

There is no unanimity of opinion as to a proper and effective solution to this complex problem. Proposed solutions range between the extremes of total segregation and forced integration. Many desegregation leaders, including some of the most militant Negroes, have indicated a preference for retaining the neighborhood school. These leaders are deeply concerned with the neglected problem of quality of schools—the focal point of the "separate but equal" doctrine. They want neighborhood Negro schools as good as neighborhood white schools. They claim the quality of education is being overlooked as a consequence of desegregation myopia. The solution advanced is to desegregate on a neighborhood basis (including desegregation of faculties) and equalize the neighborhood schools.

These leaders are not concerned about the racial composition of neighborhood schools. They recognize that segregation resulting from residential patterns has its taproot in discrimination in housing, and would be resolved if housing were available on a nondiscriminatory basis. They claim Negro parents prefer to send their children to the school nearest their homes with their friends and neighbors. They object to discrimination which requires them to send their children to a more distant Negro school solely on racial grounds. They believe, too, that the elimination of discrimination in employment would reduce residential segregation.

Many causes other than low income produce residential segregation; limited job opportunities keep income low; lack of equal education and training prevents qualification for better jobs. A segregated neighborhood school remains. The right to vote and the exercise of that right is part of the total picture. By helping to elect sympathetic public officials the Negro community can advance its cause.

Other North Carolinians, equally concerned with Negro advancement, believe that their unequal status today is the result of discriminatory treatment by the State for many years, and that the only just and effective approach is not "equal" treatment, but preferential treatment designed to catch them up with the white milieu in the shortest practicable time. Such special treatment would include special edu-

cational programs and assistance tailored to their peculiar needs. Others object to this approach and argue that it would delay desegregation. They assert that all educational programs must meet the needs of each individual pupil, and that the extra attention any or all Negro pupils might require should be met on this basis, without placing it on racial grounds which would forestall desegregation. To substantiate this position, it is pointed out that the limited experience in desegregation in North Carolina has shown that many of the Negro pupils in school with white pupils have done as well or better than their classmates, without special treatment.

CIVIL RIGHTS U.S.A.

Public Schools: Southern States

1962

TENNESSEE

By EUGENE G. WYATT and G. W. FOSTER, Jr.

A Report To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

In gathering factual material and background for this report, the author personally interviewed school officials, white and Negro leaders, teachers, and parents of schoolchildren in the various communities surveyed. Their personal observations and opinions have been included in this report where they seemed pertinent to an understanding of the developments recorded.

Much of the factual material presented was obtained from school officials who were invariably cooperative. Their assistance in this regard is appreciated by the author.

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AUGUST 1, 1962.

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Part 3. Tennessee

Introduction

Tennessee desegregation began quite soon after the Supreme Court decision in the *School Segregation Cases*. There were some instances of community dislocation and violence which attracted national attention. However, unlike some other areas, the court-ordered desegregation in Tennessee actually took place in each instance despite scattered disorders.

The Oak Ridge school system, under Federal control at the time, integrated its facilities in the fall of 1955. Today, an estimated 100 of the city's 272 Negro students are in desegregated situations. The other Negro students attend an all-Negro elementary school in a detached section of the city populated almost entirely by their race.

The first desegregation under local control took place at Clinton, in the Anderson County school system. There are few Negroes in this county (currently 64 school children) and the practice had been to transport all Negro students out of the county for their high school education. An order by a Federal court to admit Negroes to the Clinton High School in the fall of 1956 [1] resulted in such agitation that National Guard units using tanks and tear gas were necessary to restore order. Today, Anderson County Negroes are still attending a segregated elementary school, but 20 Negroes are enrolled in the white high school.

The Nashville city school system, which now numbers the school population as nearly half Negro, began desegregation in the fall of 1957 under court order.[2] Its grade-a-year plan, beginning in the first grade, has become a model for many other systems over the country. Nashville's desegregation also was not peaceful. There were several demonstrations at schools on registration days, and one almost-new school was badly damaged by a bomb. There have been no arrests in the bomb episode. Later, a Jewish community center was damaged

[1] *McSwain* v. *County Board of Education of Anderson County*, 138 F. Supp. 570 (E.D. Tenn. 1956), 1 *Race Rel. L. Rep.* 317 (1956).

[2] *Kelley* v. *Board of Education of Nashville*, Civ. No. 2094, M.D. Tenn., Jan. 21, 1957, and July 17, 1959, 2 *Race Rel. L. Rep.* 21 (1957) and 3 *Race Rel. L. Rep.* 651 (1958).

by another blast in an incident generally regarded as connected with desegregation efforts.

At the close of the 1961–62 school year, 17 of the State's 143 biracial school districts were nominally desegregated. Some of these were by court order, and eight "voluntary," although several of the latter efforts actually took place after litigation was filed or threatened. Three of the nominally desegregated school systems actually have no Negroes enrolled with whites. Of the State's 155,500 Negro pupils, 1,167 were in schools with whites—although this figure is deceptive, since 540 of these students are in one school in Nashville with only two non-Negroes—a white and a Chinese-American child. In addition to these, court-ordered desegregation will begin in Obion County [3] and Chattanooga [4] in the fall of 1962. Voluntary desegregation is scheduled at the same time for Hamilton County (which surrounds Chattanooga), Dickson County, and school districts at Bristol and Franklin. All of the latter are grade-a-year programs.

Tennessee desegregation has been affected relatively little by legislation. Acts passed in 1957 set up pupil assignment criteria,[5] permitted segregation by sex,[6] required registration for racial organizations and solicitors,[7] and permitted voluntary segregation.[8] (The latter act was declared unconstitutional in the *Nashville* school case.)[9] Only one relevant act has been approved since then, and that modified the compulsory attendance law without mention of race.[10] Only the pupil assignment law has been used to any substantial degree, and that less than in most other desegregating States. In the *Wilson County* case,[11] the Federal court refused to allow the act to be considered a desegregation plan by itself. Memphis, which used the act as a basis for desegregation, has been advised by the Court of Appeals for the Sixth Circuit that more must be done.[12]

Desegregation experience in Tennessee has been uneven, mostly because of the extreme variety of conditions existing in the State. The western part of the State is southern-oriented, still dependent to a considerable degree on a cotton economy. Many western areas have

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[3] *Vick* v. *County Board of Education of Obion County*, 205 F. Supp. 436 (W.D. Tenn. 1962).

[4] *Mapp* v. *Board of Education of the City of Chattanooga*, 203 F. Supp. 843 (E.D. Tenn., 1962), 7 *Race Rel. L. Rep.* 25 (1962).

[5] Tenn. Acts 1957, ch. 13, p. 40.

[6] *Ibid.*

[7] Tenn. Acts 1957, ch. 152, p. 2.

[8] Tenn. Acts 1957, ch. 11, p. 36.

[9] *Kelley* v. *Board of Education of Nashville*, Civ. No. 2094, M.D. Tenn., Sept. 6, 1957, 2 *Race Rel. L. Rep.* 970 (1957).

[10] Tenn. Acts 1959, ch. 289, p. 894.

[11] *Sloan* v. *Tenth School District of Wilson County*, Civ. No. 3107, M.D. Tenn., Nov. 22, 1961, 6 *Race Rel. L. Rep.* 999 (1961).

[12] *Northcross* v. *Board of Education of the City of Memphis*, 302 F. 2d 818 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 40 (1962), *cert. denied*, 370 U.S. 944 (1962).

very large Negro populations. Middle Tennessee, although rather heavily populated by Negroes, is substantially less southern in its outlook. East Tennessee has fewer Negroes, but many areas have a mountain insularity which makes desegregation difficult. In addition, two of the State's largest urban centers—Memphis and Chattanooga—are actually trade centers for large areas of Mississippi and Georgia, and to a considerable extent reflect the racial attitudes of those areas.

Educators in the three parts of the State, however, report many problems in common. The most frequently met complaint is that Negro students average 1½ to 2 years behind grade level when they are transferred to white schools in the upper grades. Negro leaders see this as additional evidence of the inferiority of the segregated Negro elementary schools. On the other hand, the Nashville school superintendent, who has dealt with biracial student bodies longer than any other official in the State, reports that Negro students transferred to white schools in the earlier grades generally are performing adequately.

This problem is not limited to students. One large urban center reports that of 901 Negroes academically qualified to take the national teacher examination, only 49 percent passed. Of the 783 qualified white teachers, more than 97 percent passed. In most of the State's school systems, officials report that Negro teachers actually earn more than white teachers, because of longer tenure and an inclination to acquire more graduate degrees. Although State officials say no Negro teacher has yet been fired because of desegregation, it is probable that fewer have been hired than would have been necessary for the segregated schools. Also, it is probable that one teacher will be dismissed in the Humphreys County system in the fall of 1962 because of transfers from the only Negro school.

Tennessee has seven State colleges and universities. All now have policies of desegregation, but in fact two have no Negro students. The State university for Negroes has three non-Negroes, all of whom are middle eastern natives. The first admission of Negroes to graduate schools in the white university at Knoxville came as the result of a court order in 1952;[13] the undergraduate schools did not desegregate until January, 1961, during litigation. The other State colleges were desegregated between 1956 and 1959. Currently there are 243 Negroes in predominantly white State colleges and universities. Of these, the largest number—97—are at the Knoxville campus of the university, where they comprise slightly less than 1 percent of the student body.

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[13] *Gray* v. *University of Tennessee*, 342 U.S. 517 (1952).

Vanderbilt University, a private institution, has recently announced a policy of admission without regard to race in all of its schools. Certain schools at Vanderbilt—Law, Divinity, and some of the graduate schools—have been desegregated since 1957. There have been a number of Negro graduates. George Peabody Teachers College apparently has a policy of desegregation for its summer graduate program. Scarritt College has been completely desegregated for many years.

One Negro teacher is employed in the Oak Ridge desegregated high school. All others in the State remain in fully segregated situations, although there are several integrated teacher organizations and workshops frequently are biracial. Specific requests for teacher integration have been made in several lawsuits, but judgment on this issue has been reserved by the courts, notably in the *Humphreys* [14] and *Wilson* [15] cases.

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[14] *Boyce* v. *County Board of Education of Humphreys County,* Civ. No. 3130, M.D. Tenn., Dec. 21, 1961.

[15] *Supra,* note 11.

Nashville and Davidson County

NASHVILLE

After 5 years of experience with the grade-a-year desegregation program which was devised by the Nashville school board during litigation in 1956 and 1957, City Superintendent W. H. Oliver still believes it is the best plan for the conditions and attitudes which have prevailed in Nashville during that time. It has resulted in a considerable number of Negro children attending classes with whites—810 during the course of the 1961–62 school year. As noted earlier, all but 270 of these are in one elementary school with two non-Negroes. There are 13,317 Negro and 16,960 white students in the school system. A recent program of annexation by the city will nearly double the number of white students while adding relatively few Negroes.

Before the desegregation litigation, Nashville's school zoning system was dual—an entirely different set of school attendance zones for each race. After the court order, new zones were devised. Actual zoning is made by the finance committee of the board of education, but recommendations made by the superintendent in consultation with principals of the various schools are usually followed. These have always been fluid as population patterns change. The new zones were geographic, but because of racial housing patterns, there are many all-Negro and all-white areas. However, no Negro has ever complained to the school board of gerrymandering. Street descriptions of zones are available at the individual schools, but no map or general description of the zoning has been made public.

Under the Nashville plan, white children in a predominantly Negro zone may transfer to a white school, and Negroes in a predominantly white zone may transfer to a Negro school. After 3 years of desegregation, only 13 percent of the Negroes eligible to attend white schools were doing so. No exact figures are available for the 1961–62 year, but school officials estimate the percentage is appreciably higher—perhaps 20 percent. After 3 years, there were no whites in Negro zones attending a Negro school. Last year, there were only the two attending the Negro Pearl Elementary School. There have been no

recent figures compiled on the number of whites originally assigned to Negro schools, but when desegregation began in 1957 there were 55, all in the first grade. Projecting this known figure to five grades, the total number would have been 275 in 1961–62.

Each student is automatically assigned to the school in his residential zone. Reassignment request is required of both Negroes and whites. Once a child is transferred to a school outside the district, he may stay there until he moves or graduates to a higher level. He may, however, request assignment back to the school in his own district at the beginning of each year. In practice, many Negroes have entered predominantly white schools at each of the desegregated grade levels. The procedure for requesting reassignment involves only filling out this form:

Date_____

Mr. Wm. Henry Oliver,
Superintendent of City Schools,
Nashville, Tenn.

Dear Mr. Oliver: As parents, or guardians, or those acting in the position of parents, of_____ (name of child) (grade) student living at_____ (street address)

in the_____school zone, we respectfully request that our child be transferred to another school.

_____ (1st choice) _____ (2nd choice) _____ (3rd choice)

Our reasons for making this request are_____

_____

_____

(Reverse side may be used for additional remarks or explanations.)

Yours very truly,

Telephone No._____

_____ (Parents' signature)

The superintendent has made it a practice to examine and act personally on every request. None has been refused which satisfied the racial criteria of the plan. Very few parents have specified more than a first choice for transfer, and it has been possible thus far to grant all these first requests. Most white parents list racial grounds as the reason for transfer. Negro parents requesting enrollment of their children in all-Negro schools assign other reasons. Some of these for the 1961–62 school year are:

Charles won't have to cross a highway if he goes to X school.
Because my other children attend X school.
Arthur has been ill and I prefer he go to familiar people.
My children have many friends at X school.
We prefer an all-colored school until desegregation is a little further along.

One Negro who lives in an area reclassified from white to Negro because the white school was closed, was allowed to go to another white school even though his race then predominated in the school of his residential zone.

Of the 10 Negroes who stayed in white schools throughout the first grade in 1957–58, five remain in desegregated fifth grades. The others have transferred to Negro schools either by choice or because their homes were moved. Of the five still in desegregated situations, four are performing satisfactory grade-level work; one has failed.

No recent figures on performance of these children are available, but a school psychologist made a study in 1960 when five of the desegregated children were still in the third grade and five had transferred back to all-Negro schools. Of the five in desegregated schools, three had achievement scores at or above the median for their classes; one was slightly below the median; and the fifth was well behind. Among the Negroes transferring back to segregated situations, all were doing above-average work as compared with their classmates except one, a child with an intelligence quotient of 76. In the white schools, three of the Negroes had IQ's above their classmates, and two below. In the Negro schools, four of the transferees from desegregated schools had IQ's very substantially above their classmates. For all Negro third grades in Nashville, the median achievement score was one-half year behind that in white third grades.

Superintendent Oliver reports substantially more difficulty with Negro students entering desegregated situations in upper grades—there are now 21 in the fifth grade who began their education in segregated schools. Most of the difficulties he ascribes to problems of social adjustment, although the cumulative effect of the generally lower achievement in the Negro schools is credited with some responsibility for this situation.

Most pressure for desegregation of Nashville schools has been exerted by the National Association for the Advancement of Colored People and by the Committee on Racial Equality. School officials believe these organizations are maintaining a continuing program to encourage Negro parents to enroll their children in the white schools for which they are eligible. There were several ad hoc organizations formed in 1957 to oppose all desegregation, which actually exerted great pressure on school and city officials at that time, but very little has been heard from them since. Recently, a Nashville citizens council was organized, but its school program has not been very active yet.

Recently there has been pressure from Negro leaders, particularly in the NAACP, to desegregate Hume-Fogg Technical and Vocational High School, which serves all of Nashville and Davidson County. The city maintains a vocational program for Negroes at Pearl High

School, but the subjects taught are not coextensive with those available at Hume-Fogg. The board has not acted on the request, but school leaders expect the board will insist on waiting until the grade-a-year program reaches high school level before desegregating these schools. However, in March 1962, the vocational practical nurse program at the Nashville General Hospital was opened to all races.

Desegregated Negro pupils in Nashville are rather generally distributed by grade and school, as the following chart of 1961–62 Negro enrollment in the first five grades of white schools shows:

Schools	Grade					
	1	2	3	4	5	Total
Buena Vista	19	20	10	17	7	73
Clemons	5	3	4	4	2	18
Cotton	6	3	1	2	1	13
Fall	19	13	6	2	6	46
Fehr	11	11	8	6	1	37
Glenn	14	6	5	5	1	31
Jones	12	16	6	8	8	50
Warner	0	1	1	0	0	2
Total	86	73	41	44	26	270

Two schools, Kirkpatrick and Caldwell, have had Negro students at various times in previous years, but none were enrolled in 1961–62. Of the schools on the chart, Buena Vista, Fall, Fehr, and Jones are in low-income districts with considerable racial residential mixing. The others are mostly low middle-income areas in racial transition. Cotton was the school badly damaged by a bomb during initial desegregation. The one Negro child who had registered there did not attend that year, but there are now 13 Negroes spread over the 5 desegregated grades.

DAVIDSON COUNTY

All of Davidson County is considered part of the Nashville standard metropolitan statistical area, but its schools were not desegregated until early 1961—3½ years after Nashville. The Federal district court synchronized the two programs, however, and now both Nashville and county schools will begin desegregation through the sixth grade in the fall of 1962.

Eleven schools were affected in the first year of Davidson County's desegregation, and 42 Negroes were enrolled in previously white schools. In the second year, there were 110 Negroes in 15 previously white schools. The Negro population in the county area is proportionately much less than Nashville. There are 46,912 white students and only 2,353 Negroes. In the first year of desegregation, about 11 percent of the Negroes eligible to attend the formerly white schools did so; in the second year, about 20 percent. School officials expect more Negro enrollments in September 1962. Unlike the experience in Nashville schools, county officials report that several of the Negroes whose parents elected to send them to desegregated schools were marginal students and their scholastic performances were irregular.

DESEGREGATION OF OTHER FACILITIES

Since the *School Segregation Cases*, there has been appreciable desegregation of other public and private facilities in Nashville. As a result of litigation, golf courses operated by the city have been opened to all races.[16] Requests by Negroes to use public swimming pools in public parks were followed by the closing of all pools for the announced reason of insufficient funds. They are still closed, for the second season. After pressure by Negro groups, which resulted in several disorderly situations, restaurants and lunch counters in department stores, variety stores, and drugstores have generally been opened to Negroes. A very few of the restaurants also occasionally serve Negroes. Hotel dining rooms generally accept Negroes only when they are a part of biracial groups. City buses were desegregated 5 years ago without court action.

Since the President's Executive order requiring equal job opportunities for Government contracts,[17] there has been a conscious effort among several large employers in Nashville to seek qualified Negroes for higher level jobs. Negroes have been employed by the city as policemen and firemen for several years, although their activities are limited to segregated areas.

Most hotel facilities in Nashville are not available to Negroes, although some report they have successfully registered, particularly when reservations were made in advance. In connection with the opening of extensive new auditorium and convention facilities, there has been a renewed effort on the part of Negro leaders to secure general admission to the city's hotels and motels.

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[16] *Hayes* v. *Crutcher*, 137 F. Supp. 853 (M.D. Tenn., 1956), 1 *Race Rel. L. Rep.* 346 (1956).
[17] Exec. Order No. 10925, 26 Fed. Reg. 1977 (1961).

There have been no allegations of any kind of voter registration discrimination in Nashville for at least a generation, and Negroes have been readily elected to the city council.

Although desegregation is proceeding generally, if slowly, in almost all areas of community life, there has been one limited area in which segregation has appeared recently for the first time: Many do-it-yourself laundries and drycleaning establishments have "white only" signs.

Humphreys County

Humphreys county lies along the Tennessee River in an area of the State historically inclined toward traditional southern attitudes. It has been generally agricultural in outlook, and in common with many such counties in the South, has suffered from migration of its young people over the past several decades. From 1930 to 1960, the population dropped from 12,039 to 11,511.

There are some 1,500 Negroes in the county, most of whom live in or near Waverly, the county seat, which has a total population of about 3,000. A few live at New Johnsonville, total population 500, and in the neighborhood of McEwen, a town of 1,000 in the eastern part of the county.

Recently, the county administration has been pursuing a vigorous policy of recruiting industry with very considerable results. As recently as 1950, the total assessed valuation of the entire county for tax purposes was $6,398,318. Within the past 2 years, new industries for the county include a titanium dioxide plant, originally estimated to cost $30 million but since revised upward; an aluminum mill, more than $28 million; a mineral extraction factory, $5 million; an air reduction facility, $2,500,000; plus several other smaller factories. In addition, organization of large-scale scrap iron and low-grade iron ore operations is well underway. Even allowing for the equalized 15 percent valuation for tax purposes, the impact of this sort of industrial growth on the economic and social life of the community has been considerable.

The Humphreys County schools have been entirely segregated from their creation. In the spring of 1961, there were 161 Negro students in the county, all enrolled in the combined Porch-Reed Elementary and High Schools in Waverly. The 2,657 white students attended 2 high schools and 7 elementary schools at various places in the county.

In May 1961, the Tennessee Department of Education conducted a survey of the county's education system and made this curriculum comparison of the high schools:

Waverly Central (white): 28 courses offered, possible 39 units for credit.

McEwen (white): 21 courses, possible 29 units.

Porch-Reed (Negro) : 14 courses, possible 18 units.

Among courses offered at the white high schools, but not at the Negro, were Ancient History, Geography, Economics, Civics, Business Arithmetic, Solid Geometry, Trigonometry, Physics, Agriculture, Shorthand, Bookkeeping, French, Latin, Home Economics, Band, Chorus, Sociology, and Problems of Democracy. The Negro school offered only one course not available at the white schools: Modern History.

Physical facilities of two of the white high schools were found to be adequate, but serious shortcomings were found in some other white schools and in the Negro school.

Tennessee law now requires 300 students as the minimum for establishment and maintenance of a senior high school. Express approval is required for a smaller school, and this was necessary for the Porch-Reed Negro school, which had only 75 high school students. However, the county expenditure per pupil has been greater for Negroes than for whites, largely because of the greater expense in transporting Negro children. For the 1960–61 school year, the cost per pupil was:

	White	*Negro*
Operating expense	$9. 00	$11. 90
Instruction	150. 26	148. 61
Transportation	39. 72	92. 60
Total	198. 98	253. 11

All Negro teachers were, like their white counterparts, fully certificated. Only one was teaching outside his area of special competence.

In August 1961, before the school term began, a Negro woman whose husband had recently been employed in the county asked that her children be admitted to the white schools, since she regarded the Negro schools as inferior. Her children had been in the Memphis school system previously. After consultation, the school board declined to accept them. On the opening day of school, her children and the children of a Negro minister presented themselves at the white school and asked for admission. They were again refused. There was some tension among parents of white children registering, but the county sheriff was present and there was no violence.

The Negroes then filed an action in U.S. district court asking for immediate desegregation of the white schools. School officials offered a plan providing for desegregation of grades 1 through 5 at that time, and of an additional grade a year beginning in the fall of 1962. This would have brought desegregation to a level approximating that of the Nashville and Davidson County school systems. Like the "Nashville plan," there were provisions for transfer of students who would be required to attend a school where their race was in a minority.

The plaintiffs objected to this plan, arguing that it did not take into consideration the substandard conditions at the Negro school. They argued that this was not a "separate but equal" situation for which the court should allow adjustment time. The court agreed, and asked for a speedier program. The county then offered to desegregate grades 1 through 5 immediately, 1 though 7 plus grade 9 in the fall of 1962, and a grade a year thereafter in both elementary and high schools. The plaintiffs made the same objection. Again the court agreed, and held that immediate desegregation would not create any problems of transportation or teaching personnel. The court also noted that ". . . Since 1951, the public officials and business interests in the county have been carrying on an industrial development program which will be facilitated by eliminating the desegregation problem . . ." [18] During the hearing, the county judge (who is the chief county executive officer in Tennessee) and the chairman of the county's committee on industrial development both testified that desegregation difficulties would hurt the county's chances for new industry.

The court entered an order requiring immediate desegregation of grades 1 through 5, and the named plaintiffs were ordered admitted to grades 7, 9, 10, and 12. In addition, the entire school system was ordered desegregated in the fall of 1962.

No appeal was taken from this order, since the county judge decided that public funds would not be available for further litigation. The named plaintiffs were actually enrolled and began classes in January 1962. No other Negro students sought admission to the generally desegregated first five grades. Several Negro parents said that they thought it best not to change their children in the middle of a school year. There is also some indication that certain elements of the Negro leadership are discouraging desegregation because of the probability of the loss of teaching jobs for Negroes. The court specifically refused to grant a request for desegregation in the assignment of teaching and other staff and operating personnel. The injunction granted was a very general one, prohibiting segregation in [19]

> . . . all questions of zoning, assignments, and transfers of students, to retransfers or reassignments of students, to transportation of students, and to all phases, aspects, and facets of said school system other than the question of the assignment of teaching and other staff and operating personnel which is reserved.

When it became obvious in late 1961 that some degree of desegregation would take place shortly, the superintendent of schools and other county officials began making talks to parent-teacher and other groups on the necessity of orderly transition. Special parents' meetings were

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[18] *Supra*, note 14.
[19] *Ibid.*

held twice a week. Teachers were briefed on possible problems. Generally, these talks stressed the inevitability of compliance with court orders, and considerable emphasis was placed on the disruptive effects of desegregation difficulties on industrial and economic processes.

Although the same legal counsel handled this litigation as has appeared in other school desegregation actions in the State, both Negro and white county leaders agree that most of the impetus for desegregation came from local Negro residents who felt the quality of education being offered in the Negro schools was inferior.

Generally, school officials report, the Negroes did satisfactory grade-level work, despite the fact that some of them did not attend school anywhere during the first half of the 1961–62 school year. One student applied for an advanced mathematics course for which he was not prepared, but he was reassigned to another course and completed it satisfactorily. One child, who was very near graduation, received the necessary units and his diploma.

Desegregation of school facilities—lunchroom, transportation, restrooms, etc.—was complete. Negroes participated in all activities. One Negro child was elected the president of his classroom.

The size of the school system is such that the superintendent is able to keep in close personal touch with many of the parents. He expects about 12 or 14 new Negro students to request and be granted transfer to white schools in the fall of 1962. In addition, there are about 30 Negro students in the Lake View and McEwen school zones whom he feels obliged to assign to the white schools in those areas because of the Tennessee pupil assignment act. Previously, these children have been transported considerable distances to the Negro school in Waverly. This he feels he can no longer do without granting white children the same privilege. The superintendent says that all of these children want to continue to attend the Negro school. Various reasons are assigned for this: The fact that most of these families have quite small incomes and find the free-lunch program at the Negro school advantageous is frequently cited. The racial cohesiveness of this small Negro community is another suggested reason. Also, many of these children are in the low-performance group at the Negro school, and seem to fear the competition they would encounter at the white schools.

The school board expects that one Negro teacher at Porch-Reed school will not be employed for the 1962–63 school year because the anticipated outflow of Negro students would lower the pupil-teacher ratio to an uneconomical point if all of the teachers were retained.

Generally, the county has maintained its southern outlook on race relations. Recreational facilities, except for those in the area operated

by the TVA, are segregated or do not exist for Negroes. The courthouse, where the school board and school officials have their offices, still maintains the customary racial designations for toilet facilities.

There is still bitterness among whites, particularly in rural districts. The elected superintendent of schools, who has been campaigning in these areas, reports he frequently encounters vocal opposition to the desegregation program and animosity toward the Negro plaintiffs.

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Wilson County

School desegregation began in Wilson County in the summer of 1961 when Negro parents filed a Federal court suit on behalf of their children for admission to elementary and high schools in Lebanon, the county seat. Suit was originally filed against the special school district which operates the Lebanon elementary schools, but it was subsequently amended to include the county school system and the special district which operates the elementary school at Watertown, which is in the southeastern part of the county. Shortly after the beginning of the 1961 fall term, the court ordered immediate admission of three named plaintiffs to the Lebanon school and directed all three boards to submit a proposal for complete desegregation through the 12th grade. The three students were admitted the next day.

The boards subsequently offered a plan which consisted mostly of a pledge to operate under the Tennessee Pupil Assignment Act, with a few qualifications having to do with time requirements. This law,[20] passed in 1957, provides criteria for assignment of pupils in various schools, including availability of room and teaching capacity, residence of pupil, availability of transportation, effect of enrollment of the pupil on the school, effect of enrollment on the welfare of the student and other students, scholastic aptitude and relative intelligence of the pupil, psychological qualifications of the pupil, the availability of special courses, etc. Race is not one of the criteria. But the court rejected this, saying: ". . . This law, as shown on its face, is not a plan for desegregation nor is desegregation a part of its subject matter or purpose. . . ." [21]

Since the boards showed no interest in a gradual plan such as that used in Nashville and Davidson County, the court ordered a general desegregation of the 12 grades of all districts, effective January 2, 1962. As part of this, a general rezoning of school districts based on factors other than race was ordered. Actually, school officials say, the county had never been zoned, so the boundaries which were drawn were the first ever set up.

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[20] *Supra*, note 5.

[21] *Sloan v. Tenth School District of Wilson County*, 6 *Race Rel. L. Rep.* 999, 1000.

The county has four high schools; two of them are located in the city of Lebanon. Previously, one had been for Negro and the other for white students. The other high schools were located at Mount Juliet, to the west, and Watertown, to the east of Lebanon. Three zones were drawn. One, for the northern part of the county, was regarded as the zone for both the previously white and the previously Negro school. The southwest zone supplied the Mount Juliet school and the southeast zone the Watertown school. Negroes already attending the Negro high school were permitted to continue there, but allowed to transfer to the white school in their zones. In the northern zone, shared by the previously white and Negro schools, assignment to a school other than the one attended was based on some of the criteria of the pupil assignment act, especially the geographical location and availability of courses factors. Although an estimated 30 or 40 percent of the county's 850 Negro students live in the zones of the 2 previously white high schools at Mount Juliet and Watertown, only 15 elected to transfer to Mount Juliet and none to the Watertown school. Five Negroes living in the joint northern zone asked for transfer to the previously white high school, but three were rejected. The rejections were mostly on the geographic factor.

The elementary schools in the county were zoned for four regularly shaped areas. Again, Negroes were allowed to remain in the Negro schools unless transfer was requested. None elected to transfer. School officials believe that a recent program of improving Negro schools which raised the standard of physical facilities above that of white elementary schools is responsible for this.

Very little formal preparation was done in the community to assure the acceptance of desegregation, although teachers were briefed generally and instructed by the school board to take special efforts to avoid incidents. None occurred when the Negroes first entered the schools. Four Negroes enrolled in white schools transferred back to all-Negro schools for various reasons.

Of the Negro students who remained in the previously white high schools, none had a satisfactory academic performance. The best academic average was made by a Negro girl who passed three of her four courses. The others failed in more than one subject. The school superintendent blames the generally lower performance on the students themselves, several of whom had been failing in the all-Negro school. Negro leaders in the community see the poor performance of these students as additional evidence of the inferiority of the segregated schools which prepared them. There is some indication, also, that parents of many of the brighter Negro students who might have made satisfactory records in the white schools have not been persuaded of the advisability of seeking nonsegregated education for their children.

Generally, the school year went uneventfully. Negroes were involved widely in school functions. Facilities were equally available. One Negro became a member of a school chorus. Another participated in spring athletic drill, and school officials say he will be allowed to participate in fall contests if he is competent.

On the last day of school, a car loaded with white boys brushed against a Negro girl leaving the school, and some insults were exchanged. The girl was not hurt. Two of the white boys were called in for discipline after a delegation of Negroes protested the incident at city hall. School officials expect more applications for transfer to previously white schools for the fall of 1962, although only four had been received at the end of the spring term. Two Negro students were permitted to enroll in a high school summer session, a tuition-financed operation not specifically covered by the Federal court injunction.

Wilson County adjoins Nashville and Davidson County on the east and much of the general pressure for desegregation of other facilities has spread from the urban center. The western part of the county is populated to a considerable extent by commuters. Shortly after desegregation of the schools, pressure was brought to desegregate a movie theater. Resulting disturbances among whites resulted in action by the State highway patrol to maintain order. The theater is still segregated. One department store has allowed Negroes to eat at its lunch counter after "stand-in" demonstrations and negotiations, but such pressure generally was less successful against drugstores. In two cases, drugstores removed their food-service facilities completely after pressure was brought for service to Negroes. Recreational facilities generally remain segregated. There is no public transportation system.

Pressure for desegregation of schools came mostly from members of the National Association for the Advancement of Colored People and from Negro religious groups. The father of two of the named plaintiffs in the Federal court suit is a Presbyterian minister.

Chattanooga

There has been no desegregation of public schools in Chattanooga, despite litigation extending over the past 2 years. When suit was originally filed against the school board, it sought to invoke the Tennessee Pupil Assignment Act. This effort was refused by the court on the ground that the schools were still functioning on the basis of dual zones for the races.[22] A grade-a-year program was offered and also disallowed.[23] Both actions were subsequently upheld by the Court of Appeals for the Sixth Circuit.[24]

Before a newly installed Federal judge, a new plan was offered and approved. It provides for desegregation in the fall of 1962 of nine named white schools and seven named Negro schools by rezoning of those schools for grades 1 through 3. Also to be desegregated then are certain special programs for handicapped children. Desegregation of the first four grades in all schools is to follow in the fall of 1963, the remaining elementary grades in all schools in 1964, first year of all junior high schools in 1965, remaining junior high grades in 1966, first year of all high schools in 1967, remaining high school grades in 1968, and desegregation of post-high-school technical institute in 1969.

The court struck down transfer and admission qualifications in the plan,[25] and the board has filed a limited appeal from this action. Attorneys for the Negroes have also filed objections to plans of the board to ask for notices of intent from parents in the school zones to be desegregated in 1962.

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[22] *Mapp.* v. *Board of Education of Chattanooga,* Civ. No. 3564, E.D. Tenn., Oct. 1, 1950, 5 *Race Rel. L. Rep.* 1035 (1960).

[23] *Mapp* v. *Board of Education of Chattanooga,* Civ. No. 3564, E.D. Tenn., Jan. 23, 1961, 6 *Race Rel. L. Rep.* 107 (1961).

[24] *Mapp.* v. *Board of Education of Chattanooga,* 295 F. 2d 617 (6th Cir. 1961), 6 *Race Rel. L. Rep.* 997 (1961).

[25] *Mapp.* v. *Board of Education of Chattanooga,* 203 F. Supp. 843 (E.D. Tenn. 1962), 7 *Race Rel. L. Rep.* 25 (1962).

Knoxville and Knox County

KNOXVILLE

Knoxville city schools began their desegregation in the fall of 1960 as a result of a Federal court order accepting a Nashville-type grade-a-year plan, with reservations for study of possible advanced desegregation in technical and vocational classes.[26] Like Nashville, the city was rezoned and the same transfer privileges were allowed.

About 30 percent of the first-grade Negroes eligible to enroll in a white school the first year did so—a total of 29 in 9 previously white schools. All the whites assigned to Negro schools requested and were granted transfers. At the beginning of the second year, a total of 51 Negroes in the first and second grades elected to attend the school of their residential zones, again in 9 schools.

Negro leaders were dissatisfied with this program, and appealed to the Court of Appeals for the Sixth Circuit. In April 1962, the court ordered the Knoxville board to present a program for faster desegregation, holding:[27]

> . . . It is not the function of this court to formulate or dictate to the board a plan for the operation of the Knoxville schools. It is, likewise, not our intention to require immediate total desegregation. We do believe, however, that more grades than contemplated by the board's plan should now be desegregated. In the light of the board's experience with the present plan, it should be able to submit an amended plan that will accelerate desegregation and more nearly comply with the mandate of the Supreme Court for "good faith compliance at the earliest practicable date."

On June 25, 1962, the Knoxville School Board voted to double the rate of desegregation by opening two grades a year instead of one.

KNOX COUNTY

Knox County, a largely suburban area surrounding Knoxville, began its voluntary desegregation program at the same time and at the same speed as the city. The county has a very small percentage of Negroes—312 Negro students and 32,574 white students—and of these only 1 elected to attend a previously white school in the 1961–62 school year.

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[26] *Goss* v. *Board of Education of the City of Knoxville,* 186 F. Supp. 559 (E.D. Tenn. 1960), 5 *Race Rel. L. Rep.* 670 (1960).

[27] *Goss* v. *Board of Education of Knoxville,* 301 F. 2d 164, 169 (6th Cir. 1962), 7 *Race Rel. L. Rep.* 36 (1962).

CIVIL RIGHTS U.S.A.

Public Schools: Southern States

1962

MEMPHIS

By G. W. Foster, Jr.

A Report To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

My report on the desegregation process in Memphis is the product of personal interviews there over a period of more than 3 years. These interviews have been with such people as the chairman and members of the Memphis Board of Education, the superintendent of schools, attorneys for both the school board and the Negro plaintiffs in the desegregation suit, and community leaders, both Negro and white.

The interpretations placed upon the facts reported are, of course, my own, for which I alone am responsible.

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AUGUST 1, 1962.

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Introduction

Memphis, Tennessee's largest city, borders the Mississippi River in the southwest corner of the State.[1] Historically the city's customs, economic affiliations, and its general outlook have been more closely associated with the Deep South than with those of any other urban area in the State. Much the same may also be said of the rural areas of west Tennessee, Arkansas, and Mississippi which surround it. The Negro population in many of these counties nearly equals or in fact exceeds the white population, a factor producing both a sturdy white resistance to change and considerable hesitation among Negroes to take the initiative.

Through the late 1950's the thought was frequently expressed by Negroes and whites alike that preexisting lines of communication between the races had largely broken down following the *School Segregation Cases* of 1954 and 1955. But these earlier communication channels were hardly between bargainers who stood on equal footing. White leadership called the shots and simply notified a selected group of Negroes to pass the word as to what might be expected as the Negro's segregated share of the community's public resources.

Even with communications limited as they were in the late 1950's there had been numerous efforts to move the Memphis Board of Education to action on school desegregation and in other matters related to Negro education. Many groups and interested individuals, often working beneath the level of public notoriety, had been at the job. But the board took no action on desegregation until suit was filed in the Federal court in the spring of 1960. And even on matters which involved evident inequalities in Negro education the board in this period moved reluctantly and only after substantial pressure had been brought to bear.

By 1960 a few limited situations could be observed in which Negroes and whites were beginning to sit in the same room and at the same table, frankly discussing among themselves their respective problems,

[1] Its population was reported in the 1960 Census as 497,524, ranking it 22d among U.S. cities. Among the cities which operated racially segregated public schools at the time of the *School Segregation Cases* in 1954, only six were larger: Baltimore, Houston, Washington, St. Louis, Dallas, New Orleans, and San Antonio.

fears, and desires. Little, and often no, publicity attended such affairs. Yet they had a profound significance. Open and realistic discussion, even if off-the-record, could and did reduce the areas of misunderstanding and often abated some of the suspicions which each "side" had of the motives of the other.

The process of discussion leading to better understanding had occasional setbacks but expanded rapidly between 1960 and 1962. Increasingly, top-level white leadership—political, economic, and social—became involved as participants in the process. Negro leadership, important elements of it new and untried, gained experience and understanding, too, as these meetings explored ways for bringing about change. And changes, though at a slower rate than the Negro leadership preferred, were taking place at a quickened pace.

Withal, much fear, suspicion, and resistance remained in 1962. Decisions concerning the scope, place, and timing of change were more often the product of action and reaction to particular situations than of longer range planning worked out jointly by Negroes and whites. Both leadership groups continued to fear that in almost any particular situation either might agree to steps which would fail to win support from dominant segments of their respective communities. And to guard against this, both groups tended to seek the protection of court orders to shift responsibility for decisions elsewhere and leave them free to express personal disagreement with some of the results. But the growing string of successful changes held out hope for those most intimately involved that they were learning how, and could take the next steps with greater confidence.

Events surrounding the quickening tempo of change suggested a number of things. One strikingly evident point was that none of the dominant forces, Negro or white, wanted Memphis to become a Little Rock or a New Orleans. Among the whites few welcomed the changes away from patterns of segregation but most accepted the inevitability of much more change to come (though they would try, short of community disorder, to slow the rate at which it came). An increasingly sophisticated Negro leadership moved with expanding confidence, but continued to be troubled by the slowness of change, and—privately—conceded despair at the indifference of so many Negroes to education and the resistance of elements within the Negro community who had vested interests in continued segregation.

Patterns of Change: 1955-1962

By 1962 an impressive list could be compiled of wholly or partially desegregated activities and facilities in Memphis. Many of these of a small, private nature developed gradually over a period of years. Most of the large-scale and tax-supported instances came after 1960. And many of these were the end product of Federal court litigation which had dragged on for as much as 5 years before any results were obtained.

Informally, at least, the municipal bus system had desegregated.[2] The old pattern of Negroes at the back of the bus tended to linger. But neither drivers nor police were enforcing segregation and Negroes who elected to use it had the same freedom in the buses as whites.

Under pressure of litigation but without court order, the desegregation of all units of the public library system was announced as of September 9, 1960,[3] although it took a subsequent court decree to desegregate the toilet facilities in them.[4]

Memphis State College—after almost 4 years of litigation in the Federal courts—opened its doors to eight Negro students in the fall of 1959.[5] Two years later, some 80 Negroes were enrolled with more than 6,000 whites.[6]

Federal court action designed to desegregate all facilities operated by the Memphis Park Commission resulted, in January of 1962, in a court-approved plan to reach the final result gradually over a 10-year period.[7] In 1962, the zoo, an art museum, an amusement park, 4 of the 7 public golf courses, and some of the city's 99 playgrounds were already desegregated under the 10-year plan. The gradual plan was sustained by the United States Court of Appeals for the Sixth

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[2] The result apparently came about without entry of a formal court decree although litigation not reaching the merits of the case had actually reached the Supreme Court. *Evers* v. *Dwyer*, Civ. No. 2903, W.D. Tenn., June 27, 1958, 3 *Race Rel. L. Rep.* 743 (1958), *reversed and remanded* 358 U.S. 202 (1958).

[3] See resolution adopted by Board of Trustees of Cossitt Library, 5 *Race Rel. L. Rep.* 1271 (1960).

[4] *Turner* v. *Randolph*, 195 F. Supp. 677 (W.D. Tenn. 1961), 6 *Race Rel. L. Rep.* 825 (1961).

[5] So. School News, Oct. 1959, p. 12.

[6] Southern Education Reporting Service: Statistical Summary, November 1961, p. 36.

[7] *Watson* v. *City of Memphis*, Civ. No. 3957, W.D. Tenn. 1961, 6 *Race Rel. L. Rep.* 828 (1961). A suit to desegregate the Municipal Auditorium, *Flowers* v. *City of Memphis*, was pending in the Federal district court as this was written.

Circuit on June 12, 1962, and attorneys for the Negro plaintiffs promptly announced that Supreme Court review would be sought.[8]

Protracted litigation finally resulted in desegregation of the airport restaurant but not until after an incident in which Carl Rowan, an Assistant Secretary of State, had been denied an opportunity to sit with white companions while they had coffee.[9]

The combination of sit-ins and a later Negro boycott led to an agreement made in the fall of 1961 to withdraw the protest in return for assurances that a number of Memphis lunch counters would be desegregated shortly after the Christmas rush was over. The desegregation of the counters took place on schedule early in 1962.[10]

There were other evidences of change, too. A Negro was appointed to the Memphis Transit Authority in the summer of 1961.[11] Another was later appointed to the Board of Directors of the Memphis City Hospital and a third was named as an Assistant United States Attorney for the Western District of Tennessee.[12] Although long free to register and vote, recent registration drives have substantially increased the role which the Memphis Negro vote will play in both local and statewide elections.

In 1962 much still remained to be done. Apart from areas in which residential neighborhoods were undergoing transition from white to Negro, residential segregation was virtually total. Employment in white-collar jobs—professional, business, even stenographic and clerical—was almost exclusively confined to activities run by Negroes and servicing the Negro community. And public school desegregation—off to a dramatic but token start in the fall of 1961—was a job largely undone.

The story of school desegregation in Memphis follows.

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[8] *Memphis Commercial Appeal,* June 13, 1962, p. 1; N.Y. Times, June 13, 1962, p. 44.

[9] The litigation bore the name of *Turner* v. *City of Memphis,* Civ. No. 3934, W.D. Tenn., Jan. 23, 1961, 6 *Race Rel. L. Rep.* 233 (1961), *reversed and remanded,* 369 U.S. 350 (1962). The incident involving Carl Rowan is reported in the *New York Times,* Jan. 21, 1962, p. 60.

[10] The decision to delay desegregation of the lunch counters until after the holiday season turned on two concerns: first, the greater likelihood of disturbance if the change occurred while the stores were crowded with shoppers, many of whom were from surrounding rural areas, at this time; and second, the question whether temporary sales personnel, brought in for the period of heavy purchasing, could be relied on as much as could the permanent sales force.

[11] Prior to selection of a particular man for the post the Memphis City Commission had invited a number of Negro organizations to join in making a recommendation. After herculean efforts, the various groups submerged their differences and agreed on one man. This nominee was thereafter rejected by the Commissioners, a move which many of the Negro groups treated as an act of spite and which gave rise to a noisy controversy in the Memphis papers during July 1961. The man subsequently named to the job by the Commissioners was widely respected in the Negro community but resentment against the Commissioners over their prior action persisted.

[12] A Negro was also elevated recently to the position of supervisor over all vehicular mail deliveries at Memphis.

Background and Statistics

The Memphis public school system, reportedly the 15th largest in the United States, had an enrollment during the 1961–62 school year of slightly more than 100,000 pupils, about 46 percent of whom were Negroes. Four members of the Board of Education—the policy-making body for the system—are elected at large; the fifth board member, its president, is appointed by the mayor with the concurrence of the city commission. The school system is, by southern standards, a good one although like most others it could be improved if more adequate funds were available.

Typical of systems which grew up under State laws requiring racial segregation, dual sets of Negro and white schools had traditionally been maintained. Each set had its distinctive teaching and administrative staffs, respectively Negro and white, with the system capped administratively by a white superintendent. Until the fall of 1961 the pupils enrolled in the two sets of schools separately by race.

The first break in this pattern occurred about a month after schools opened for the 1961–62 school year when 13 Negro first-grade pupils were reassigned after hearings to 4 formerly all-white elementary schools. Thus, the system operated in that year 68 schools which were all white, 40 which were all Negro, and 4 with all-white faculties and token numbers of Negroes attending with white pupils—a total of 112 schools in the system.

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Mechanics of Pupil Assignment

With some exceptions at the junior and senior high school levels, Memphis operated within its dual system in 1961–62 three tiers of schools: elementary (grades 1 through 6); junior high (grades 7 through 9); and senior high (grades 10 through 12).

Each elementary school had a distinctive geographic attendance zone, with Negro schools in effect zoned on one map of the city and white schools on another. The Negro and white attendance zones overlapped in mixed neighborhoods, with Negro children initially assigned according to the Negro attendance zone and the whites according to the white zone map.

Junior high schools were generally fed by four to six elementary schools, preserving the separate racial character of the two sets of schools at this level. Similarly, high schools had four to six feeder junior highs, again preserving the segregation pattern.

INITIAL ASSIGNMENT: NEW PUPILS

A pupil enrolling in the Memphis schools for the first time, either as a first-grader or a new resident, could be enrolled by his parent at any school in the city, Negro or white. This initial "enrollment" is the equivalent of registration elsewhere. Except for children who moved into the city after school commenced, enrollment of new pupils took place in 1961 late in August.

All enrollments were then forwarded to the attendance department of the board of education, which initially assigned all enrolling pupils according to race. A white pupil who resided in the attendance zone of the white school in which he had enrolled—or a Negro pupil who resided in the attendance zone of the Negro school in which he had enrolled—was automatically assigned to that school.

Pupils who enrolled in schools outside their own racial attendance zones were treated differently. All 50 Negro pupils who enrolled in white schools and apparently many of the white pupils who enrolled in out-of-zone white schools were initially assigned to the schools of their own race in the attendance zone of which they resided. Parents were permitted to appeal within 10 days after initial assignment for

reassignment under the Tennessee pupil placement law to the school in which the children had been enrolled.

The process of initial assignment, as is clear from what is said above, operated entirely along racial lines.

ASSIGNMENT OF PUPILS PREVIOUSLY ATTENDING MEMPHIS SCHOOLS

Pupils eligible to continue in the same school the following year were automatically assigned to that school by a notation on their report cards in the spring of 1961. Parents were permitted to appeal within 10 days thereafter for reassignment to another school.

Similarly, a pupil graduating from an elementary school was automatically assigned by the report-card method to the junior high school to which his elementary school fed.[13] Junior high graduates were assigned in a like manner to high school. In both situations, parents could appeal for reassignment within 10 days.

The report-card system of assignment in spring had the obvious advantage of permitting school authorities to anticipate enrollment for the following year and to announce publicly a list of schools which were uncrowded and to which requests for reassignment could be sought.

The report-card method of assignment, of course, perpetuates whatever patterns of racial segregation already exist in a school system and the situation is relieved only to the extent that appeals for reassignment permit access to nonsegregated schools. The Memphis board had announced earlier that it would accept—at all grade levels—requests for reassignment without regard to race. No Negro parents, however, took appeals from report-card assignments made in the spring of 1961 and the policy was not then subjected to any test.[14] As this was written, 42 appeals by Negro pupils from report-card assignments in the spring of 1962 were pending before the board. These pupils seek reassignment to formerly white schools. The appeals were from pupils at various grade levels and potentially affected a number of still-segregated white schools.

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[13] The practice of designating all-white elementary schools as feeders for one junior high and all-Negro schools to another, of course, has the effect of perpetuating segregated patterns in the junior high schools. The same is true with respect to racial designations of junior high schools which feed the high schools.

[14] The first evidence that the board would assign Negroes to formerly white schools at other than the first-grade level came in June 1962 when two Negro students were admitted to summer session courses in a white high school. Both had attended private schools outside the city during the regular school year and had applied for courses not offered in the summer curriculum of the Negro high schools.

APPEALS FOR REASSIGNMENT

As the practice operated for the 1961–62 school year appeals for reassignment were in all cases made subject to the provisions of the Tennessee pupil placement law.[15] Among the factors taken into account were available space in the school to which reassignment was sought, geographic location of the pupil's residence and the school sought, scholastic achievement of the pupil relative to levels maintained in the school to which he sought admission, and various psychological effects.

Each spring, as earlier indicated, the board has announced a list of schools in which vacancies exist and to which reassignment might be sought. A list of "closed"—that is, already filled—schools has also been announced at the same time. Any appeal requesting reassignment to a "closed" school is automatically denied.

Approximately 200 appeals were made to the board from initial assignments made following the enrollment period in August of 1961. Among the 50 Negro pupils who were enrolled at white schools, the parents of only 39 appeared at the hearings on the appeals—as did the parents of about 130 of the whites who had indicated an intention to appeal. The great majority of the appeals was rejected, many because admission to "closed" schools was sought.

Of the 39 Negro pupils on whose behalf hearings were held, the board voted unanimously on September 30, 1961, to reassign 13 Negro pupils among 4 previously white elementary schools. This decision climaxed a month during which the board and school professionals had faced up for the first time to the question of how school desegregation would be commenced at Memphis. Until the 50 Negro applications were received late in August of 1961 the board had given little attention to the question. There had been a few discussions in which it had been generally assumed that something would be worked out under the Tennessee pupil placement law but little had been done on detailing the criteria for admission of Negroes, the mechanics for processing them, and preparing both the schools and the community for the change itself. Between the end of August and the end of September answers had to be worked out to these and many other problems.

At the outset the board had designated two hearing officers before whom the applicants and their parents were to appear. The hearing officers also heard reports from professional social workers who visited the homes of most of the applicants. Batteries of reading readiness and IQ tests were administered among the first-grade classes at the

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[15] Sections 49–1701—49–1764, Tenn. Code. See also 2 *Race Rel. L. Rep.* 215 (1957).

schools which the Negro applicants were attending and in the schools to which they sought reassignment. Understandably, the information revealed by these processes disclosed a number of problems and the board, anxious for the success of whatever it finally decided upon, had to resolve many hard questions.

Gradually, some generalized policies evolved during the month of September. Among them were these: Designation of the particular schools to be desegregated involved a number of considerations. The then recent experience of New Orleans in commencing desegregation at only two schools and in the lowest socioeconomic white neighborhoods pointed away from selection of schools in such areas for the opening round of desegregation. In such neighborhoods friction was great, few sophisticated whites could be found to furnish leadership in keeping the schools going as viable institutions, and discipline problems were greater than in middle and upper income white areas. Again, the board hesitated to put fewer than three Negro youngsters in any particular school since the year was expected to be a difficult one and perhaps more than a single child could withstand. Too, the board desired a geographic spread of the schools over the city.

The proximity of the Negro children to the schools in which they had sought reassignment posed another difficulty. Long before desegregation was the issue, the board had taken geographic considerations into account in passing on applications for reassignment. The children before it were all first-graders and traffic problems arising when they went great distances to school loomed large. On the other hand, the board had in the past, and did again for some of the Negro applicants, allowed reassignment to distant schools where transportation could be supplied. (This policy, it should be noted, did not operate to bar reassignment of applicants who actually lived closer to Negro schools than to the schools for which they applied.)

A factor which limited the number of schools to be desegregated was the matter of police protection. The police had recommended round-the-clock surveillance, by substantial number of officers, of each school selected. As it turned out, some 200 policemen were assigned for a number of days to guard the 4 schools, a result which was achieved only by placing many on double shift during this period. If, in retrospect, these numbers seemed more than needed to do the job, there was general agreement that it was better to be safe than sorry.

Apart from school selection, choices also had to be made among the applicants themselves. The board wanted all youngsters it chose to succeed. Failure of the year to work out successfully would be damaging to the child, would generate suspicion and hostility in the Negro community, and would only serve to stiffen attitudes of assumed superiority among the whites. Many of these problems were expected

to lessen later when desegregation spread and experience with it matured, but for the first year they were regarded as critical matters.

During the period in which it was approaching its final decisions, the board met with some Negro leaders and discussed fully what it had before it. The atmosphere generated by the discussion did much to convince the Negroes that the board was acting in good faith and all agreed that winning the support of the Negro community, and the white community as well, called for a belief that the operation had been conducted in good faith.

These, then, were the major elements in the process by which the board reached its decision to assign the 13 Negro first-graders to the 4 schools.

The First Year of Desegregation

Unlike Atlanta and Dallas, which had made long, elaborate preparations for community acceptance of the school desegregation that began in the fall of 1961, little of the sort had been done in Memphis by late August of 1961. Indeed as late as mid-August of 1961 neither Negro nor white leadership had expected any school desegregation for that year. But a Negro drive soon afterward to recruit prospective first-graders produced the 50 enrollments (registrations) in white schools near the end of the month and turned the tide.

The very failure to make preparations was itself a strong argument in favor of turning the applicants down and postponing things at least for the 1961–62 school year. Tactically, however, such a decision would have wrecked the board's position in the school case which was pending on appeal at the time in the U.S. Court of Appeals for the Sixth Circuit at Cincinnati. (See discussion of the school litigation below.) And a further argument in favor of installing some desegregation in 1961 was the fact that at Atlanta, Dallas, and elsewhere things had gone off smoothly that fall.

Nevertheless, there were other problems to be solved during September which were not directly related to the school problems themselves. These involved winning the backing of the Memphis power structure—its political and civic leadership and the press. There was little reason to fear the possibility of intervention by either the Governor or the State legislature, as had happened in the instances of Little Rock, New Orleans, and in the several Virginia cities during the "massive resistance" period in that State. Behind the scenes meetings—some involving the board and many involving other groups and interested private citizens—were suceessful in obtaining the solid backing of the power structure. There was no evidence of a disposition to turn the city into another Little Rock or New Orleans.

One decision, made early, was to withhold advance announcement of the time the desegregation would actually take place. Two factors apparently controlled the decision. First, such an announcement would give segregationist forces an opportunity to organize their resistance. The second grew out of the concern that if informed in advance representatives of the Nation's television, radio, and press would descend upon the city, forming a good-sized crowd of their own

in the process and affording segregationists a chance to boost their prestige by getting on TV and being photographed and interviewed for national distribution.

Brief announcements during September conveyed the suggestion that some desegregation was in the offing since the board was still working on the appeals. But this was all.

The president of the board appeared at a press briefing the evening before desegregation occurred. He made it clear that the board did encourage full coverage of the event when it took place, but pledged the press to withhold public announcement until shortly after the children entered school the following morning, October 3. And, once the fact was accomplished, the story did receive major coverage, although the police did not permit either reporters or spectators in the school areas in the early days of the program. A press headquarters, set up across the street form board offices, was relayed information by school officials as rapidly as it came in from the schools and the police. And reporters thereafter interviewed elsewhere many of the pupils, parents, and teachers involved.

Within the first few hours following announcement that desegregation had taken place, perhaps 15 white pupils were withdrawn from the 4 schools by their parents. Subsequent news stories carried the intimation that the parents who did this were recent arrivals in Memphis from Mississippi, and were not established Memphians. In time most of the children withdrawn returned to school. The small boycott was about the only incident, and the city accepted the change peaceably (though many among the whites were disturbed that desegregation had come).

Within the schools themselves the year of desegregation worked satisfactorily. Periodic testing during the year confirmed the wide range of ability and aptitude initially indicated among the 13 Negro pupils, with the range spanning from a level only slightly above mental retardation to a point well above the normal range of intelligence. One child failed at the end of the year and was directed to repeat the first grade; the other 12 passed, some standing well up in the top ranks of their classes. The Negro parents (like a lot of the white ones) tended not to give much time to PTA meetings, though some appeared occasionally during the year. The teachers and principals, for the most part, reported that cordial relationships had been established with both the Negro children and parents. And the Negro parents seemed, in general, satisfied, too.

In short, as a small though critically important beginning, the Memphis program appeared to fare well.

Problems for the Future

Memphis got off to its start on school desegregation in 1961 under pressure from the Negro community. And considering the many ties which the city had to the Deep South it was hardly to be expected that the white community would have acted without pressure. The start was generally viewed at the time by important elements of the city's Negroes as an act of good faith (although they intended to watch future events carefully and would continue to apply pressure for change).

Quite apart from the shape which future community attitudes might take, three education problems of real magnitude were likely to require substantial efforts. One was the obligation—recently imposed by Federal court litigation against the Memphis board—to form plans for gradual elimination of the dual set of schools. And intimately related to the solution of that problem were the other two: first, the question of Negro teacher competence and, in time, the matter of faculty integration; and, second, remedying the deficient academic levels found in the Negro schools.

DESEGREGATION PLANS AND FEDERAL COURT LITIGATION

In the spring of 1960 an action was commenced in the Federal district court against the Memphis board on behalf of 18 school-age Negro children. The action, known as *Northcross* v. *Board of Education of the City of Memphis*, sought relief in alternative form: either an injunction against the board to discontinue the operation of a compulsory biracial school system—or an order from the court directing the board to submit a plan which would do away with the dual set of schools.

In answering the complaint, attorneys for the board took the position that Memphis did not operate a compulsory system of biracial schools. Rather, they argued, the Tennessee pupil placement law constituted a plan for removing racial discrimination in the public schools. And since none of the plaintiffs in the action had exhausted

their administrative remedies under the pupil placement law, they moved that the action be dismissed.

The case did not come to hearing before the court for some time and it was not until May 2, 1961, that the district court handed down its opinion. The court entered findings of fact that the "defendants do not operate a compulsory biracial school system; nor do defendants maintain a dual schedule or pattern of school zone lines based upon race or color; nor do defendants assign pupils to the schools of the city of Memphis on the basis of race or color of pupils. . . ." [16] The court then rendered judgment granting relief to the plaintiffs in the form of approving the pupil placement law as a plan for desegregating the Memphis schools and denied other relief on the grounds that the plaintiffs had not exhausted their administrative remedies under the placement law.[17]

The Negro plaintiffs took an appeal from the judgment, but the appeal had not been decided, nor even argued, in the court of appeals when the 50 applications for reassignment were presented to the board in late August of 1961. As indicated earlier, the pending appeal placed the board in an awkward position when the reassignment applications were received. A flat denial of all the applications would almost certainly have evidenced the inadequacy of the placement law as a plan of desegregation and thus might have increased the likelihood that the court of appeals would overturn the district court's judgment. Conversely, the allowance of some reassignments could be used as evidence of the board's good faith in operating under the placement law as a desegregation "plan."

After the board approved the 13 reassignments to formerly white schools, an affidavit was filed in the court of appeals attesting that desegregation had taken place in Memphis, and this was accompanied by a motion to dismiss the appeal on the grounds that the case had become moot because the school system was now desegregated. The court of appeals, however, declined to dismiss the appeal and, on March 23, 1962, handed down its decision reversing the judgment of the district court.[18]

"We are impressed," the court of appeals said, "that the defendants honestly and sincerely desire to comply with the law, but they have pursued the mistaken belief that 'full compliance' as required by the Supreme Court can be had under the pupil assignment law." [19] The court went on to hold that the findings by the district court that Memphis did not operate under a dual set of schools were "clearly errone-

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[16] *Northcross* v. *Board of Education of the City of Memphis*, Civ. No. 3931, W.D. Tenn. 1961, 6 *Race Rel. L. Rep.* 428, 429 (1961).

[17] 6 *Race Rel. L. Rep.* at 430 (1961).

[18] *Northcross* v. *Board of Education of the City of Memphis*, 301 F. 2d 818 (5th Cir. 1962), 7 *Race Rel. L. Rep.* 40 (1962).

[19] *Id.* at 724, 7 *Race Rel. L. Rep.* at 45 (1962).

ous" and not supported by the evidence at trial. Since the *Brown* decision:[20]

> . . . there cannot be "Negro" schools and "white" schools. There can now be only schools, requirements for admission to which must be on an equal basis without regard to race. Minimal requirements for nonracial schools are geographical zoning, according to the capacities and facilities of the buildings and admission to a school according to residence as a matter of right.

Analyzing the pupil placement law, the court conceded that the statute might serve some purpose in the administration of a school system but concluded that—

> It will not serve as a plan to convert a biracial system into a nonracial one.[21]
>
> * * * * * * *
>
> We urge the defendants herein to adopt and submit to the district court some realistic plan for organization of their schools on a non-racial basis, in "full compliance" with the mandate of the Supreme Court, and to do so "with all deliberate speed."[22]

After the court of appeals decision was announced, the board sought unsuccessfully both to obtain a rehearing in the court of appeals and a review of the case by the Supreme Court.[23]

Following this, the president of the board announced that the board "will have to start all over and formulate a new plan as soon as feasible." It was likely, he added, that it would be some type of geographical boundary plan and expressed doubt that "we'll have anything before school starts in the fall."

What the Memphis board would come up with was entirely speculative as this is written. A geographic program that would commence with the elementary grades and in time extend to junior and senior high school levels, coupled with the present policy of permitting reassignment applications at all grade levels to any uncrowded school in the system, might in many respects be an ideal plan for the city. The Court of Appeals for the Sixth Circuit still permits the transition rule enabling members of racial minorities in any school to obtain automatic transfer to schools in which their race predominates, thus permitting whites residing in largely Negro areas to avoid attending Negro schools and also allowing Negroes who hesitate to enter integrated situations to withdraw to Negro schools. Experience with this rule in Nashville and elsewhere strongly suggests that two factors play major roles in influencing the choice of schools under the circumstances. First, convenience (normally proximity) to the pupil's residence; and, second, an affinity for schools in which one's race predominates. Where the two factors work together, the child tends to remain in his attendance area. But where the two conflict, the choice of racial affinity has prevailed in most cases over convenience.

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[20] *Id.*, at 822–23, 7 *Race Rel. L. Rep.* at 44 (1962).
[21] *Id.*, at 821, 7 *Race Rel. L. Rep.* at 43 (1962).
[22] *Id.*, at 824, 7 *Race Rel. L. Rep.* at 45 (1962).
[23] Rehearing denied, 302 F. 2d 824 (6th Cir. 1962); *cert. denied*, 370 U.S. 944 (1962).

The availability of the reassignment policy even in grades not then affected by the geographic assignment plan—still absent in the Nashville program—would provide a degree of flexibility that would enable Negroes who actively sought integration, and were prepared to cope with the higher academic standards of the white schools, to overcome the limitations of education in the generally less adequate educational programs in the Negro schools.[24]

Only the future could tell.

TEACHER COMPETENCE AND FACULTY INTEGRATION

Memphis shares with school systems all over the country the problem of finding Negro teachers whose preparation matches that of white teachers employed in the same system. A recent report from the Memphis superintendent of schools to the board announced that only 16 of 95 Negro applicants who had recently taken the national teachers' examination achieved scores equal to or above the minimum level required for employment of white teachers. And it is generally estimated that three-quarters or more of the Negro teachers entered the Memphis system on standards below those required for certification of white teachers.

Nor is Memphis unique in having this problem. Southern Negroes, trapped in segregated schools for all their education, produce their own teachers in schools inferior in every respect to white schools. The widespread efforts to improve school facilities in terms of buildings and equipment did not produce the same immediate results with respect to academic achievement levels and teaching skill in the Negro schools. Remedial academic programs to upgrade the quality of the Negro schools have been limited and, in the main, lack the resources, both monetary and human, to close the gap. Many Negroes, once they have obtained the security of teaching jobs, have sought to remedy the problem by seeking advanced degrees in integrated graduate schools of education, and many of them have vastly improved their skills by doing so. But they enter these graduate schools under the handicap of their own limited backgrounds, and the task for a lot of them is almost insurmountable.

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[24] The concept of permitting a combination of geographic assignment operating on a stair-step basis through the various grade levels and of separate opportunity for individual applications for reassignment to grades not yet geographically assigned appears in *Pettit* v. *Board of Education of Harford County*, 184 F. Supp. 452 (D. Md. 1960), 5 *Race Rel. L. Rep.* 379 (1960), and appears to be the thought which the Court of Appeals for the Third Circuit had in mind in *Evans* v. *Ennis*, 281 F. 2d 385 (3rd Cir. 1960), 5 *Race Rel. L. Rep.* 837 (1961), *cert. denied, sub. nom. Ennis* v. *Evans*, 364 U.S. 933 (1961), 5 *Race Rel. L. Rep.* 987 (1961).

Yet, with all this said, there are to be found in almost any school system some Negro teachers as able and skilled as many white teachers. A haunting problem for school administrators is the question of dealing with this sensitive question. Most have no wish to take steps likely to humiliate or frighten the Negro teachers. And they hesitate both to ask that Negro schools give up their strongest teachers for service on integrated faculties and to place white teachers on Negro faculties for fear that Negroes will misunderstand their motives in doing so.

Nevertheless, integration of teaching staffs remains an essential step which must be taken in time. It is indispensable as an aid in upgrading achievement levels in the schools which will remain all Negro for years to come because of residential segregation. And, as an ultimate constitutional question, it is essential that all teachers have access to any schools in a system without regard to race. But it was only in a few areas of the Upper South that the pattern of teacher integration had started to develop by 1962.

Unraveling the problem will take a long time and must be tackled on a variety of fronts. More Negroes interested in teaching must seek education in integrated institutions at every level. Most of the all-Negro colleges and universities will require major upgrading if they are to survive as constructive institutions. And remedial education programs—which cost vastly larger sums—must be made available, not only for Negroes but for all who suffer handicaps of social and economic isolation and educational disadvantage.

REMEDYING ACADEMIC DEFICIENCIES

The elaborate pilot projects aimed at remedial education of disadvantaged children—such as the Ford Foundation's great cities gray areas project and others in communities of the North and West—nowhere operated on such a scale in the South in 1962. Here and there, valiant efforts were being made with limited funds. But, measured against need of both Negroes and whites in the South, they were woefully inadequate.

Historically, educational standards in the South (and the resources to improve them) have lagged behind those of the rest of the country. But if the problems of disadvantaged children are perhaps most acute in the South, the same problems have become national ones which plague both the great urban slums and the remote rural areas of the North and West. And, unless attacked as national problems, it seemed unlikely in 1962 that any approach was likely to make much of a dent in them.

Memphis was a vigorous, fast-growing and increasingly prosperous community in 1962. And it had been working at improving its position relative to national educational norms. A report to the Memphis Board of Education in the spring of 1962 acknowledged the substantial differences in achievement levels between Negro and white schools. But the report also made another point worth noting. In 1960 only the first- and second-grade levels in the Negro schools were achieving at national norms. By the 1961–62 school year it was possible to report that Negroes in the first four grades were achieving at national average levels, a significant jump in that short period. The results still left much to be done, but a useful purpose was served in alerting the community to the job still ahead. Increased school desegregation in the years ahead would doubtless further the improvement, but alone it could not do the job. Many other remedial activities were also needed.

Summary

Memphis had, by 1962, broken sharply with many characteristics of its long past. Most of the breaks had occurred within the most recent 2-year period. They had taken place in an orderly manner, without great fanfare, and in ways which gave its citizens, Negro and white, reason for pride. It had not forgotten the best of its southern heritage, for it retained its friendliness, dignity, and essential decency. Like so many of its sister communities it was caught up in the major social revolution of the times, was beginning to make its adjustments to it, and showed every sign of having turned its face to the future rather than the past, which it and the rest of the South had resisted for so long. If it continues to face up to its problems and work constructively to solve them, a bright day lay ahead for the city.

CIVIL RIGHTS U.S.A.

Public Schools: Southern States

1962

VIRGINIA

By Edward A. Mearns, Jr.

A Report To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

This is a report on public school desegregation in Virginia. A great deal of the information reported is based on personal interviews in the areas studied, including those with school superintendents, school board members, principals, teachers, members of city councils, and county boards of supervisors. Also, there were valuable meetings with interested and knowledgeable persons in these communities, such as newspaper editors, civic leaders, and parents of school children. Throughout, both whites and Negroes were consulted in a sustained effort to get a balanced view of each community.

The picture finally presented is reconstructed from these interviews. It represents no single outlook, but in every case is a synthesis of many, distinct views. In northern Virginia, the basic research and interviews were conducted by a member of the Commission staff. The responsibility for the descriptions, analysis, and conclusions contained in the report, including the northern Virginia section, is, of course, entirely mine.

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AUGUST 1, 1962.

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Introduction

This is a report on the process of desegregation in Virginia public schools. The study shows that in questions of equal protection there are many Virginias, not just one. Therefore, the bulk of this report consists of studies of particular communities and their individual experience with desegregating schools. Each of these localities has established a different pattern; each with its different attitudes, has reacted in a different way to the events pressing it to open its white schools to Negro pupils. An attempt has been made to identify the principal and characteristic consideration shaping desegregation in each community to make the complicated school issues more manageable. It is hoped that by pointing up what is characteristic, a handle may be found for the solution of problems.

All of the communities chosen for study have seen some desegregation of their schools; they have this and little else in common. Northern Virginia—Arlington, Alexandria, Fairfax, and Falls Church—is a densely populated area with proportionately few Negro residents. It was selected because of its greater capacity to accept desegregation. Norfolk, Virginia's largest city, was chosen for its size, its considerable Negro population, its large naval installation, and the large number of persons living there who are directly or indirectly serving the Federal Government. This combination gives it the quality of being big, southern, and yet less Virginian than most of the areas studied. Richmond, now a poor second to Norfolk in size and very "Virginia," possesses a large Negro population, as well as attitudes contrasting sharply with the places already mentioned. Charlottesville, home of the University of Virgina, cosmopolitan in outlook, with an average Virginia ratio of Negroes to whites, and Warren County, smaller and less sophisticated, with a modest-sized Negro citizenry, conclude the list. The group provides a fair sample of Virginia desegregation problems, and serves also to emphasize the variety and the uniqueness of the local patterns that have developed from the necessity of implementing the *School Segregation Cases.*

Preceding these community studies is a section which describes the Virginia legal machinery provided for bringing about—but which for the most part is holding back—desegregation. In this section, pupil placement, tuition grant, compulsory school attendance and other school laws are described briefly. The final section of the report is a summary and analysis of equal protection in Virginia public education. The concern here is with the pace at which desegregation has been taking place. It is also the occasion for discussing the quality of Negro education in the State, with the emphasis on the recognized gap existing between the academic achievement levels of Negro and white students. This gap receives attention throughout the report because it raises a major equal protection issue. The education provided in Negro schools in Virginia is inferior. Since inferior education itself is a denial of equal protection, when that inferiority exists in segregated schools the deprivation to Negro children is twofold.

In Virginia, where there has been so much litigation, legislation, and other activity over school desegregation, there is much that a report such as this can only suggest. There is much that must be left out entirely. For example, none of the school districts reported on is located in Virginia's southside. This area, for the most part rural, with the State's heaviest concentration of Negroes, should be the subject of a future study. But so little desegregation has taken place in Southside, that it would add little to a report concerned with the desegregation process.

The most obvious omission is Prince Edward County. As one of the original school districts ordered to desegregate by the U.S. Supreme Court in *Brown* v. *Board of Education*,[1] it has seen enough activity, and, as surely, enough litigation to warrant a separate study. In September 1959, it closed its public schools to avoid admitting Negro pupils to its white schools. Its schools were still closed in the school year 1961–62. Moreover, its county board of supervisors has not appropriated funds for schools for the year 1962–63.[2] However, on July 25, 1962, Prince Edward's school board was ordered to submit a plan to the Federal court by September 7, 1962, which will effect the opening of its schools.[3] At present, no one knows what will happen in Prince Edward; any conclusions ventured about this school district at this time have little chance of surviving imminent events.

The omission of Prince Edward serves to point up that this report does not attempt to represent the Virginia desegregation process as a single, simple process. There are too many different Virginias for this—rural and urban, large and small, northern Virginia, and, of course, Southside.

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[1] 347 U.S. 483 (1954), 1 *Race Rel. L. Rep.* 5 (1956); 349 U.S. 294 (1955), 1 *Race Rel. L. Rep.* 11 (1956).

[2] So. School News, July 1962, p. 1.

[3] *Allen* v. *Prince Edward County*, Civ. No. 133, E.D. Va., July 26, 1962.

Legislative Background

On January 19, 1959, the Virginia Supreme Court of Appeals at Richmond and a special three-judge Federal District Court at Norfolk struck down key statutes in Virginia's massive resistance legislation.[4] Following the decisions in these cases, the Virginia General Assembly enacted a group of statutes designed to minimize the impact of desegregation, which was to come as a result of the overturning of these laws. During this 1959 extraordinary session of the general assembly, Virginia amended its pupil placement and tuition grant laws, and enacted statutes which dealt with compulsory school attendance and gave indirect aid to private schools, in order to effect the shift from massive resistance to freedom of choice in education.

PUPIL PLACEMENT

In 1956 Virginia passed a State pupil placement act, divesting local school officials of their authority to assign children to specific schools and placed that authority in the hands of the State pupil placement board.[5] The act was amended in 1958,[6] and again in 1959.[7] Under this act, as it presently stands, the criteria which guide the State pupil placement board in assigning pupils are as follows:[8] (1) Orderly administration of the public schools; (2) Competent instruction of the pupils enrolled; and (3) Health, safety, education and general welfare of such pupils.

Until August 1960, the State board assigned all Negro pupils to Negro schools and all white pupils to white schools. The one exception to this practice occurred on October 22, 1959, when Judge Walter Hoffman ordered the board to assign four Negroes to white schools in Norfolk.[9] Thus, prior to August 1960, all assignments of Negroes to white schools in Virginia resulted from court orders.

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[4] *Harrison* v. *Day*, 106 S.E. 2d 636 (Va. 1959), 4 *Race Rel. L. Rep.* 65 (1959); *James* v. *Almond*, 170 F. Supp. 331 (E.D. Va. 1959), 4 *Race Rel. L. Rep.* 45 (1959).

[5] Va. Acts 1956, Ex. Sess., ch. 70, p. 74.

[6] Va. Acts 1958, ch. 500, p. 638.

[7] Va. Acts 1959, Ex. Sess., ch. 71, p. 165.

[8] Va. Code (Supp. 1962), sec. 22-232.5.

[9] *Beckett* v. *School Board of City of Norfolk, Virginia*, 185 F. Supp. 459 (E.D. Va. 1959), 5 *Race Rel. L. Rep.* 404 (1960).

Following the appointment of three new members to the State pupil placement board, the original members having resigned in protest against the State's freedom of choice policy, the first voluntary assignments of Negroes were made. The board began by relying on residence, a criterion not expressly set forth in the applicable statute. It appears that the board will only admit Negroes to white schools if they live closer to the white school to which they have applied than any Negro school. There is an element of discrimination in the board's use of this residence criterion, as white children are automatically assigned to white schools, even though they may live nearer to Negro schools. Such a practice, although perhaps appropriate in a period of transition, cannot hope to survive once full compliance with the *School Segregation Cases* is required in the State.

Under the State's new policy of freedom of choice, which became effective on March 1, 1960, an option is permitted Virginia communities to remain under the State pupil placement board's jurisdiction or, instead, to handle pupil assignments locally.[10] To operate under local option, it is required that the governing body of the locality duly adopt an ordinance making this election upon the recommendation of the local school board.[11] However, before local option could be implemented, the State board of education was required by the statute to adopt criteria to guide local boards. This was not done until February 3, 1961.[12] Therefore, although the act was to become effective March 1, 1960, all assignments for the 1960–61 school year continued to be made by the State board.

The criteria adopted by the State board of education are as follows:[13]

(1) Academic achievement and aptitude;
(2) Availability and locality of facilities and instructional personnel;
(3) Potential effect of the specific placement of a student upon his own educational progress and that of others in the same grade;
(4) Restriction of disruptions to educational system by avoidance of unnecessary reassignment of pupils;
(5) Validity of reason given by parents for particular placement request.

Of the communities covered in this report, Arlington, Fairfax, and Falls Church have exercised the option to reassume local control over pupil assignment. The general pattern developing in these places also stresses geography or residence rather than the specific criteria set out by the State board of education.

Finally, there are the communities which do not operate according to the State pupil placement criteria, nor the criteria of the State board of education. These school districts assign pupils under the

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[10] Va. Code (Supp. 1962), secs. 22–232.18—22–232.31.
[11] Va. Code (Supp. 1962), sec. 22–232.30.
[12] So. School News, Mar. 1961, p. 13.
[13] *Ibid.*

scrutiny of the Federal courts or in accordance with the Federal court-approved placement plans. In this report, these communities are represented by Charlottesville, Norfolk, and Warren County.

TUITION GRANTS

In 1959, when Virginia shifted its policy to freedom of choice, the original tuition grant laws were repealed and replaced by laws making no reference to desegregation.[14] The former grants were available in the event schools in an area were desegregated, and could be used only by children attending private, nonsectarian schools. The new "State and Local Scholarships," as they are called officially, are available to any student who attends an accredited nonsectarian private school located anywhere, or a public school outside the student's own school district. Selection of the school is left to the parents, who need not justify their selection or give reasons for not wishing to send a child to the public school in their district.

The State pays $125 toward the grant for each eligible elementary school child and $150 for each high school child. The locality adds local money. The total amount of the grant is the lowest of three sums:

(1) The actual amount of the tuition charged by the school the child is attending.

(2) The per-pupil cost of operating schools in the locality making the grant.

(3) $250 for each elementary child, and $275 for each high school child.[15]

It is also required that every locality participate in the tuition-grant program. If a locality fails to put up its share, the State pays the full cost, and deducts the locality's share from some other payment to which the locality is entitled.[16]

The tuition-grant program has been in operation for 3 years; its actual use should be noted. Many children are using the grants to attend private schools although they live in communities with segregated schools. Instances are reported of students using grants to transfer from segregated schools to attend desegregated public schools in another district. As more parents discover the money is available without question, more requests for grants are being made. This has led to criticism of the grants program, particularly in urban areas, such as Norfolk and northern Virginia. The chief criticism is that the

[14] Va. Code (Supp. 1962), secs. 22-115.29—22-115.35.
[15] Va. Code (Supp. 1962), sec. 22-115.32.
[16] Va. Code (Supp. 1962), sec. 22-115.34.

grants are a drain on public school funds which diminish local support for public schools and tend to require tax increases. Argument is also heard that the grants are being abused and should be restricted to their original purpose—the purpose of permitting children to avoid desegregated schools. Defenders argue there is nothing in the act which says or implies that the scholarships should be used to avoid desegregation (its constitutional virtue). They contend that these illustrations of abuse are in accordance with the theory that the program truly be one of free choice.

In the 1961–62 school year, the total number of grants came to 8,371 at a cost to the State and local communities of $2,060,895. It should be mentioned that this year no students in Prince Edward County were receiving grants, as the Federal court foreclosed their use by the county's students while Prince Edward's public schools were closed. In the previous year, Prince Edward students had received 1,347 grants.

It is not likely that Virginia will shift from its current reliance on tuition grants. Nor is it likely that localities will be given the choice of whether or not to participate in the program. On February 8, 1962, a bill to permit localities to withdraw from the State tuition-grant program was killed by the house of delegate's education committee. The vote of the committee was unanimous.

A related group of statutes has been enacted which is also designed to advance the freedom of choice program by strengthening Virginia's nonsectarian private schools. These acts (1) permit local school boards to provide transportation for children attending these private schools; [17] (2) permit local governing bodies to allow tax credit for contributions to these schools (not to exceed 25 percent of the tax due); [18] (3) permit teachers to discharge their obligations to repay State board of education scholarships by teaching in private schools (previously, obligations had to be discharged in State public schools); [19] and (4) permit teachers in these private schools to participate in the State retirement system.[20]

COMPULSORY SCHOOL ATTENDANCE

On January 31, 1959, the Virginia General Assembly repealed the State compulsory school attendance law. In April of that year, a law was enacted permitting local governing bodies to adopt compulsory

[17] Va. Code (Supp. 1962), secs. 22–294.1—22–294.3.
[18] Va. Code (Supp. 1962), sec. 23–38.1.
[19] *Ibid.*
[20] Va. Code (Repl. Vol. 1958), sec. 51–111 38.1.

school laws on recommendation of their local school boards.[21] Thus far, 57 of Virginia's 131 school districts have adopted such ordinances, including Alexandria and Falls Church, and Arlington and Fairfax Counties. These ordinances, in the context of desegregation, can have only a limited effect—and that psychological—as school officials by law must excuse every child whose parent conscientiously objects to his attendance at a particular school.[22]

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[21] Va. Code (Supp. 1962), sec. 22–275.24.
[22] Va. Code (Supp. 1962), sec. 22–275.4.

Charlottesville

The city of Charlottesville lies in central Virginia. It has a population of 30,000, of which 5,561 are Negroes. Presently, the city is calm, there being no strong, vocal group pushing for or against school desegregation. In mid-1962, Charlottesville's chief concern was its need to expand its school facilities, particularly at the high school level. Its one white high school, Lane, already overcrowded, anticipates increases in enrollment from several sources; first, as a result of an annexation which becomes effective in January 1963; and, second, as a consequence of a court order which permits Negroes to transfer freely to Lane from the city's all-Negro high school. Finally, there is the future possibility that several hundred students will be seeking entry to Lane should Virginia's tuition grant program be discontinued, which would result in further aggravation of Charlottesville's present school problems.

BACKGROUND

Charlottesville, along with Norfolk and Warren County, went through the 1958 school-closing phase of Virginia's massive resistance policy. When massive resistance collapsed in January 1959, city school officials were under an order to admit Negro pupils to the white schools.[23] However, a one-semester stay of this order was granted.[24] It was September 1959 when Charlottesville's schools were finally opened on a desegregated basis. The city operates one predominantly white high school, Lane, and five white and one all-Negro elementary schools. It shares with the surrounding county of Albemarle the operation of one all-Negro high school, Burley. The assignment of pupils to Burley, whether they reside in the city or in Albemarle County, is the responsibility of the Charlottesville school superintendent.

In the 1961–62 school year, 35 Negro children were attending school with whites. Of these, 15 were at Lane High School, with its total

[23] *Allen* v. *School Board of City of Charlottesville*, Civ. No. 51, W.D. Va., Sept. 13, 1958, 3 *Race Rel. L. Rep.* 937 (1958).

[24] *School Board of City of Charlottesville* v. *Allen*, 263 F. 2d 295 (4th Cir. 1959), 4 *Race Rel. L. Rep.* 39 (1959).

enrollment of 1,035, and the other 20 were in Venable Elementary School with about 500 white children. Lane and Venable were the first, and remain the only, desegregated schools in Charlottesville.

PUPIL PLACEMENT, TUITION GRANTS, AND SCHOOL LAWS

Charlottesville operates under a local pupil placement plan approved by Federal District Judge John Paul, who has handled the city's school desegregation case from the beginning. Under this plan, the superintendent of public schools has the responsibility for assigning pupils at both the elementary and high school levels. For the purpose of assigning elementary school pupils, the city is divided into six districts. In the fall of 1961, the superintendent began the practice of initially assigning each elementary school pupil to the school serving his district, without regard to race. However, any student assigned to a school attended predominantly by those of another race was permitted to transfer to a school where his race was in a majority. Under this arrangement all 140 white students initially assigned to all-Negro Jefferson Elementary School were transferred to predominantly white schools. Some 40 Negroes living in white school districts elected to be transferred to Jefferson. The remaining few Negro children live in the Venable school zone and attend that school. On December 18, 1961, Judge Paul approved this procedure, including the free-transfer provision for students in a minority at the schools where they are initially assigned.[25]

At the high school level, Charlottesville has begun a new practice for assigning its pupils. Before Judge Paul's order in December 1961, all white students had been assigned to Lane and all Negro students had been assigned to all-Negro Burley High School. To transfer to Lane, a Negro pupil had to satisfy both a residence and an academic requirement. Under the academic criterion, the superintendent approved transfers if the academic aptitude and scholastic achievement of the Negro applicant indicated that he would do adequate work in comparison to the white pupils' performance in the grade to which he was applying. In his order, Judge Paul eliminated both the residence and academic criteria. As a result of this order, in the fall of 1962, every high school student in Charlottesville, white or Negro, may elect to attend either Lane or Burley, his assignment ultimately depending solely on his own preference. Prior to the close of the 1961–62 school year, school officials undertook to

[25] *Allen v. School Board of City of Charlottesville*, 203 F. Supp. 225 (W.D. Va. 1961), 6 *Race Rel. L. Rep.* 1011 (1961).

ascertain students' preferences. Though the assignment procedure for the year 1962–63 has not been completed, it appears that there will be 33 Negroes attending Lane in the fall. Fourteen of these will be students who attended there the previous year.

In the 1961–62 school year, first installment payments of tuition grants ran to 628 in number. Some 133 of the tuition grantees were attending 14 traditional private schools. The single largest group of these grants went to pupils at the Belfield school, a well-established local elementary school with tuition substantially in excess of the grant awarded. Belfield's enrollment is composed principally of children who would probably attend private school even were there no tuition grants available, however. Admittedly, the availability of these scholarships is crucial to certain of the Belfield parents. The other 495 grants were awarded the parents of children going to Robert E. Lee School (elementary) and Rock Hill Academy (high school), two post-desegregation private schools in the city. Both are sponsored by the Charlottesville Educational Foundation (CEF) whose primary aim is to provide education for those children who refuse to attend the desegregated Venable or Lane public schools.

With the desegregation situation cooler than it has been, there has been some disenchantment with the CEF fare, especially at the high school level. The combined enrollment of the 2 schools is down more than 100 from a high of 637 reported in October 1960, while the overall school population of Charlottesville has been steadily climbing. The CEF schools are clearly faced with typical new school problems, particularly the need to conduct a quiet recruiting campaign, but they will probably continue to operate as long as tuition grants last.

Unlike the communities of northern Virginia, in Charlottesville there is no strong sentiment against the tuition-grant program. Some grumbling is heard, protesting the drain on funds needed for public education and criticizing the windfall to those whose children had always attended private schools—a windfall of increasing expense to the community. These complaints are quite weak and disorganized, except for those of the League of Women Voters. Generally, the attitude is that the CEF schools, and therefore the tuition grants, are a safety valve that Charlottesville is able and willing to afford. This is not surprising. The Charlottesville Daily Progress, for example, has strongly supported the grant program on the principle of "free choice in education," quite apart from the program's utility as a safety valve.

As a final matter in regard to school laws, Charlottesville's city council has not yet adopted a compulsory school attendance law. There has been no noticeable effect on the school dropout rate.

Desegregation in the public schools has been slight, consisting of 35 Negroes attending two biracial schools. To date there have been no major incidents involving the Negroes attending Lane and Venable. Academically, these Negro students have ranged from the top to the bottom of their classes. It is to be expected that under the new assignment policies which have abandoned any academic criterion there will be a larger but less well-selected group of Negroes competing with the generally better prepared white students at the high school level. In this situation poorer performance and more failures in the Negro group should be expected.

In the desegregated schools, lunchrooms, assemblies, school-sponsored clubs, and the high school band have been integrated. Lane no longer runs school dances or other social activities, these being banned by the superintendent. Athletic teams at Lane, so far, have not been integrated, and there has been no strong pressure to do so. The "right" athlete has not yet appeared. For the moment no one wishes to give up interscholastic competition in a sport that would be affected. Sooner or later it will come, and by that time more public schools in Virginia will be desegregated and Lane will be able to find opponents for its schedule. Should events follow this pattern, no crisis is expected.

The physical facilities in both Burley and Jefferson are modern and good. Nonetheless, the Negro parents in the community believe that Jefferson is overcrowded. The school has 895 pupils, which is the largest number attending any grade school. It is roughly 300 more than the next largest enrollment in any school in the city's elementary system. However, according to the State department of education the school has a pupil capacity of 990. This figure is based on an average of 30 pupils per classroom, and Jefferson has 33 classrooms. If not overcrowded, it seems clear that earlier expansion of Jefferson's facilities on its present site are a result of predesegregation efforts to keep all the city's Negroes in one school. The Negro parents, in complaining about overcrowding, are in reality upset over past segregationist attitudes that permitted a Negro elementary school to reach a capacity of 1,000, while optimum enrollment for white elementary schools was considered to be several hundred pupils less.

The Negro teachers enjoy the respect and confidence of the Negro community. They are mostly products of the Virginia segregated school system, and for this reason lack the cultural breadth that comes from contacts, particularly educational contacts, with whites. Their

previous educational experience is now being repeated in Charlottesville. For in Charlottesville, as in the rest of Virginia, there is a substantial gap which exists between the academic aptitude and achievement of white and Negro students. At the seventh-grade level, it has been estimated that only the upper 15 percent of the Negroes stand in an academic range with the upper 50 percent of the white students. This gap is recognized openly by Charlottesville educators, though little has been done to close it. Some gains in this connection are seen in integrated teachers meetings which are held on a citywide basis. There is also a small-scale summer program conducted by school authorities for culturally deprived youngsters, mostly Negro. In the formal sense, this is all.

One bright spot is the work being done at Jefferson school by the Negro teachers, guided by their energetic principal. On the assumption that the gap already exists in the preschool child, work with entering first-graders this fall will begin a month before school formally opens. This is to help ready them for what is to come in their important first year. On the further assumption that the Negro child's range of cultural experience must be broadened to give meaning to what he learns in school, Jefferson has mapped out a program of class tours and visits for each grade. For example, first-graders take a train ride to and from a nearby town, something new for the typical Negro child. Fourth-graders studying Virginia history see Thomas Jefferson's Monticello. A bus trip for sixth-graders to Washington, D.C., and one to Williamsburg for pupils in the seventh grade are also part of the program. A drawback to this program is that the rides and visits are financed by parents, some of whom are in no position to bear this extra expense. The cost of this program could justifiably find its way into the city's school budget.

Jefferson school is making a small but conscious effort to improve Negro education, even though segregated. Modest gains are seen in comparing reading test scores in 1951 with recent scores. Where formerly the average seventh-grade pupil was reading at the 5-year-7-month level, in recent tests this same average reader at Jefferson has been knocking at the 7-year mark. The Negro teachers, as a result of their greater efforts, seem to be achieving better results than many of their counterparts around the State.

SPECIAL PROBLEMS

Charlottesville faces immediate as well as long-range problems connected with public school desegregation. The most immediate, though not the most serious, problem involves future registrations at Lane

High School. The pressing fact is that Lane is presently operating beyond its capacity and faces increases in enrollment from several sources. Natural increases in population is one. Then, too, many more pupils will soon live in the city school district as a result of the annexation of residential areas now part of surrounding Albemarle County. The annexation becomes effective in January 1963. As time passes, another source will be Negroes who prefer biracial Lane's college-entrance curriculum over all-Negro Burley's nondemanding course of study. In addition, there is the danger that should Virginia's tuition-grant program be invalidated, 300 high school pupils attending the postdesegregation private school would be forced to seek admission.

In short, Charlottesville needs a new high school. Recent studies have recommended new high school construction. The sites most often suggested are in or near the new annexation zone, north and west of the city. A school built there would soon become an all-white institution as a result of the exclusively white character of this residential area. This location, however, is justified as it lies in the path of Charlottesville's normal expansion.

Less immediate, yet serious, is the problem of the present districting arrangement at the elementary school level which results in virtually all Negroes being assigned to Jefferson. By using geographical zones as a basic feature in its assignment plan, Charlottesville is assured that desegregation will not get beyond the token level. Having attended an all-Negro school for 7 years, few of Jefferson's future graduates will feel sufficiently well prepared to seek admission to Lane. Though this arrangement may be appropriate during a period of transition toward full compliance with the *School Segregation Cases*, it will not survive such a period. Soon, Negro parents will probably request relief in the form of redistricting. Specifically, they will seek the contraction of Jefferson's school boundaries in order to add several blocks of predominantly Negro housing to neighboring white school districts. If such relief were granted, the effect would be to relieve Jefferson of enrollment pressures and also to increase the number of Negroes attending biracial schools. There are no indications that a request for redistricting is imminent. However the need for this rezoning in the not too distant future seems obvious.

CONCLUSION

Charlottesville's temperament is such that it can accept more desegregation than has taken place in its public schools. This is perhaps attributable to its being a university town. It has already quietly

desegregated its larger lunch counters, although desegregation of most public facilities, public gatherings, and movie theaters has not taken place. Employment opportunities for Negroes are not good, and relatively scarce compared to opportunities in the larger cities. The pace of desegregation in the schools is not likely to speed up or slow down. Race issues for the present are not central in local thinking.

The newspaper has not played up Negro transfers to white schools recently, nor is it likely to. This helps to prevent any vigorous anti-desegregation efforts from building up. On the other hand, the Negro community has few strong leaders pushing for desegregation. It numbers few professionals other than teachers; there are no lawyers and only two doctors in the city. The Negro teachers are the only source of leadership, and while belonging to the NAACP, they have not been particularly active. These teachers have a healthy, secure relationship with local school officials. This relationship represents one of the few communication links between the city's white and Negro communities. Neither great hostility nor great understanding characterizes the Negro-white relationship in Charlottesville.

Norfolk

In respect to the problems of school desegregation, Norfolk has shown itself to be more forward looking, more flexible, and less self-conscious than its Virginia brethren. It has made determined and successful efforts to head off difficulties. Having survived its school-closing crisis in the fall of 1958, it now faces the future with considerable confidence in its ability to handle "come what may." Yet Norfolk is suffering from a lack of communication with, and understanding of, its Negro community. The result is an insensitivity to certain evidences of inequality in the education of its Negros. Further, its substantial renewal and redevelopment program has real possibilities of producing future racial difficulties in the form of the segregated residential areas it may create.

BACKGROUND

Norfolk, with its 305,000 population, is Virginia's largest city. It has been estimated that 80,000 of its people are Navy, serve the Navy, or are employed by other people who do. In the 1961–62 school year, 34,893 white and 18,394 Negro pupils attended a total of 65 schools in the Norfolk system. Its 24 all-Negro schools include 19 elementary, 4 junior, and 1 senior high schools, Booker T. Washington. Both white and Negro schools are overcrowded, and Norfolk dispenses considerable part-time education with a number of schools operating on double shifts.

Norfolk's schoolchildren were among the big losers in Virginia's struggle to maintain its policy of massive resistance. Literally thousands of students during the fall term in 1958 received makeshift schooling or none when their desegregated schools were closed by Governor Almond. But, after State and Federal court rulings invalidated the school-closing laws, Norfolk's schools reopened on a desegregated basis February 2, 1959. The reopening of these public schools occurred without incident. This fact is characteristic of the way Norfolk has faced all its desegregation problems. This is not to say that tremendous pressures were not felt during the crisis period.

The moderate and enlightened members of the Norfolk school board were subject to very severe pressures when it became apparent that massive resistance was reaching the showdown stage both here and in Charlottesville. The board, having taken the position before Judge Walter Hoffman that would place a handful of Negroes in all-white schools, immediately found itself caught between the conflicting demands of Federal and State laws. To its credit, the board consistently exerted itself to keep its schools open.

It is important to recognize that the board was backed throughout the crisis by an influential segment of the business community. One hundred business leaders at one crucial stage asserted publicly their support of the school board's decision to admit the first 17 Negroes to white schools, if the alternative meant closed schools. This group and others, as much for economic reasons as anything else, have worked to maintain Norfolk's image as a law-abiding community, free of serious race disturbance, with an attractive future for commercial interests.

Norfolk's record is one that speaks of a readiness to accept some modest changes. The city has quietly desegregated its buses, parks, golf courses, and many of its lunch counters. Negroes are employed on the police force, although not in the fire department. In comparison to what the community has accepted in these other areas, school desegregation has moved slowly. Norfolk, in 1961–62, had only 50 Negroes attending classes with white pupils in its 8 biracial schools. This accomplishment is to be viewed in the light of a Negro school population of over 18,000 and the period of 3 years since the first Negro was admitted to a white school.

The city is undergoing a facelifting as a result of extensive slum clearance, redevelopment, and renewal activity, all of which indicate the farsightedness of its city manager and city council. The officials, with a sound economic eye, are consciously ushering in a period of better times for Norfolk's citizens. This should include better employment prospects and corresponding educational benefits for Norfolk's Negroes. The people in Norfolk consider their school-closing period to have been the critical one. They feel the crisis is past.

PUPIL PLACEMENT, TUITION GRANTS, AND SCHOOL LAWS

Norfolk's system of pupil assignment is different from any in the State. Placement is a cooperative venture in which the school superintendent, school board, and Judge Walter Hoffman have shared. In a sense, Norfolk is under the State pupil placement board, as it has never ex-

ercised its option to withdraw from the State board's control. However, in a practical sense, the Norfolk School Board is uniquely situated in that the district court, in December 1959, ordered it to disregard the decisions of the State pupil placement board.[26] The members of the State board had also, prior to this time, been ordered to place four Negroes in predominantly white Norfolk schools.[27] These two orders by Judge Hoffman have impressed those involved, so that it has become routine for the school board, on the advice of the superintendent, to make assignment recommendations that are invariably followed by the State board. Now, the school board simply announces to the State board that, unless it hears to the contrary, it will proceed on its own recommendations. Moreover, the district judge has strongly urged the local board's reconsideration of certain applications with the result that certain Negroes have been assigned to the schools for which they applied.

Assignment decisions are based on 10 criteria, which had been used for some years, but which were presented to the district court in precise form on July 17, 1958.[28] Only three of these assignment criteria are significant, these being the *residence* of the applicant, and his *academic achievement* and *mental ability* as compared to the achievement level and mental ability of pupils within the school to which he is applying. Achievement scores are derived from an elaborate series of tests. An overall standard also applied is the applicant's "ability to adjust" in the school he has selected.

The mechanics of assignment in Norfolk start with a "preschool roundup" for all children entering the first grade. Local newspapers publish the date of the "roundup" and the request that parents bring children to their "neighborhood school." No maps indicating the proper school for each child are published. Instead, custom, tradition, and common knowledge are relied on to get children where they belong. The school officials have a map, which they themselves use, showing school zones, but this has not been published since about 1956. If a child appears at the wrong school, he is directed to the one usually attended by children of his race who live in his neighborhood. This applies to white children who appear at the wrong white school, Negroes at the wrong Negro school, and all Negroes who appear at a white school.

If a Negro child in this last category wishes to attend a white elementary school, he must first show he lives nearer to the white than the Negro school. Failing in this, his request for admission

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[26] *Beckett* v. *School Board of City of Norfolk, Virginia,* 185 F. Supp. 459 (E.D. Va. 1959), 5 *Race Rel. L. Rep.* 1062 (1960).

[27] *Beckett* v. *School Board of City of Norfolk, Virginia,* Civ. No. 2214, E.D. Va., Oct. 23, 1959, 5 *Race Rel. L. Rep.* 407, 411 (1959).

[28] 3 *Race Rel. L. Rep.* 942 (1958).

will be denied. If he does live closer to the white school, his achievement scores from the preschool test and his mental ability are then examined. Admission to the white school follows when his score and his mental ability are sufficiently high to satisfy school officials that he will adjust well and compete favorably with white students already assigned. The standard used is neither precise nor rigidly fixed. White pupils, under the same circumstances, will be assigned solely on the basis of residence. Though they are given the same tests, the scores achieved by white children are not determinative of their school placement.

Promotions to another school in the Norfolk system work on a "feeder" system. Each elementary school "feeds" its sixth-graders to a particular junior high, while each junior high school automatically sends its graduates to a specific high school. Under this system, Negro elementary schools "feed" Negro junior highs, and all the Negro junior highs "feed" Booker T. Washington. The same pattern operates for the white schools. Unless a Negro who has started in a Negro school applies for a transfer somewhere along the line, he will remain in Negro schools till he leaves the public school system. By the same token, however, a Negro attending a biracial school will automatically be promoted with his classmates to a white junior or senior high school.

All children being promoted to either junior or senior high school are tested at this time and technically are assigned to their new schools. Both Negro and white test scores are viewed, though they may be put to different use. For instance, a Negro seeking to shift from a Negro elementary to a white junior high school, after showing he resides closer to the latter, would have his score used in the manner described for elementary school assignment. A white pupil has his test score examined solely to determine whether it is so low that he should be assigned to a "special" school. Transfers in Norfolk are treated almost like assignments, with a new test being administered to the applicant at this time. In effect, all assignment procedures, whether placement, promotion, or transfer, are handled in the same fashion. Owing to the manner in which the Negro tests are used, these procedures are plainly discriminatory.

Both the Federal district court and court of appeals have recognized the discriminatory aspects of the pupil assignment operation but are expressly tolerating its continuance during this interim or transitional state in Norfolk's school desegregation.[29] The Fourth Circuit has also asked that school officials submit a time schedule showing when desegregation will reach full compliance with the

[29] *Supra*, note 26, and *infra*, note 30.

School Segregation Cases.[30] No schedule has yet been produced. In remarks to Negro counsel requesting the abandonment of testing, Judge Hoffman has suggested that the goal may be 4 or 5 years away, at which time the sole criterion for placement will be geography. Perhaps, in this regard, an appropriate step available right now would be to require school officials to publish their present map showing the location of schools and the residential districts they serve for the information of those planning enrollment or contemplating transfers.

The State's policy of providing tuition scholarships for Virginia students is not a crucial item in the Norfolk school picture. Neither the number of persons receiving tuition grants nor the attitude of the community would create a serious problem if the grants were discontinued. Though the more than 1,000 grants are a large percentage of the Virginia total, this is a small figure when compared to the Norfolk school population of 53,000. If all these scholarship holders were to return to the public schools which they would normally attend, it would not cause a disruption of the system. Then, too, they would not all return. Many pupils would continue to attend the well-established, predesegregation private schools, such as Norfolk Academy, which they attend for reasons quite apart from feelings about desegregation or the availability of tuition grants. Only about 175 students receiving grants attend Tidewater Academy, a school established during the period when public schools were closed, but maintained in order to serve children not wishing to attend a desegregated school. Tidewater Academy is experiencing hard times and will most likely shut down should the grant program fail; that is, if the weight of its other problems does not cause it to close sooner.

The general feeling in the city is that Norfolk can do without tuition grants. They are deemed an unnecessary expense using funds capable of better use elsewhere. Added to this is the resentment many eviuce toward well-to-do parents receiving grants—parents who have shown themselves quite able financially to patronize private schools. Moreover, it was the Norfolk delegation to the general assembly which introduced the bill which would have granted communities the local option of withdrawing from the State tuition-grant program. The bill was unanimously defeated in committee. This vain effort, however, supports the opinion that, on the whole, people in the city would not suffer if tuition grants were abolished.

Norfolk has not enacted a compulsory school attendance ordinance. Though school officials have no precise data on school dropouts, they

[30] *Hill* v. *School Board of City of Norfolk*, 282 F. 2d 473 (4th Cir. 1960), 5 *Race Rel. L. Rep.* 1062 (1960).

guess that being without such a law has had little effect on the dropout phenomenon. If there has been no increase in the rate of students quitting school, it does seem that the individual who once would have continued attending till 16 is now dropping out at an earlier age. Earlier dropouts, then, rather than more dropouts, appear to be the situation. Norfolk's parents and children have experienced closed schools, and therefore greatly appreciate educational values. This in part accounts for the fact that no significant dropout problem has been created.

NEGRO EDUCATION

The Negro in Norfolk is better educated, housed, and employed and more articulate and aware than most Virginia Negroes, at least those living outside of northern Virginia. However, the achievement gap between white and Negro pupils is every bit as noticeable here as elsewhere. The Norfolk Negro child is below grade level, whether the comparison is made with national or Norfolk standards. Therefore, the kind of education afforded the Negro in biracial, as well as in all-Negro schools, deserves a look. First, there are no programs to aid the Negroes who have entered predominantly white schools to make an adjustment to this new educational experience. Nonetheless, most of these Negroes have been doing satisfactory work in the class entered, no doubt owing to their having been carefully selected on the basis of achievement test scores and mental ability. As time has passed, less selectivity has been made in regard to Negro applicants so that their performance as a group may, in the future, be less satisfactory.

In the desegregated schools, Negroes eat in the same lunchrooms and attend assemblies with the white children. All school-sponsored activities are open to them. On this score, there has been misunderstanding, for, for while school officials firmly state that the high school French Club, for example, is open to all, Negro parents just as firmly declare the belief that their children cannot become members. On the high school sports scene, Norfolk has had its most dramatic desegregation exhibit. A Negro halfback named Heidelberg, with his well-publicized heroics, did more to make desegregation at Norview High School something real for its students than did all the litigation and publicity over his original admission to school. Norfolk Catholic High, with its completely desegregated program, including sports and social activities, is a reminder that desegregation need not be attended by great stresses and strains.

In respect to education of the Negro at Negro schools, the Negro teachers have more bachelor's degrees, more graduate degrees, and

more professional experience than their white colleagues. It is doubtful that this outweighs the intangible deficiencies of their own limited educational experience. In common with most southern communities, few of Norfolk's Negro teachers have received any education in other than all-Negro colleges. There are no programs in the system aimed specifically at overcoming this weakness. To be sure, there are "integrated teacher workshops," but so far the Negroes have not been very active participants in these. There is no sign that these teachers are even willing to recognize the existence of the so-called gap, or admit that they can do much to narrow it. As a result, they too often continue in past habits of assigning little or no work, and of accepting uncritically, obviously poor performances on the parts of their students. Support for this conclusion is the strikingly uniform reaction of Negro pupils entering desegregated schools for the first time. They have never been asked to do so much, nor have they been where so much was expected of them. The pace, the workload which has placed such demands on them, is accepted as normal by their white classmates. This facet of the gap-closing problem is known to both white and Negro educators in Norfolk and the responsibility for making any corrective effort should be equally shared.

The physical plant in the Negro and white schools varies widely from very good to very bad, depending chiefly on the age and general character of the neighborhood in which the school is located. The newer of the elementary schools for Negroes have tended to be rather small. The older and poorer facilities are typified by Booker T. Washington High School, the only Negro high school in the city, described by more than one Negro parent as a "horror." There is no doubt that the motivation of many parents seeking transfers to white high schools in Norfolk is to get their children out of Booker T. Washington, rather than any crusading spirit which is attributed to them. One is entitled to ask whether transfers from Norfolk's Negro high school could not be justified on the *Plessy* v. *Ferguson*,[31] separate but equal doctrine, without enlisting the aid of the *School Segregation Cases*.

SPECIAL PROBLEMS

Norfolk's school problems are complicated by an unusual lack of communication between the members of its white and Negro communities. This is strange, for one reason, because being a large city it has a fair number of Negroes of professional status and other leaders who should

[31] 163 U.S. 537 (1896).

be able to keep in touch with their white counterparts. For another, its school problems have generated less real heat than evidenced in other southern cities. Yet a comparison of white and Negro views on several important subjects related to public education shows a great disparity as to what the facts are. Already mentioned is the conflict over whether the French Club is open to Negroes. The whites say "Yes!"; the Negroes say "No!" The whites say the Negroes' schools and teachers are good; the Negroes believe both are relatively poor. The whites believe that they have tried to bring the Negro along, but that the Negro doesn't really want to improve and refuses to help himself; the Negro believes that all his efforts to get up have been thwarted by white refusals to help his progress. The whites state that inflammatory incidents and Negro criticisms of school policies are largely manufactured by prestige seekers in the Negro community; Negroes believe that whenever they have a valid "complaint" white officials turn a deaf ear and refuse thoughtful consideration of Negro problems. When views get this far apart, it must be because one or both sides have faulty information and there is no real factual basis on which to operate.

Perhaps one specific example will point up the difficulty. Negro parents recently appeared at a P.T.A. meeting, complaining to school officials that their children were not permitted to bring their textbooks home with them evenings. The thought was that Negro schools were not being provided with sufficient textbooks because of neglect for Negro interests or economies sought to be achieved at their children's expense. White school officials labeled this a "manufactured" incident, basing their view on the fact that Negro principals had never requested additional books and would have immediately received them had the need been known. Each side attributed fault and improper motives to the other, but this served only to cloud the real issue. First, school officials were not consciously keeping books out of circulation, nor was it a system policy that Negro children could not take their books home. Second, this was not a manufactured crisis produced to embarrass the superintendent of schools. There was a misunderstanding on both sides. Though the Negro parents were hasty to ascribe bad faith to school officials, the superintendent could have checked to find what was wrong and corrected it. The answer should have been to provide additional texts if needed, and then require the Negro teachers to assign homework and see the books were put to use.

Naturally, the belief that schools and teachers are fine, that Negroes do not seriously wish to help themselves, and that all Negro complaints are manufactured contributes to the feelings of complacency on the part of school officials. These attitudes are in conflict with the serious, though quiet, feelings of dissatisfaction that Negroes share.

Some communication links must be established if objective appraisals of future school problems are to be made. There should be Negro membership on city planning committees. A beginning in the right direction would include putting a Negro on the Norfolk school board.

To bolster their move to bring about greater desegregation of Norfolk's schools, Negroes have consistently relied on two principal arguments. One is that schools and school facilities for Negroes are poor, and that they are therefore entitled to at least equality in school buildings and equipment. The other is that residence should be the sole basis for assigning pupils to public schools. The thrust here is that the school nearest a Negro should be made available, rather than to require him to walk past a white school on the way to his own. Recent developments are revealing the capacity of these two arguments to cut both ways.

Two factors are silencing these arguments and contributing to the gradual turnabout taking place. First, Norfolk is divided by numerous bays, inlets, creeks, and rivers, while at the same time being crisscrossed by countless large, busy highways, major thoroughfares, traffic arteries, and railroads. Combined, these natural and manmade hazards easily provide an imaginative planner with opportunities to develop segregated residential and school patterns. This factor is coupled with a second, which is that Norfolk, its city manager and city council have their sights set on prosperity. They are busy clearing slums, redeveloping areas, building low-cost housing, and doing everything generally associated with the phrase "urban renewal."

They are also building schools. Here's the rub. Many of the schools recently built or planned for the near future are small, three and four-room primary schools to provide education for grades one through three or four. They are designed to serve very small neighborhood communities, and are located so children in those communities will typically be closer to them than any other school. At one point, the city council was considering a proposal for the construction of 68 of these tiny schools. Negro leaders only half-jokingly say that in Norfolk every Negro child will soon have a school in his own backyard.

Their chief complaint is four-room Coronado, a Negro elementary school which sits directly on the perimeter of a Negro neighborhood, across the street and facing a white residential area. Coronado effectively acts as a buffer for the white zone, as Coronado is necessarily closer to any Negro child living in the area directly behind it than the nearest white school. Another tense issue is the planned expansion of the relatively new Rosemont school. The plan is to make this Negro junior high into a combined junior and senior high school. Negroes see this as a move to prevent increased desegregation of nearby Norview High School, which is already biracial. The Rosemont area is

fast growing, but is virtually all Negro. Also distressing from the Negro viewpoint is the presence of a wide highway which separates the Rosemont and Norview sections of the city.

In answer to Negro criticism of their school construction and school location plans, the city fathers claim the chief criterion for deciding where to locate schools is population. Race, it is said, has not been a consideration. "Good schools, where they are needed" is the announced standard. However, the side effect of the city's renewal and redevelopment program has been to reinforce the trend toward school-building in Negro-concentrated residential areas. A new school surrounded by fine playgrounds is centered in every new low-cost housing project. If the project houses Negroes, the school naturally becomes another all-Negro school. These projects are attractive and well-cared for. They are a testimonial to Norfolk's desire to solve its problems, serve its Negro citizens, and look to the future.

CONCLUSION

But what does all this school construction and redevelopment activity mean for Negro education, particularly the desegregated kind? By using natural and manmade barriers, by building numerous small elementary schools, and by creating segregated residential areas complete with schools attached, Norfolk is clearly developing its capacity to contain desegregation. At the same time, it serves its Negro citizens a solid fare of good houses and good schools—at least as far as more tangible educational factors are concerned. All of this is to the good. These new houses and schools, by satisfying Negro desires, also dull the desire to push for desegregation, thus eliminating Negro support for their spokesmen. This desire gone, there is the danger that the intangibles of Negro education may then be neglected.

In the good will and good works clearly visible, Norfolk has been satisfying the claims of the present at the expense of the claims of the future. While apparently smoothly handling its school desegregation problems, it has been storing up long-range difficulties by its creation of new segregated residential areas. Norfolk's legacy to its future citizens appears to be a wealth of northern, big-city type segregation problems.

Richmond

In 1950 Virginia's capital, Richmond, was also the State's largest city. Now with 220,000 people, it is a distant second to Norfolk. The 1960 census shows that Richmond is actually losing population.

The desegregation of the city's public schools has been peaceful but slow, attended by neither strife nor notoriety. For the most part, its problems are quite similar to those of northern cities of comparable size. With 92,000 Negroes, Richmond has the largest percentage of nonwhite citizens of any major Virginia city. The city's real trouble is not litigation over the desegregation of its schools. Rather, it is Richmond's anxiety over the size of its Negro population. Of major concern to Richmond whites is the mere presence of so many Negroes and what this may mean to the city's future. This factor must be appreciated by anyone seeking to understand equal protection problems in the Richmond public school system.

BACKGROUND

The first Negro applications for admission to white schools were made in the summer of 1958. These were referred to the State pupil placement board, which rejected them, as it rejected all other Richmond Negro transfer requests during the following 2 years. On August 15, 1960, the State board assigned two Negroes to the Chandler Junior High School (white), and that September, a Richmond public school was desegregated for the first time. On July 5, 1961, the lone remaining Negro plaintiff of six who had filed the original Richmond suit for admission to white schools in 1958 was ordered admitted to an elementary school.[32] The court found the State board had discriminated against her because of race. Since this decision, the State board has processed and approved the transfers of a small number of Negro applicants. In Richmond in the 1961–62 school year, there were 36 Negroes attending classes with white children in 4 formerly white schools. Since there are 17,867 white and 23,824 Negro students

[32] *Warden* v. *Richmond School Board*, Civ. No. 2819, E.D. Va., July 5, 1961, 6 *Race Rel. L. Rep.* 1025 (1961).

enrolled in 58 Richmond public schools, this is clearly token desegregation.

PUPIL PLACEMENT, TUITION GRANTS AND SCHOOL LAWS

Richmond continues to operate under the control of the State pupil placement board. Theoretically, this places in the hands of the State board all initial assignments, promotions to higher level schools, and transfers from school to school within the system. Each child whether entering school for the first time, graduating from elementary or junior high, or seeking a transfer must fill out a placement application. This application is filed at the school where local procedures required the pupil to register. A request for placement in the school where the pupil must register is treated as a request for initial assignment. A request for placement in a school other than the school where he must register is treated as a request for transfer. Any application by a Negro seeking admission to a predominantly white school for the first time is considered to be a request for transfer.

Applications for initial assignments are sent to the State board which routinely approves them, for, as a practical matter, the board exercises its authority to make assignments only in the transfer cases. In transfer cases, local school officials inform the State board as to the applicant's residence, his aptitude and achievement scores, and his probable adjustment in the school he wants to attend. It is the stated practice to do no more than provide this information. The State board exercises its independent judgment without a local recommendation. Recently, the State board has appeared to rely almost exclusively on residence in reaching its decisions. Thus, applications of Negroes living nearer the white school applied for than any Negro school are granted. No applications are granted if this is not true.

At the local level, assignments to the lowest elementary grade begin with preregistration at neighborhood schools. Richmond newspapers notify parents of the time of preregistration. They also describe the school zone boundaries, and indicate the schools to which parents in given areas should report. According to school officials, these boundaries were frozen by the State placement board a few years ago. Depending on the dominant character of the area, its school is designated either Negro or white. In Richmond, there are no overlapping school boundary lines, nor dual attendance maps to maintain segregation. Thus, white children live in Negro school zones, and Negroes in white school zones. However, if a Negro child reports to his neighborhood school, and it is white, he is told he must register at a Negro

school in another zone. Should he want to attend the white school in his own area, he must apply for a transfer from the Negro school at which he is required to register. As already stated, his case is not treated as a request for initial assignment. White children living in Negro school areas are treated exactly the same, but no white children ever elect to transfer back to the Negro schools serving the area in which they live.

Negroes seeking admission (transfer) to the lowest elementary grade of white schools face another obstacle. The State cutoff date, after which requests for transfer will not be considered, falls prior to the date of preregistration which is set by the local officials. Unless a Negro parent is particularly foresighted, he will not have thought to apply for transfer before his child's enrollment in school. The result is that most Negro children begin their education in a Negro school. Therefore, the first real opportunity for a Negro child to apply for admission to a white school comes toward the end of his first school year. But once a pupil is settled in a school, inertia cuts down his desire to transfer. Thus, the time sequence on transfer reduces the number of Negroes who seek to attend desegregated schools in Richmond. The initial assignment by race is effective in this regard.

As to promotion to junior or senior high school, the situation is the same as in Norfolk. Certain elementary schools are "feeder" schools for particular junior highs, while certain junior highs send their graduates to particular senior high schools. The important thing is that Negro elementary schools feed Negro junior high schools, and these in turn feed the all-Negro high schools. Unless a student transfers at some time in his career, once enrolled in a Negro elementary school he will be "locked in" Negro schools all the way through. Also, as in Norfolk, once a Negro child enters a biracial white school, he will go the rest of the way through the school system with white classmates.

As a final matter, under the school zoning system which places white children in Negro school zones, and Negroes in white areas, there are many pupils who must be transported to schools at a considerable distance from their homes. The city buses these children to school. This is the only school transportation the city provides. Interestingly enough, it was this bus situation which produced the school desegregation suit in Richmond.

In Richmond, 111 tuition grants were awarded at a total cost of $26,125.57 during the 1961–62 year. These totals, though not final, are not likely to undergo any substantial change. For a city of Richmond's size, these figures are insignificant. It is clear that the tuition grant law plays no part whatever in the school desegregation struggle in Richmond. Another fact that should be mentioned is that Richmond has not enacted a compulsory school attendance law. The official

feeling is that the lack of such law has not produced dropouts on any large scale. Here, as elsewhere in Virginia, a student who might be described as a typical dropout candidate just leaves school earlier than was possible under a law specifying a minimum age.

NEGRO EDUCATION

As regards equal protection in schools, Richmond falls short of implementing the *School Segregation Cases* chiefly in the slowness of desegregation, which has resulted in "tokenism." Buildings and facilities for Negroes are old or new, good or bad, depending on their age and location. No pattern of favoring whites over Negroes with respect to school construction can be detected. To the contrary, to make up for years of lost time the city has been spending the greater share of its available construction funds for Negro schools. This policy dates back to a period following World War II, where over a 10-year span from 1946 to 1956, while $5,012,000 was spent on white school buildings, $9,871,000 went for Negro school construction. Despite this policy, the city has not been able to catch up. Negro schools continue to be quite overcrowded, as contrasted with the white schools which are thinning out. In part, of course, this is the result of in- and out-migration, as previously mentioned.

The problem of overcrowding in the Negro schools is one with dimensions that can best be seen in the school enrollment figures over the last decade:

White and Negro Public School Enrollment, 1951–61

	White	Negro	Percent Negro
1951	20, 429	13, 882	40
1954	22, 136	16, 644	43
1957	19, 667	18, 787	49
1960	17, 980	22, 164	55
1961	17, 867	23, 824	57

Clearly, the trend reflects a citywide increase in Negro pupils and a decrease in white enrollment, with steady increase in overall school population. The Negro's higher birth rate, plus his desire to live in urban surroundings, accounts for a good deal of the increase. The drop in white enrollment is, apparently, a result of the exodus of young white couples with school-age children to the counties immediately

surrounding the city. This city-county shift is coupled with a white-family movement to the outer sections of the city in order to get out of neighborhoods that are becoming more Negro-concentrated. The combined result of this influx of Negroes and departure of whites has produced an imbalance characterized by under-attended white and over-attended Negro schools.

School officials have tried to face the twin problem of "tokenism" and overcrowding with little success, which is not surprising. Any effort to balance individual school enrollments and at the same time speed desegregation would call for moving Negroes from their neighborhood school to the less-crowded white schools nearby. Theoretically, this should solve both problems. But, until the attitudes of the white population change, every effort to put more Negroes in nearby schools accelerates the shift of the white population to other areas both inside and outside the city. This makes the residential areas more unstable, and aggravates the original problem.

So far, school officials have practiced a policy of waiting until a white school has all but emptied out, and then, at one stroke, establishing it as a Negro school. Approval of the State pupil placement board is secured for the switchover. This practical approach, however, does nothing to facilitate desegregation. Directing attention to the feeder system of promotion of elementary pupils to junior high schools and junior high school students to senior high schools, one change that would bring about greater desegregation can be suggested. If assignment at the secondary levels were based solely on residence, more desegregation would be the result. This result is inherent in the greater difficulty in zoning large areas to achieve separation of the races. School districting for segregation is simple only where a large area is being broken into many small parts. This description by and large only fits the process of elementary school zoning in larger cities.

Richmond's Negro teachers are able, and respected, but are also products of the classic segregated educational pattern which has tended to deny Negroes the cultural experience essential to educated people. There are in Richmond no programs or practices, other than integrated teacher workshops, aimed at overcoming this lack of background. Negro teachers are less transient as a group than white teachers, and, on the average, have more years of teaching experience.

The curriculum for the Negro schools in Richmond is similar to that found in northern city high schools. The emphasis is on home economics for girls and mechanical skills for boys. This approach, while realistic for young people seeking employment in Richmond upon high school graduation, hampers the college-bound student and those capable of qualifying at more skilled jobs than presently open to

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Negroes locally if they had suitable education. The present curriculum lags behind the broadening job opportunities for the Negro which must accompany industrial expansion in the South as elsewhere. The existing inequality in white and Negro curricula is not peculiar to Richmond, nor Virginia, nor the South for that matter. As for Negroes attending biracial schools, they are few in number. They have been attending white schools for so short a period that there is no showing that they have or pose any distinct problems. Richmond has no formal programs to aid in their adjustment to their new educational challenge.

SPECIAL PROBLEMS

The real problem in Richmond is not the desegregation of schools, nor any particular type of desegregation at all. Its difficulties lie in the belief of the white citizen that Richmond has a Negro problem. It is the presence of the Negro in such large numbers that makes Richmond's whites tense. The school enrollment figures, set out above, are symptomatic of the overall increase of the Negro in every phase of the city's life. The whites in Richmond fear "engulfment" and all that that term signifies. Watching the Negroes move in and the whites move out has created a tremendous anxiety over the future of the city. Comparing Negro population and Negro voting statistics to corresponding white figures causes the whites to doubt that they can preserve the southern characteristics of the past. In Richmond white people fear that the poetry of southern life will soon be gone, if it has not gone already.

Why this attitude exists can only be suggested. One reason may be that, like any city which grows larger, more crowded, more industrialized, and at the same time older, Richmond is simply facing big-city problems. Lacking a solution for them, it is not unnatural to seek a scapegoat. The Negro provides one. Richmond would undoubtedly be facing most of its present difficulties even if the recent influx of population was entirely composed of non-Negroes. Another reason may be that Richmond is close geographically and psychologically to southside, where the greatest race tension exists. It is just down the road to Prince Edward and Powhatan Counties. Also, Richmond's newspapers have a tendency to play up the race question, particularly the influential Richmond News Leader, which continually sounds alternate notes of anger and anguish.

There have been specific incidents and there remain specific conditions that contribute to white Richmond's attitude. Local Negro college students have been active in trying to open segregated restau-

rants, lunch counters, and certain public facilities to Negroes. Sit-ins and picketing by these students have caused considerable resentment. In particular, their efforts to desegregate the dining rooms of one of Richmond's large department stores, Thalhimers, which resulted in several convictions for trespassing, generated a good deal of heat.

The loss of young white families to the surrounding counties, already mentioned, is another of the contributing conditions. The effect of this migration on school enrollment has been graphically demonstrated. It has had a similar effect on voting statistics. One set of figures may serve as a typical example. Before Richmond's councilmanic election in 1958, there were 46,954 white and 10,541 Negro qualified voters. This was 3,000 less white voters, and 400 more Negro voters than 2 years before. The Richmond council of nine is elected "at large," not on a ward basis, which prevents Negroes from putting a single candidate in office. In fact, in the 1958 election, the white candidate with the most solid Negro support finished 12th with 7,482 votes. The candidate winning the ninth seat polled 10,275. The growing political strength of the Negro, estimated at just under 12,000, aided by losses in white voting strength obviously adds to the concern of Richmond's white people.

The city of Richmond recently attempted to counter what is here called her "real problem" by bringing about a political merger with Henrico County, which lies directly to the north. The hope was that this would bring into the city Henrico's more than 125,000 citizens, greatly increasing the ratio of whites to Negroes in Richmond. The city-Henrico merger proposal was defeated on December 12, 1961, when Henrico County voters said "No," by a wide margin. The defeat was a serious setback to Richmond's hopes, and Richmond began suit immediately to annex a major portion of Henrico County, as well as a substantial area in Chesterfield County which borders Richmond on the south. In Virginia, the courts determine whether there shall be an annexation. They inquire into the necessity for and the expediency of the proposed annexation, with an eye to the best interests of the city and county involved.[33] Under Virginia procedure for annexation, no voter approval is required. The chances are excellent that when the legal proceedings are concluded Richmond will have been competely successful. One immediate effect of annexation should be the reduction in white tension.

CONCLUSION

Richmond must recognize its problems are big-city problems, and not Negro problems. Big-city problems can be aggravated by race issues.

[33] Va. Code (Repl. Vol. 1956), sec. 15–152.11.

And one way to aggravate them is to continue to preach that you have a race problem. Richmond runs the risk—not very grave at present—that her political leadership may fail her. By constantly harping on the race issue and by giving expression to fears of engulfment, its leaders may create a grave race problem. The best answer lies in Richmond's continuing its effort to make the city a better place in which to live; using its planning and management skills to produce low-cost housing for both Negroes and whites; and making itself more attractive to young white couples who feel the pressure to leave. In all this, Richmond will be helped by annexation. Richmond's prize for winning the annexation suit will be more time to solve her problems.

In regard to equal protection in schools, the first step should be to improve the quality of Negro education in Negro schools. Attention should be given to modifying the standard high school curriculum in order to prepare Negro graduates for a brighter economic future. Richmond must then seek to avoid the charge of "tokenism." Greater numbers of Negroes could presently be attending Richmond's white public schools. School officials have not prevented this. They have not stood in the way of implementation of the *School Segregation Cases*, other than through their rather broad reading of the State pupil placement board's powers. City school officials have accepted the State board's freezing of elementary school zone lines, and assert that any redistricting would require its approval. And, on one occasion, they sought and received approval to turn a white into an all-Negro school. These school officials also believe that the State board must acquiesce in any plan to assign pupils to junior and senior high schools other than under the present feeder system of promotion. Richmond's experience exemplifies the virtually complete control exercised by the State board over the major means to bring about desegregation in the State.

If this is a necessary view under State placement laws, then the slow progress in desegregating Virginia's public schools must be attributed to the State pupil placement board. On this score, however, recent board action on Richmond transfer applications suggests State support for local recommendations. There will be a marked increase in the number of Negroes in biracial schools for 1962–63. In June 1962, the board transferred 90 more Negroes to predominantly white schools, including 5 that will be desegregated for the first time. This is a short step, granted, but at an increased tempo and in the right direction.

Warren County

Warren County, a rural-industrial area in the northern part of Virginia, has a population of 13,600 whites and 1,054 Negroes. About two-thirds of these people live in Front Royal, the county seat, where the first public school closing to prevent desegregation in Virginia occurred. Yet today, what tension exists in Warren County is generated not by Negroes seeking a speedup in the process of desegregation, but by a split in the white community over the tuition grant program and its effect on public education.

In Warren County, one-third of the total school population and one-half of the area's high school students attend a private school, organized when public schools closed. This school is almost entirely supported by pupils whose tuition is paid by the State. The community is deeply divided between those who oppose the tuition grant program as a financial drain on the support of public schools and those supporting Virginia's freedom of choice plan. The latter includes the segregationists and a few persons backing private schools as an educational experiment. This division is sharpened by the real and unsettling possibility that a Federal court may invalidate the tuition-grant program, which would greatly complicate the county school picture. In this debate, the Warren County Negroes have taken no active part. Although they will be materially affected by the outcome of this struggle, they have chosen to be spectators.

BACKGROUND

In the summer of 1958, all eyes were focused on the desegregation suits pending in Charlottesville and Norfolk. These litigations were proceeding at a pace which made it virtually certain that in one or both of these communities "massive resistance" would be tested. It was, therefore, surprising that the Warren County High School was the first to be closed by order of Virginia's Governor Almond. Prior to this, Warren County had operated 10 white and 1 Negro elementary schools; and 1 white and no Negro high school. Negro high school students had an option of being (1) bused 45 miles to a Negro boarding school each Monday morning to be returned on Friday afternoon.

or (2) taken each day in county school buses to a Negro high school 25 miles away.

In August, suit was brought seeking the placement of 24 Negro pupils in the Warren County High School and 5 in the Front Royal Elementary School. Judge John Paul heard arguments and granted an injunction against the Warren County School Board's denying enrollment of the Negroes in the high school.[34] He refused a similar injunction to the Negro plaintiffs seeking enrollment to the elementary school.[35] Appeal failed; the board was ordered to admit the Negro students on September 15, 1958. That day the Warren County High School closed.[36] After the school-closing laws were declared unconstitutional and attempts at further legal delay were unavailing, the high school reopened February 18, 1959, with only the 24 Negro students in attendance. The white pupils remained at the temporary private school which had operated during the fall semester when schools were closed. In the fall of 1959, the Warren County High School opened with 285 white and 24 Negro students. By September 30, the white enrollment had increased to 399; by the end of the 1959–60 session there were 429 whites and 22 Negroes enrolled, 2 Negroes having withdrawn during the session.

Immediately after desegregation in the county two significant events occurred. The first was the establishment on a permanent basis of John S. Mosby Academy, organized by local citizens who desired a segregated high school. (This school was the successor of the temporary school organized in September 1958, when public schools were closed.) The second was the completion and opening of Criser High School, a combined elementary and high school for Negroes. (The first facility for Negro high school students in the county.) By the 1961–62 school year, enrollments in the various public and private schools in Warren County looked like this:

Warren County School Enrollment, 1961–62

White		Negro
Public schools	John S. Mosby Academy	Criser High School
Elementary.....1475 Warren County high school..... 612	Elementary.....452 High school.....606	Elementary and high school.....302

[34] *Kilby* v. *School Board of Warren County*, Civ. No. 530, W.D. Va., Sept. 8, 1958, (summarized in) 3 *Race Rel. L. Rep.* 972 (1958).

[35] *Ibid.*

[36] *Ibid.*, 3 *Race Rel. L. Rep.* 972 (1958).

In the same school year, Front Royal Elementary School was desegregated, making a total of 18 Negroes in the two biracial county schools. There is little immediate prospect of an increase in the number of Negroes attending desegregated schools. The school board estimates that in the 1962–63 school year there will be only 18, possibly 20, Negroes in Warren County schools with white children.

PUPIL PLACEMENT, TUITION GRANTS, AND SCHOOL LAWS

Warren County is one of three school districts in Virginia making its pupil assignments in accordance with Federal court-approved policies. The other two are Charlottesville and Norfolk. Though the school board continues to send all its placement applications to the State pupil placement board, this appears to be a formality. In August 1960, as ordered by the court, the school board submitted a plan for the assignment of county high school students.[37] Under the plan, State route 340, which virtually splits Warren County into two geographically equal zones, was made the dividing line between two attendance areas. The Warren County High School (white) was designated to serve all high school students in the western zone, while Criser High School (Negro) was to serve the high-school-age students in the eastern area. Initial assignment to high school was to be on a geographical basis. Coupled with this was the provision that when initial assignment caused a pupil to be assigned to a school occupied predominantly by pupils of the opposite race, "Such pupil shall be permitted, upon the request of his or her parents or guardian, to attend the school nearest his or her residence which is occupied predominantly by pupils of his or her own race."

Judge Paul approved the school board's plan, but ordered the board to return and submit a similar plan for the assignment of elementary grade pupils.[38] In his order, he also granted the Negro plaintiffs the opportunity to present evidence supporting their contention that Criser High School was not comparable with Warren County High from the standpoint of reasonable academic opportunity. The plaintiffs have not yet tried to establish this contention.

In June 1961, the school board submitted its plan for the assignment of pupils to the elementary grades. Under this plan, each pupil is assigned to the elementary school nearest his home. If the enrollment of the nearest school is predominantly of the other race, the pupil may enroll at the school nearest his home in which his race predom-

[37] 6 *Race Rel. L. Rep.* 123 (1960).

[38] *Kilby* v. *School Board of Warren County*, Civ. No. 530, E.D. Va., Aug. 9, 17, and 22, 1960, 6 *Race Rel. L. Rep.* 121 (1960).

inates. The plan has established no school zones, and operates solely on the principle of distance plus the right of minority transfer. Judge Paul approved the plan, as he had the plan for assigning high school students. The school board has faithfully followed the principles incorporated in these two plans.

In considering requests for transfer, the board has been guided by the same principles as those used in making original assignments. Thus, a high school student may transfer freely to the school in the zone where he lives. A transfer request to attend another elementary school is also granted freely if that school is the nearest school to the applicant's home. As of July 1, 1962, the deadline for presenting transfer applications, the board had received only two requests from Negroes living in the Criser zone to attend Warren County High School, and had received none from white children in the Warren zone asking transfer to Criser. The two Negro applications will probably be denied, as the board's policy has been to "stick strictly to the court-approved plan."

Tuition grants are a crucial factor in Warren Connty's desegregation picture. In the 1961–62 school year students in the county received 1,089 awards at a total cost of over $304,000. This is 13 percent of the dollar cost of tuition grants awarded in the entire State for this year. Virtually all these grants go to pupils attending John S. Mosby Academy, the segregationist private school. In Warren County the unfortunate effect of the tuition-grant program is the weakening of financial support for public education. The program, by allowing half the high school population to enroll outside the public school system, decreases the amount of money which the State allots on the basis of the average number of pupils in daily attendance at Warren High School. The loss of State funds results in less money for school operating expenses, the chief item of which is teachers' salaries. As yet, however, this reduced financial support has not adversely affected Warren County High School.

On the other hand, the fact that enrollment is less has resulted in a favorable teacher-pupil ratio at the county high school. Public school officials believe that the public high school students in this sense are better off than before desegregation. They point to the increasing percentage of graduates who are now going to college. The 1960 class sent 45 percent of its graduates to college; the 1961 class sent 54 percent. Estimates are that even a greater percentage of the class of 1962, perhaps 65 percent, will be attending college in the fall following their graduation.

In comparison, it is estimated that only 10 to 12 percent of the Mosby Academy's 1962 seniors will go to college. This comparison suggests several possibilities: first, the students who remain at Warren

County High School are as a group better motivated and possessed of higher aptitudes; second, the favorable teacher-pupil ratio affords the public school students more individual instruction and hence a more beneficial educational experience; and third, the Mosby school, as a new school, has not yet succeeded in overcoming its organizational, curricular, and other educational problems. The number of graduates with the capability and desire for higher education is usually considered to be an index of the quality of the education received in a school. The Warren County experience raises doubts as to the soundness of the tuition-grant program and the manner in which the county's educational dollar is being spent. Most communities in Virginia can ill afford to divide their effort in supporting education. The educational soundness of the tuition-grant program must be judged by the result which it produces for all students.

A valid compulsory school attendance ordinance under Virginia law requires both a recommendation by the district school board and subsequent enactment of an ordinance by the local governing body. The Warren County School Board has made the appropriate recommendation, but the county board of supervisors has taken no step toward passage of a compulsory school attendance ordinance. It does not appear that the supervisors plan such a step at any time in the near future.

NEGRO EDUCATION

The small number of Negro students attending Warren County's predominantly white schools precludes generalizations. However, the academic record of Negroes attending Warren County High School has compared favorably with that of the white students. Some Negroes have stood high in their classes, some low, and some have stood in the middle. There have been no incidents in the white schools arising out of the presence of the Negro children, not even name-calling. The Negro children continue to eat by themselves in the school cafeteria, although not as a result of any school policy. All school-sponsored activities are open to them; for example, at least one Negro girl is a member of the school's chapter of Homemakers of America. However, there have been no Negroes playing on any school athletic teams; the one boy who contemplated "trying out" was dissuaded. Dances and other school social events have been discontinued.

The Negro teachers exhibit the same lack of cultural breadth and the same narrowness of experience noted previously in connection with other Virginia communities. Only 4 of 17 have studied in desegregated schools. Their academic contact with whites has been limited

to integrated teacher workshops or to committees organized for such purposes as selecting textbooks. How the Negro teachers feel about desegregation of public schools is not clear. It is apparent that they are less obviously active in the Negro effort to gain a greater measure of educational equality than in the previously discussed localties. In this they share the attitude of the great bulk of the Negro community of Warren County.

The most disheartening factor in appraising the education of the county's Negro children is that the so-called gap in achievement and aptitude levels between white and Negro students is being ignored. School officials have noted that the average Negro pupil lags one and one-half grades behind his white counterpart by the time both have reached the fourth grade. Many local white educators are convinced that this gap cannot be closed. They concede the Negro's capacity to memorize and recite facts and figures, but are pessimistic about the Negro's ability to develop his critical faculties. It is difficult to understand this pessimism, as it seems equally reasonable to believe that the Negroes' critical faculties may be developed by education equal to that received by white children. Recently efforts have been made to improve instruction at Criser. These include emphasis on remedial reading and increased use of television in the classrooms. Additions to Criser's library have also been made and science and mathematics instructional aids purchased. It is hoped that these will begin to vitalize Criser's academic program and operate to narrow the disparity in white and Negro achievement levels.

More distressing in this area is the fact that Negro teachers seem unconcerned with this problem of the "gap." They are perhaps justifiably sensitive to comparisons of white and Negro students. It is also fair for them to criticize achievement and aptitude tests which tend to produce higher scores for pupils of a higher socioeconomic level. Nevertheless, sensitivity and the fact that present methods of measuring the gap may be deficient should not be permitted to hide the existence of the gap. Nor should these factors be permitted to slow efforts toward providing better education for Negroes in Negro schools.

The new Criser High School, which provides both elementary and secondary education for Warren County Negroes, is a handsome physical plant, built on a spacious 15-acre hilltop site. Its facilities include a separate building for industrial arts. Physically, it compares favorably with Warren County High School. In addition the industrial arts program is superior. However, Warren offers a more extensive program of foreign language and science courses than does Criser. Until recently Criser students had no opportunity to take physics. Distributive education is still closed to them. Thus, it can be seen that Negro students, for the most part, do not have the same

educational opportunity as white students in the county. This inequity has been pointed out, but it was not seriously attacked by the Negroes in the Warren County school desegregation suit. School officials justify this unequal opportunity on the ground that Negroes in Criser are not interested in a broader curricula.

In Warren County the Negroes are proud of their new school. They also have great respect and a high estimate of the ability of their teachers, an estimate not shared by the white community. By dismissing the probability that an educational gulf may separate students of the white and Negro races, they ignore one of their most serious problems. The Negroes' satisfaction with their school and teachers suggests the reason for so few requests by Negroes to attend the white high school. It also forecasts few in the near future.

SPECIAL PROBLEMS

As in Charlottesville and Norfolk, school desegregation seems to proceed under control. However, should Virginia's tuition grant program collapse, Warren County will face a crucial situation. If a court should decide the program is unconstitutional or that the "private" post-Brown schools can no longer practice racial discrimination because State action is found in their operation, the John S. Mosby Academy would be forced to continue without the substantial public financial support it now receives. In this event, it is not clear what position the county would take with regard to public schools. Segregationists pressure and large-scale community hostility could be so great that Warren County might choose to become another Prince Edward and close its public schools. The likelihood of this depends on the nature and strength of the economic and political forces at work in the community at that time.

Warren County, primarily rural in its makeup, is conservative on the race question. In this county, it should be remembered, when the schools were first opened on a desegregated basis in the spring semester of 1959, 24 Negroes attended classes alone in the white high school. Over 1,000 students decided for various reasons not to return. More than 2 years later, half the high school population continued to attend Mosby Academy which, whatever its academic future, is presently not equal to Warren High.

In Warren County organized labor also is one of the forces to be taken into account. The members of the Textile Workers Union of America at the American Viscose plant strongly supported the segregationist Warren County Educational Foundation during and after the school closing in 1958. At one point in 1959, the 2,000 members

of the union (which includes both whites and Negroes) were contributing $1,600 a week to this foundation under a paycheck deduction system, which was discontinued by order of the international union of which it is a member. About two-thirds of the members of the local union are rural Virginians, and probably less than 10 percent are skilled technicians. This raises a question as to whether fear of future Negro competition in employment is partially responsible for the local union's conservative desegregation stand. It is estimated that no more than 50 Warren County Negroes would qualify for jobs presently held by white employees at the plant. The union would probably be actively prosegregationist should another school crisis arise.

Most Warren County businessmen, in contrast, have learned that a stiff segregation posture hurts business. American Viscose officials admit that Warren County's formerly uncertain school situation made it difficult to attract management personnel and technicians. This segment of the community, along with the county's relatively liberal school board, would, it is believed, stand solidly behind public education.

The Warren County Board of Supervisors is perhaps the most important facet in this appraisal and yet its position is the most difficult to assess. It has seemed necessary for two members of the board to seek election as segregationists. Yet, it must be increasingly evident to these members that the county's welfare, as well as that of their constituents, rests on industrial development, which in turn depends on public schools and community stability. Thus, the board members may be confronted with a dilemma. The board, as the county's governing body, has power to cut off all funds for operating schools; therefore, how the board resolves the dilemma, if it arises, is very important. It is generally believed that it would ultimately support public education.

In the event that parents are denied the use of tuition grants, most will be unable to continue sending their children to John S. Mosby academy unless financial support comes from some other source. It is expected that money will be forthcoming from other parts of Virginia and the South if needed to enable Warren County and Mosby Academy to stand firm for at least the current school year. Mosby could conceivably garner enough support to continue operating indefinitely without tuition grants.

The public schools would probably be kept open, as has been suggested above. Once again Mosby students would begin to return to the public schools; if not immediately, at the start of the first full year after their tuition grants were cut off. The county would immediately require a new high school building, as the return of even a

substantial fraction of the high school students in Mosby would create impossible overcrowding, unused classrooms having been converted to other uses. Warren County might offer to purchase the private school's facilities, but the offer would probably be rejected. At this point, site selection and school construction plans would have to be undertaken. Under the most favorable conditions this is a difficult process, even for a governing body and school board firmly committed to the support of public education. In the face of the hostilities and pressures certain to exist during a period like the one suggested above, it will be even more difficult. The elimination of tuition grants will surely present Warren County and its public schools with many perplexing problems to which solutions would have to be found.

CONCLUSION

The progress of desegregation of Warren County schools is dependent upon the fate of Virginia's tuition-grant program. If the grants survive, the white community may continue to provide inadequate support for the public schools, weakening public education without any compensating benefits to private education. Moreover, Negro education will continue to suffer if educators confuse good facilities with good education and write off as insoluble the problem of the education gap between white and Negro pupils.

If the tuition-grant program is declared unconstitutional the number of white children attending desegrated public schools would probably increase, but it is doubtful that the number of Negro children attending these schools would be materially affected. Still public officials will be confronted with many administrative problems having their origin in the court order to desegregate Warren County public schools.

Although the Warren County Negro has now chosen the role of bystander, watching the white community struggle with the process of desegregation, he was the catalyst.

Northern Virginia

BACKGROUND

Four communities are known collectively as northern Virginia. They are the cities of Alexandria and Falls Church and the counties of Arlington and Fairfax. One of the most rapidly growing areas in the United States, its population increased dramatically during the 1950–60 decade. The present breakdown of its 539,618 persons, by community, is as follows:

Community	White	Negro	Total
Alexandria	80, 388	10, 353	91, 023
Arlington County	154, 172	8, 590	163, 401
Fairfax County	260, 145	13, 821	275, 002
Falls Church	10, 011	144	10, 192

The increase in population during the decade was primarily of white persons. Thus, while the Negro population increased numerically to its present 32,908, it decreased in proportion to the total.

Northern Virginia is unique among Virginia communities which are in the process of desegregating their public schools. Its distinguishing characteristics result primarily from its proximity to Washington, D.C. Most of its people work for the Federal Government; some in the District of Columbia; others are in the military, attached to bases in the area. The white community is well-educated and to some extent transient. Residents come and go as a result of changes in the political party in power, depart to enter private employment, and, in the case of military personnel, are transferred. Because of their ties to the Nation's Capital and their transitory residence, they are less identified with their residential communities and the State than native Virginians.

It is a fair generalization that this transient, well-educated, non-native citizenry is more liberal on the race issue than the rest of the State, and has a much greater capacity to accept desegregation as

the law of the land. The extent of desegregation in this area in 1961–62 can be seen in the enrollment figures.

Public School Enrollment, 1961–62

Northern Virginia community	White	Negro	Number of Negroes w/whites	Schools desegregated
Alexandria	2, 368	2, 298	45	8
Arlington County	23, 602	2, 128	143	11
Fairfax County	63, 668	2, 195	95	18
Falls Church	1, 937	26	3	2
Total	91, 575	6, 647	286	39

The 286 Negroes in biracial schools in northern Virginia accounted for over half the State's total of 533 in 1961–62. This result is striking when compared with the results achieved in Norfolk and Richmond, urban areas with a combined population equal to northern Virginia's. In the same school year, Norfolk-Richmond had only 86 Negro pupils in classes with whites. The significance is greater when the Norfolk-Richmond Negro school enrollment of 42,218 is compared to nothern Virginia's 6,647. There is reason to believe that desegregation will continue to make progress in these more liberal communities.

PUPIL PLACEMENT, TUITION GRANTS, AND SCHOOL LAWS

Under Virginia law, communities have the option of withdrawing from the State pupil placement board's jurisdiction to handle their pupil assignments locally. Only four Virginia locales have exercised this option; among them three are northern Virginia communities, Alexandria being the exception.

Arlington County

Under its local school plan, Arlington County is zoned into school attendance areas, each child being assigned in the first instance to the school serving his district. The plan includes a provision permitting any pupil assigned to a school in which his race is in a minority to transfer to another school. In practice, both white and Negro pupils receive the same treatment. Thus, if a pupil's

race is in the majority at the school of his residential zone, he must enroll there. But if his race is in a minority at the school, he may enroll there or elect to attend the nearest school where his race is predominant.

Promotions are handled under a system in which designated white elementary schools feed certain white junior highs, which in turn feed two white county high schools. Negroes attending desegregated schools are promoted with their classmates to white junior or senior high schools. Negro elementary schools, with the exception of the Langston school, feed Hoffman-Boston, an all-Negro combined junior and senior high school.

The school zone lines, which are substantially the same as when first drawn in 1949, confine the Negro population in two areas. The larger of the two, Hoffman-Boston, mentioned above, holds three-fourths of the Negro school population. The smaller, separated by considerable distance from Hoffman-Boston, is Langston. Langston Elementary School serves a residential concentration of Negroes in the northern part of Arlington which is completely surrounded by white residential areas. Upon graduation, pupils in Langston's eastern section may go to Stratford Junior High (white) or Hoffman-Boston. Similarly, pupils in Langston's western section may go to Swanson Junior High (white) or Hoffman-Boston. On graduation from either Stratford or Swanson, former Langston students are sent with their classmates to one of the white high schools unless they elect to attend the Negro high school.

The great majority of Negro pupils live in the Hoffman-Boston zone and, under the Arlington assignment plan, are locked in the Negro school system as a result of the school board's nontransfer policy. The only transfers approved, and these have been approved freely, are those from schools where the applicant is in the racial minority. There is little prospect for any nonsegregated education for the large proportion of Arlington Negroes since they live in the Hoffman-Boston area. In November 1961, the school board asked the Federal court to dissolve the injunction entered in 1956 prohibiting racial discrimination in the operation of the schools. The Negro plaintiffs objected on the ground that both the school attendance zones and the transfer rule were based on race. The court overruled the objections and struck the case from the docket.[30] The fact that the school zoning antedated desegregation by 10 years did not impress the court. The constitutionality of the transfer rule, here sustained, is widely used in both Virginia and North Carolina. It has not yet been passed on by the Court of Appeals for the Fourth

[30] *Thompson* v. *County School Board of Arlington County*, 204 F. Supp. (E.D. Va. 1962), 7 *Race Rel. L. Rep.* 45 (1962).

Circuit.[40] A taxpayers suit attacking a school bond issue to build a large addition to one of the elementary schools in the Hoffman-Boston area on the ground that the purpose was to perpetuate segregation has been equally unsuccessful to date.[41] A petition for *certiorari* was filed in the U.S. Supreme Court on July 17, 1962.[42]

Fairfax County

Fairfax County, like Arlington, operates under a local pupil assignment plan. Geography rather than zoning is the major criterion in Fairfax. Children are permitted to enroll either at the elementary school nearest their home, or the school nearest their home attended primarily by children of their own race. In theory, promotion operates the same way. In Fairfax, however, all pupils graduating from a school are not automatically assigned together to a school of the next higher level. Instead, each child is assigned to the next higher class at the school nearest his home. In practice, under this system, white children have been assigned to the nearest white intermediate or high school. Negro children who had been attending Negro elementary schools have been assigned to all-Negro Luther-Jackson, the combined intermediate and high school, unless they applied to attend a white school nearer their home. Until the spring of 1962, there was no formal procedure for assigning Negroes graduating from biracial schools. However, assignment of these pupils for the 1962–63 school year gave rise to a special problem.

At the end of the 1961–62 year, all the Negroes graduating from desegregated elementary and intermediate schools were assigned to Luther-Jackson. Parents of these children protested to the school superintendent. They were informed that these assignments had resulted from their failure to make timely application for their children to attend desegregated schools at the next level. On appeal to the school board, the parents were informed their children would be reassigned to biracial schools. A majority of the board expressed the view that they had thought this procedure would be automatic and that it would be automatic in the future. Local board action seems to have solved this problem.

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[40] The Sixth Circuit has repeatedly upheld the rule and the Fifth Circuit condemned it. [*Editor's note:* After the Virginia report was submitted the Fourth Circuit Court of Appeals held a minority transfer provision invalid because its purpose and effect was to perpetuate segregation. *Allen* v. *School Board of City of Charlottesville,* Civ. No. 8638, 4th Cir., Sept. 17, 1962.]

[41] *Alexander* v. *County Board of Arlington County,* Law No. 8440, Circuit Court of Arlington County, Va., Mar. 6, 1962. Va. Supreme Court of Appeals, Apr. 18, 1962.

[42] Docket No. 258, 31 U.S. L. Wk. 3065.

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What may prove to be the biggest advance in Virginia school desegregation took place in the late spring in Fairfax. The board unanimously approved the applications of 102 Negroes to attend white schools nearer their homes than the Negro school. At the same time it rejected 21 others, 3 of whom actually lived closer to white schools. Eighteen others lived closer to Negro schools. On appeal, all 21 were approved by the board. On behalf of the 18 it was argued that white children living closer to Negro schools had always been permitted to attend more distant white schools; not to permit Negroes the same opportunity would be discriminatory. This argument apparently led to the board's action, which for the first time permitted Negroes to enter white schools even though Negro schools were actually closer to their homes. Under this rule (in essence the rule of the Delaware case of *Evans* v. *Buchanan* [43]) the board is now a short step from abolishing the dual school system. In the meantime, in Fairfax County, the white schools are wide open to the Negro, although he must seek transfer.

Falls Church

Falls Church is unique among northern Virginia communities in that it operates no Negro schools. Under an informal contractual arrangement, Fairfax County accepts the city's Negro students as tuition students. Under this arrangement the city pays the entire cost; it receives no aid for this under the State tuition-grant program.

Falls Church has exercised the local option of assigning its own students. The school board has delegated this duty to the school superintendent who makes his assignments in accordance with the criteria set up by the State Board of Education, as provided by the State law.

There is one junior-senior high school, serving all of Falls Church, and three elementary schools, serving separate districts within the city. The criterion for placement of the Negro children, identical with the placement of whites, is residence in the area served by a particular school. The residential distribution of Negroes is such that if all the Negro children attended the city's schools all Falls Church schools would be desegregated.

School authorities have expressed a readiness to accept all the Negro pupils into the Falls Church schools. The $10,000 paid Fairfax County for tuition would then be saved. These local officials, however, feel that the Negro children should have the option of attending

[43] 195 F. Supp. 321 (D. Del. 1961), 6 *Race Rel. L. Rep.* 685 (1961).

Negro schools in Fairfax if they prefer to attend a Negro school, and intend to continue financial support of this arrangement until the Negroes choose to attend local schools.

Alexandria

Alexandria operates under the State pupil placement board. It is the only school district in northern Virginia that does. Alexandria does not use a system of attendance zones, but relies instead on distance from schools in making pupil placement recommendations. The result is that each child is assigned to the school nearest his home, with the exception that no child is required to attend a school where his race is in a minority.

In practice, race intrudes at the elementary level to this extent: If a white child presents himself at the white school nearest his home, he is accepted and enrolled. If a Negro child presents himself at the school nearest his home, he is accepted and enrolled, if it is an all-Negro school; but if it is a white school, the Negro is told he will be informed later whether he has been accepted. Similarly, on promotion to the high school level, white children are assigned to white high schools, Negro children enrolled in Negro schools are assigned to all-Negro Parker-Gray High School. To get out of a Negro school, the Negro pupil must apply for transfer.

However, virtually all applications of Negroes for admission to white elementary and high schools, where these schools have been the closer to the applicants' homes than the Negro school, have been recommended for approval by local officials. These recommendations have been followed by the State pupil placement board as a matter of routine. So far there have been relatively few applications. On February 13, 1962, Judge Oren Lewis dismissed *Jones* v. *School Board of Alexandria*, stating there were no issues remaining to be settled.[44] However, the permanent injunction issued by Judge Byran on January 23, 1959, barring the Alexandria School Board from refusing admission of Negroes to schools on the basis of race, remains in effect.[45]

There are two military installations in northern Virginia where dependents of military personnel reside on base; Fort Myer in Arlington County and Fort Belvoir in Fairfax County. Both operate a non-segregated on-base elementary school; Fort Myer a kindergarten through 6th grade school and Fort Belvoir a kindergarten through 7th grade school. Upon graduation these pupils are assigned to public schools in the respective counties by local school officials.

[44] Civ. No. 7895, E.D. Va.

[45] *Jones* v. *School Board of Alexandria*, Civ. No. 1770, E.D. Va., Feb. 6. 1959. 4 *Race Rel. L. Rep.* 29 (1959), *aff'd.*, 278 F. 2d 72 (4th Cir. 1960).

Prior to the 1960–61 school year all assignments of children of military personnel were made by race in both counties. For the 1960–61 school year Arlington County school officials gave Negro dependents of military personnel the option of attending the all-Negro school or all-white schools serving the area in which Fort Myer is located, to which white dependents were assigned. Fairfax County has not announced such a rule, but it has been reported that the school board would react favorably to applications by Negro students residing at Fort Belvoir for reassignment to the appropriate white schools for the 1962–63 school year.

There is a strong feeling in all four communities that the tuition-grant program is both expensive and unnecessary. On March 24, 1962, the Arlington County Board of Supervisors refused by a vote of 3–2 to appropriate additional money for the payment of tuition grants. The board previously had allotted $50,000 for this purpose, but was informed that an additional $30,000 would be required. All members of the board expressed disapproval of the State program. However, the two members voting for the appropriation said that nothing was to be gained by opposition, since under State law a locality not paying its share has the equivalent amount deducted from some other State appropriation to which it is entitled. The majority felt the county should go on record as opposed to the program.

In Alexandria, a special situation contributes to the community's general dissatisfaction with tuition grants. A large number of pupils receiving grants in the 1961–62 year attended Burgundy Farms, a nonsegregated, private elementary school. Some think these pupils would have attended there anyway and that the grants should not be used by parents in such a case. Segregationists were even more distressed to have tuition grants used by parents seeking a nonsegregated education for their children. In the unlikely event that Virginia puts its tuition-grant program on a local-option basis, northern Virginia might well discontinue the program.

Virginia communities are granted the option of enacting compulsory school attendance laws.[46] As of June 1962, 57 of Virginia's local governing bodies, on recommendations from their school boards, had exercised this option. All four northern Virginia communities now have adopted a local compulsory school attendance law.

NEGRO EDUCATION

In northern Virginia, the inferiority of the all-Negro school is not seen in its physical plant and facilities, which compare favorably

[46] *Supra*, note 21.

to white schools. Such slight disparity as exists is due to the fact that white PTA groups tend to buy additional school equipment—for example, television sets, library books, and athletic equipment—for the white schools, and Negro PTA's do this, if at all, on a much smaller scale.

The Negro teachers have more formal education than the white, but most of it has been received in segregated institutions. Often culturally deprived themselves, these teachers have little cultural breadth to impart to their students. In northern Virginia, the Negro teachers have more contact with white teachers, as well as with whites generally, than Negro teachers in other parts of the State.[47]

It is difficult to measure the academic achievement of Negroes in biracial schools. Apparently none of the four communities keeps school statistics by race. The Negro students have been received well by their white classmates and teachers. However, all Negro students interviewed report they are having to study harder than they did in Negro schools. This suggests that they may be ill-prepared, which would not be surprising in view of the wide gap in academic achievement of white and Negro pupils in the same grade. The existence of this gap is readily conceded by Negroes in northern Virginia.

Many Negro students stay in school only as long as they must. In Arlington, for example, the average Negro completes 8 or 9 years of school, while the average white finishes a year or more of college. Also, Negro children are too often without motivation, coming as they do from homes where there is no place to study, and where both parents work, usually as domestics or laborers. In contrast, the white children come from upper middle class homes, rank above national averages in achievement and are unusually well motivated.

Conscious of this disparity in background and preparation, the Fairfax Council on Human Relations has instituted a regular tutoring program for Negro children attending desegregated schools. After first report cards are issued, Negro families with children in biracial schools are canvassed by the council to ask if their children need help. If so, they are offered tutoring an hour or two each Saturday at a local Negro church. Efforts are being made to expand the council's tutoring program. Despite the need for such efforts, no similar programs seem to be in operation elsewhere in Virginia.

The Negroes themselves have recognized the achievement gap exists, but the only obvious reaction among most Negroes is reluctance to transfer to white schools. The question is raised as to whether Ne-

[47] In the spring of 1961 the all-white Arlington Education Association voted to admit Negro teachers, the first action in Virginia directed at ending segregation in teacher organizations. The directors of the Virginia Educational Association, the parent organization, promptly voted to expel the Arlington branch. However, at its annual meeting in November, the VEA adopted a motion to study a proposal to permit local chapters to decide whether to admit Negro teachers.

groes really obtain a better education in desegregated schools where they must compete with better prepared, highly motivated white students. Frustration and failure engulf the ill-prepared Negro pupils. An all-Negro high school, such as Arlington's Hoffman-Boston, which has a favorable pupil-teacher ratio, offers compensating values of personal attention for some pupils. With these difficult educational questions in mind, Negro teachers have neither been encouraging nor discouraging Negro pupils to transfer to white schools.

In Alexandria, Fairfax, and Falls Church, all school-sponsored activities are open to Negroes enrolled in the desegregated schools, including interscholastic athletics and school dances. However, attendance at dances has been expressly limited to students enrolled at the particular school. Thus, a Negro girl's escort must be enrolled at her school to attend the dance there. Given the limited number of Negroes in each desegregated school, this works to exclude Negroes from school social affairs. When specifically requested to do so, school officials have made exceptions to this rule.

Arlington schools no longer conduct dances and socials, but desegregated dances sponsored by community organizations are permitted in school buildings. As of April 1961, Negroes were barred from athletics in accordance with the Arlington School Board's announced position that desegregated athletics were against State policy. It seems the board has retreated from this position, although there has been no public statement to this effect.[48]

SPECIAL PROBLEMS

Northern Virginia faces two special situations that tend to set it apart from the rest of Virginia. One is legal; the other, nonlegal. The nonlegal situation is the growing scarcity of Negro housing in the area, and the effect this scarcity has had on Negro population trends. Alexandria's experience can be taken as a good example of what is happening. Negroes, in recent years, have been moving from rural areas in the State into the cities. What hope the Negro has for better employment opportunities, education, and housing seems to lie in urban centers. Counter to this general pattern, Alexandria's Negro population has been decreasing relative to the white.

Whether consciously or not, the city has been driving out its middle and upper class Negroes through its failure to provide them suitable housing. The Negroes who have been leaving usually possessed a

[48] Several outstanding Negro athletes are presently on junior high school teams, which compete only with other junior high school teams within the county. The school board will be faced with the first real test of its athletic policy when these children are promoted to desegregated high schools, whose teams participate in interscholastic competition out of the county.

better education, higher aspirations, and greater employment potential than those who remained. Thus, Alexandria has been steadily depriving itself of the Negro element best qualified to contribute to the city's welfare. The city also seems bent on aggravating this situation with its plans for urban renewal and redevelopment. Areas purchased or condemned by a city usually displace more Negroes than whites. As this occurs in Alexandria, the Negroes displaced relocate elsewhere.

The movement of northern Virginia Negroes is related to the problem of school desegregation. First, Negro teachers with the financial ability to secure better housing than is now available prefer to live in neighboring Virginia areas or Washington, D.C. Since the community is no longer their home, this lessens their feeling for it, its schools, and its problems. Second, and more serious, is that the better type of Negro family is leaving. This drains the community of its better motivated Negro children with higher scholastic aptitudes. This exodus must widen even more the existing Negro-white educational gap, making the northern Virginia school desegregation problems even more difficult.

In three of the four northern Virginia communities segregated schools remain. In them are many Negroes who could profit from desegregated education. Present zoning arrangements (Arlington) and segregated residential patterns (Alexandria) plus local assignment plans stressing residence prevent these Negroes from ever receiving such an education. Perhaps, when State law has created segregated residential and school zones, local school officials have not performed their full constitutional duty by merely instituting an assignment plan based on geography. These Negro citizens may still want this legal question answered. Judge Lewis may have been premature in striking these cases from the docket.

CONCLUSION

Recent events in northern Virginia are cause for optimism in regard to achieving equal protection in public education. In two of the four communities, it appears that any Negro who wishes may now attend a desegregated school. Falls Church has only to admit a handful of Negro children to competely desegregate its school system, and appears ready to accept them. Fairfax County, where Negroes are being admitted to the white schools nearest their homes, has moved Virginia a big step toward eliminating discrimination in its public schools. Every sign indicates that the communities in northern Virginia will be the first in the State to reach compliance with the mandate in the *School Segregation Cases.*

Summary

In reviewing equal protection in Virginia public schools, two things stand out. First, the the pace of desegregation has been slow, laying Virginia open to the charge of "tokenism." Very few Negroes are receiving a biracial education in Virginia. The prognosis for September 1962, shown in appendix B, is less than 10 percent. Second, Negro education in Negro schools is not equal to the education provided whites, either in tangible aspects or, more importantly, in intangibles. Officially, very little is being done to improve the quality of this education. At present the educational opportunity of white and Negro children in the State is not comparable.

THE PACE OF DESEGREGATION

In the 1961–62 school year, the total number of Negroes attending biracial schools was 533. (See app. A.) In the coming year, this total is expected to increase by several hundred. Since Virginia has a Negro school population of over 217,000, this is clearly token desegregation. Many Virginians have deceived themselves into thinking that a handful of Negro pupils attending white schools satisfies the mandate of the *School Segregation Cases*. It is hard for them to appreciate that not some, but every, Negro student must be given the opportunity to attend school on an equal footing with white pupils similarly situated. In no school district in Virginia, with the exception of Falls Church and, hopefully, Fairfax County, does such a situation exist.

The tool used in Virginia to deny equal opportunity is "residence." Under every placement procedure—State board, local option, or court-approved plan—residence is the instrument which withholds the opportunity to attend white schools in a particular community from the majority of its Negro pupils. The State pupil placement board denies Negro transfer applications whenever the applicant's home is nearer a Negro school than a white one. In Alexandria and Norfolk the operation is substantially the same. Arlington, Charlottesville, Richmond, and Warren County accomplish the same result by school dis-

tricting. In these four communities, Negroes are locked into their Negro schools, transfers out of zone being permitted normally only to students who find themselves in a minority at the school of their zone of residence. At the same time, white students living in the zone of a Negro school can transfer out under the predominant-race rule not yet passed upon by the Court of Appeals for the Fourth Circuit.

The element of discrimination which runs through all these procedures is that white children in every Virginia community have the opportunity to attend the nearest white school *whether or not* it is the nearest school to their home. At best, Negro children have the opportunity to attend a white school *only* if it is the school nearest their home. Typically, under these arrangements white children may pass Negro schools on the way to white schools. However, though Negro children in some areas may be permitted to attend white schools, no system or plan permits Negroes to attend a white school if a Negro school is closer.

Falls Church, with no Negro schools and virtually no Negro schoolchildren, is the clear exception. Falls Church stands ready to admit any Negro pupil living in the city to one of its white schools. The recent action of the Fairfax County School Board may make this county another exception. By accepting the argument that a Negro child should be entitled to bypass a Negro school to attend the nearest white school if a white child can do this, the school board has moved Fairfax closer to desegregation. If the board should continue this practice, every Negro child in Fairfax will have the opportunity to attend a white school, while not being required to do so.

Virginia is fearful of adopting this Fairfax position. It fears engulfment. However, on the experience of two communities who have given Negroes a measure of free choice in selecting the schools they attend, the fear seems unfounded. In Charlottesville, where Negro high school students have been permitted a free choice of going to either the local white or the Negro school, only 33 out of about 300 of the city's Negro pupils have elected to go to the white high school. In Warren County, only 24 Negroes attended the white high school in February 1959. It is estimated that in the fall of 1962 this number will have dropped to 15. It should be noted that under Warren County's court-approved plan many more Negroes could freely enroll there. There seems to be no rush by Negroes to enter white schools, whatever the reason.

NEGRO EDUCATION IN NEGRO SCHOOLS

Throughout this report, stress has been placed on the failure of Virginia school officials to narrow the gap between white and Negro levels

of academic achievement. Certainly, the solution to this difficulty does not lie entirely, nor even primarily, in the hands of educators. Nonetheless, much can and should be done by the school authorities to improve the quality of education provided in the Negro schools. Unfortunately, not only the tangible factors (buildings and equipment) but also the intangible factors (curriculum, teaching methods, and the teachers themselves) in the Negro schools are inferior. In comparison to white schools, they usually offer a smaller list of courses and cover less material in their classes. Teaching methods are old fashioned, with emphasis normally placed on developing the memory, rather than the reasoning power, of the pupil. Also, the assigning of homework is not a typical practice in Negro schools. In short, the educational standards and goals are lower than those prevailing in white schools. Teachers' expectations of what the pupils can achieve are lower.

It is said that most Negro pupils, being less talented, cannot move at the faster pace sustained in the white schools. The simple answer to this suggestion is that low-aptitude white pupils who attend white schools receive more homework, better instruction, and must move at the characteristically faster pace in the white schools despite their lack of talent. It is also frequently said that the Negro teachers, parents, and pupils are the appropriate persons to accept the responsibility of closing the educational gap. Anyone taking this position seems truly to have missed the point. The Negro teachers are themselves products of segregated schools where these same deficiencies have always existed. They use the same methods and operate using the same standards as their former teachers. Lacking any past or present contact with white educational institutions, they cannot be expected to conduct classes up to these standards. Lacking cultural breadth, as a result of their narrow experiences, they are unable to widen the cultural vision of their pupils. Only the exceptionally talented could be expected to overcome the inherent weakness of the segregated schools they attended and become strong teachers. Some have; but the majority have not. The majority are weak teachers in spite of the number of advanced degrees and years of teaching experience they may have.

Efforts to close the gap must come from white school administrators. School superintendents must set higher standards for and exert efforts to raise the achievement levels in Negro schools. As responsible and experienced educators, it is expected that they will supervise and guide the operation of the Negro schools in their school districts with the same attention and energy they demonstrate in running their white schools. All too often in Virginia, if there are no complaints from Negro principals and teachers, school superintendents and school board members are willing to ignore what they must know are serious shortcomings in their school systems.

It seems fair to suggest that there would not be so much pressure being exerted to desegregate the public schools at this time were the Negro schools in Virginia of better quality in respect to the more vital, intangible factors in education.

THE FUTURE

Recently, the State pupil placement board has voluntarily assigned Negro applicants in increasing numbers to white schools around the State, to both schools already desegregated and those to be opened to Negroes for the first time. Thus, Virginia shows promise of continuing its slow, steady, desegregation pace. However, in a year or two, all the easier-to-desegregate communities will be operating biracial schools. Then, what remains will be school districts with hardened segregationist attitudes like Prince Edward County. In the summer of 1962, Powhatan County, a neighbor of Prince Edward, threatened to close its schools in the event the State placement board assigned a Negro to one of its white schools. This foreshadows what lies ahead for Virginia.

However, within a year or two, Virginia will have answered, or passed beyond the need to answer, two critical questions: Can a county (Prince Edward) close its public schools while the rest of the State's schools remain in operation? Is there an affirmative obligation for the State to provide public education for all its children? (It is difficult to conceive of a State with the pride of Virginia deciding to abandon public education.) Determined and wise leadership can make it unnecessary for Virginia to face either of these two questions.

With respect to equal protection in Virginia public schools, the task ahead looks formidable. But Virginia has come a long way since the fall of 1958.

APPENDIX A

Virginia Public Schools Desegregation, 1961–62

School district	Population		Public school enrollment, 1961–62				Method of pupil assignment	Tuition grants		Compulsory school attendance law
	White	Negro	White	Negro	Negroes w/whites	Biracial schools		Number	Cost	
State	[1] 3,123,003	822,426	[2] 672,674	216,096	[3] 533	75	Various	[4] 8,371	$2,060,895	None.
Charlottesville	23,830	5,561	3,398	1,244	35	2	Court-approved plan	640	109,151	None.
Norfolk	225,251	78,806	34,893	18,394	50	8	do	1,006	258,600	None.
Richmond	127,627	91,972	17,867	23,824	36	4	State pupil placement board	111	26,125	None.
Warren County	13,600	1,054	2,087	302	18	2	Court-approved plan	1,089	304,116	None.
Alexandria	80,388	10,353	12,368	2,298	45	8	State pupil placement board	155	34,997	Yes.
Arlington County	154,172	8,590	23,602	2,128	143	11	Local plan	360	84,684	Yes.
Fairfax county	260,145	13,821	63,668	2,195	95	18	do	979	232,900	Yes.
Falls church	10,011	144	1,937	26	3	2	do	41	10,212	Yes.

[1] U.S. Census, 1960.
[2] State Board of Education Bulletin, Superintendent of Public Instruction, Annual Report 1960–61.
[3] State totals, Southern School News; individual totals, local school district or Southern School News.
[4] State Department of Education.

APPENDIX B

Virginia Public Schools, Projected Desegregation as of September 1962

School district	Total enrollment [1]		Expected enrollment, Negroes in white schools, September 1962	Number of biracial schools	Date desegregated
	White	Negro			
Alexandria	13, 316	12, 279	63	8	1959
Amherst County [2]	3, 072	1, 502	9	2	1962
Arlington County	24, 983	2, 153	201	14	1959
Augusta County [2]	8, 225	444	3	1	1962
Charlottesville	3, 422	1, 250	44	2	1959
Fairfax County	61, 685	2, 299	214	34	1960
Falls Church	2, 192	26	5	3	1961
Floyd County	2, 355	132	24	1	1960
Fredericksburg [2]	1, 845	631	9	3	1962
Grayson-Galax	4, 941	240	23	1	1960
Hampton	14, 825	4, 134	2	1	1961
King George County [2]	959	578	29	2	1962
King William County	969	889	12	1	1961
Loudoun County [2]	4, 701	1, 339	4	2	1962
Lynchburg	8, 900	2, 887	15	8	Jan. 1962
Montgomery County	6, 515	361	4	1	1961
Newport News	15, 808	10, 034	35	5	1961
Norfolk	37, 026	18, 043	44	8	1959
Portsmouth [2]	13, 718	9, 845	14	4	1962
Prince William County	9, 868	919	9	3	1961
Princess Anne County [2]	16, 887	3, 486	38	2	1962
Pulaski County	6, 317	500	36	3	1960
Richmond	19, 207	23, 120	131	8	1960
Roanoke	15, 685	4, 083	91	4	1960
Shenandoah County [2]	4, 792	95	3	2	1962
Stafford County	3, 290	523	36	2	1961
Warren County	2, 699	313	15	2	1959
Winchester [2]	2, 739	344	4	1	1962
Total	325, 287	92, 449	1, 117	128	

[1] From State Board of Education Bulletin, Superintendent of Public Instruction, Annual Report 1960–61, pp. 338–45.

[2] Initial desegregation by assignment of Virginia State Pupil Placement Board or court order for September 1962.

Source of desegregation figures, Richmond (Va.) News Leader, Aug. 21, 1962, pp. 1 and 5.

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