DOCUMENT RESUME

ED 064 446 UD 012 497

TITLE	Motion for Leave to File Brief Amicus Curiae on the Merit and Brief Amicus Curiae for the Congress of Racial Equality. In the Supreme Court of the United States, October Term, 1970, Number 281, James E. Swann, et al., Petitioners vs. Charlotte-Mecklenburg Board of Education, et al., Respondents...
INSTITUTION	Supreme Court of the U. S., Washington, D.C.
PUB DATE	12 Oct 70
NOTE	54p.
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	Boards of Education; Bus Transportation; Community Schools; *Court Cases; Defacto Segregation; *Public Schools; Racial Balance; Racial Discrimination; School Districts; *School Integration; *School Segregation; School Zoning; Socioeconomic Status; Status Need; *Supreme Court Litigation
IDENTIFIERS	Alabama; Congress of Racial Equality; CORE; Mobile; Swann vs Charlotte Mecklenburg Board of Education

ABSTRACT

This document is the text of the brief for the Congress of Racial Equality (CORE) in the U.S. Supreme Court case of Swann vs. Charlotte-Mecklenburg Board of Education, October 1970. The statement of the motion to file brief is followed by the brief and argument comprising (1) the present state of the law; (2) the "root and branch" of the public school system--an analysis of the dual school system, some considerations for establishing a unitary system, and a plan to disestablish segregation in the Mobile (Alabama) schools and establish two non-discriminatory, non-racially exclusive unitary school districts; and, (3) racial dispersal should not be held to be a constitutional requirement per se--arguments made in support of a constitutional requirement of racial dispersal in the schools are fallacious, any argument that integration is a constitutional requirement suggests the legitimation of the inferior status of blacks, the results of attempts to enforce racial dispersal by law in the schools are often counter-productive, and establishing constitutional requirement of racial dispersal in the public schools would foreclose other developments in the evolution of public school education which might prove desirable from an educational point of view as well as for other reasons. Appended are two exhibits, A and B, which comprise a plan for the desegregation of Mobile County schools. (RJ)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 281

JAMES E. SWANN, et al.,
Petitioners.

VS.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, et al.,
Respondents.

(Including Consolidated Cases)

On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON THE MERIT AND BRIEF AMICUS CURIAE FOR THE CONGRESS OF RACIAL EQUALITY

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MOTION OF THE CONGRESS OF RACIAL EQUALITY FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON THE MERITS

The Congress of Racial Equality respectfully applies to this Court for leave to file a brief as an amicus curiae in the above-entitled action pursuant to the provisions of paragraph 3, of Rule 42 of this Court's rules on the following grounds:

1. Consent to the applicant's filing of a brief amicus has not been received from either the petitioners or the respondents as of the filing date.

2. The Congress of Racial Equality is a non-partisan, nationwide organization of American citizens of various backgrounds, professions and occupations, having member chapters in various states. All CORE

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members are dedicated to the principle of racial equality and religious and political freedom. CCRE was first organized in 1942 in Chicago, Illinois, and is dedicated to the principles of non-violent techniques. The purpose of the organization is to aid in furthering and effectuating the constitutional guarantees as to personal and group political liberties.

The national policy is set by CORE's national convention. The National Action Council carries out planning and decides questions of policy that arise between conventions, with the assistance from a National Advisory Committee. In addition to other constitutional techniques, CORE seeks to advance its objectives by participation as an amicus curiae in litigation involving its proposal for the establishment of community school districts.

3. CORE has a history of involvement in school cases throughout the country, South and North. No. 944, Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970), Norwalk CORE v. Norwalk Board of Education, 423 F. 2d 121 (1970), etc., and tangentially in Birdie Mae Davis, et al. v. Board of School Commissioners of Mobile County, et al.

In Mobile, Alabama, CORE, along with its local affiliate, Step Toward Educational Progress, Inc. (S.T.E.P.), introduced to the school board of Mobile County an innovative desegregation plan. It is believed that this plan can meet with a broader spectrum of agreement among citizens of Mobile, in the Black and White communities, than any other desegregation plan offered or suggested by the petitioners or respondents in this case. Before this thesis could be tested by

referendum or by lower court action, the Mobile school case, Birdie Mae Davis, et al. v. Board, supra, was called up by this Court.

In Norwalk CORE v. Norwalk Board of Education, supra., CORE contended that the school board's desegregation plan was unconstitutional because certain benefits are derived from a school in one's neighborhood and an integration plan that closed Black schools and not White ones discriminates invidiously against the Black community in the distribution of those benefits; and there are certain burdens involved in busing school children and any plan that causes Blacks to "bus" and not Whites discriminates invidiously and unnecessarily against the Black community in the distribution of those burdens.

The NAACP opposed the CORE contentions, but was denied entrance as an intervenor in this case because the Court held that their position was substantially the same as the school board's (the defendant).

4. Reason for submission of brief

Petitioner's brief has not been received. Movant's National Council has spent a substantial amount of time in studying available documents in the instant case, as well as relevant authorities, including social science data, etc. On the basis of such studies and conversations between counsel for several of the companion cases, the movant has reason to believe that some questions of law of relevance to the issue herein will not be fully covered in either the respondent's or the petitioner's brief.

CORE believes that, in addition to precedents in the desegregation cases, there are fundamental alternatives available for consideration by the Court. In recent years CORE, through its National

Advisory Committee and local chapters, has observed the public school systems in the North and the South at first hand. These observations, in addition to discussions with parents, teachers, school administrators, community leaders and others substantiate CORE's belief that a community school district structured along natural, geographic lines is the best possible way of destroying segregation and insuring equal education for children, irrespective of race or religion.

CORE has prepared "A True Alternative to Segregation, A Proposal for Community School Districts: A Preliminary Proposal," dated February 1970 (Exhibit A attached) which states inter alia:

> School segregation is a system designed and structured to serve the needs of Whites at the expense of Black pupils. When normal standards of educational excellence are applied to Black schools under segregation, it becomes clear that they are inferior to White schools.

CORE's 1970 national convention, held in Mobile, Alabama, September 3-7, passed resolutions expressing fear of the emergence of a unique type of segregation growing out of the attempts of local school boards to comply with desegregation orders, whether in "good faith" or not. This phenomenon, de facto segregation in actuality, has been occurring whether by conscious or unconscious design. The CORE resolutions observed that integration plans as presently designed and implemented have not worked to satisfy the end ordered by this Court to satisfy the constitutional requirement of equality. This is also true of plans designed by the Department of Health, Education and Welfare and approved by the lower courts. The atmosphere of crisis being created by these integration plans, many of which we view as de facto segregation plans, are creating conditions destructive to the

learning process of both Black and White children.

CORE accordingly believes that there are alternatives to simple school integration in many districts and that the alternatives in many communities may be more desirable under Brown in opposition to the reasons given by the respondent. These alternatives are worthy of this Court's consideration.

It has not been feasible to present the instant motion at an earlier date due to the necessity for first determining respondent's proposed arguments.

It is respectfully requested on the above grounds that this application for leave to file a brief as amicus curiae be granted.

Respectfully submitted

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CONGRESS OF RACIAL EQUALITY

October 12, 1970

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BRIEF FOR THE CONGRESS OF RACIAL EQUALITY (CORE) AS AMICUS CURIAE

The Congress of Racial Equality (hereinafter referred to as CORE) is a national organization working for the eradication of every vestige of racial discrimination in American life. It was founded for this purpose twenty-eight years ago when James Farmer and a small group of fellow Americans sought to apply Ghandian principles to the American racial situation.

The first action of this dedicated band of idealists took the form of a sit-in at a lunch counter in Chicago. The success of this action encouraged similar action in other areas, and CORE was soon on its way to becoming the major organization that it is today.

CORE is a federation of chapters in cities throughout the country. Chapters undertake local projects as well as participate in projects on the national level. National policy is set by the national convention. The National Action Council carries out planning and sets policy between conventions, with the assistance of a National Advisory Committee.

During its early period, CORE's direct action techniques were based on the concept that moral suasion alone could achieve the desired goal of the organization. The sit-in and the picket line thus became its hallmark, and its members became known for their courage, their tough idealism, and their willingness to undertake any project in the interest of justice no matter what the risks to their persons.

The direct action strategy was used in any and all areas where discrimination was to be found, but it was in the area of public accommodation that the organization was most spectacularly successful. Participants in the famous Greensboro sit-ins which set the stage for similar sit-ins throughout the South and parts of the North, were trained by CORE workers. The Freedom Rides of the early 1960's gained worldwide recognition for the organization and firmly established it as one of the leaders in the fight for equality in America.

The dramatic sit-ins and Freedom Rides organized and conducted by CORE had tangible results in civil rights legislation, in desegregating public facilities, and in opening up jobs in many areas.

A reassessment of its programs and strategies in the mid-1960's indicated to the organization that it had been consistently and decidedly rebuffed in its assaults on discrimination in housing and

education. It became apparent that new strategies would have to be devised to deal with the entrenched nature of discrimination and racism in those areas.

Aside from its obvious importance in the quest for equality, education was seen as the area to which new strategies could most feasibly and profitably be applied. The organization has therefore concentrated a major portion of its resources in the field of education over the past number of years. Its concern and its programs in this area as well as its long support for Brown v. Board of Education are a matter of public record. CORE has fully supported the mandate of Brown, as evidenced by its involvement in various court cases. Its deep involvement in Carter v. West Feliciana Parish Board of Education, for example, is an indication of how far back and how deep its involvement in education has been. (Carter was a case for disestablishment of segregation by means of integration.) CORE has never been dogmatic about the means of obtaining its goal of equality for all Americans.

In Norwalk CORE v. Norwalk Board of Education, 423 F. 2d 121 (1970), CORE argued against an integration plan, stating that there are certain benefits to the neighborhood schools, and it therefore opposed the closing of the Black neighborhood school, in the interest of integration, because it placed the burden of integration on Black children while White children retained whatever benefits accrued from the neighborhood school. Moreover, the busing of children to facilitate integration placed the entire burden of busing on Black children.

CORE's experience and periodic reassessment of its methods of achieving its goals have caused it to question if in fact integration

in every case is the most practicable or most desirable means of obtaining equal education for Black Americans. Field experiences and each successive court case in which it has been involved as either amicus curiae or as plaintiff cast doubts as to the universal workability of integration as a pathway to equality.

CORE's present involvement in Mobile, Alabama, centers on attempts to bring about desegregation by the creation of two unitary school districts.[1] One large community which happens to be predominantly Black would constitute a school district; the other district would be predominantly White. CORE plans to file a court case in Mobile were interrupted by the consolidation of five school cases by this Court. Our efforts were then concentrated on filing this amicus curiae.

CORE strongly believes that there are alternatives to school integration in many districts and that these alternatives are legal and viable. Neither of the litigants nor the Government represents the point of view of a significant segment of the Black community, which we feel deserves the hearing and the consideration of this Court. It is for that reason we file this amicus curiae.

BRIEF AND ARGUMENT

1. PRESENT STATE OF THE LAW AND QUESTIONS

In the field of public education, the opinions of the Supreme Court over the last seventy years manifest the Court's concern with the fundamental question of the means of delivering to all Americans the constitutionally guaranteed end of equal protection under the law.

In Plessy v. Ferguson, 163 U.S. 537 (1896), the Court ruled that

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[1] See Exhibits A and B.

segregated, but equal facilities were a valid means by which the constitutional end--equal protection--could be fulfilled.

For fifty-eight years the means affirmed by Plessy dominated court rulings throughout the land. In rejecting this doctrine in Brown I, this Court ruled that legally imposed separation is unconstitutional, and condemned Plessy as an unacceptable means of delivering to Black Americans the end of equal protection.

In Brown II, this Court ordered the disestablishment of segregation--legally enforced separation--and stated that local authorities have the affirmative duty to employ other means of complying with the constitutional requirement.

The post-Brown opinions of this Court in the main dealt with the resistance of local authorities to its order to disestablish "root and branch" the pattern of segregation. The Court's rulings manifest increasing impatience with the lack of "good faith" displayed by local authorities and with their resistance to such means as will guarantee the end required by the Constitution.

Fifteen years after Brown, Court rulings permit no further delays. "The obligation of every school district [emphasis added] is to terminate dual school systems at once and to operate now and hereafter only unitary schools." Griffin v. School Board, 377 U.S. 218, 234 (1964); Green v. County School Board of New Kent County, 391 U.S. 430, 438-439, 442 (1968); Alexander v. Holmes County Board, 396 U.S. 19 (1969).

Since Brown rejected the means affirmed by Plessy, the order of the day may be said to be the identification and implementation of

such alternative means as would most "effectively" and at the "earliest practicable date" lead to the ends required by the Constitution--one non-discriminatory, unitary school system within each and every school district.

On March 9, 1970, in Northcross v. Board of Education of Memphis, 397 U.S. 232 (1970), noting that "other issues may emerge" [emphasis added] Chief Justice Burger posed the issue of means clearly when he asked for further argument to resolve several questions:

> Whether as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; and to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court.

We respectfully suggest that inherent in the Chief Justice's first question is a three-part question, namely:

(a) Is the constitutional mandate to disestablish school segregation a mandate to establish school integration?

(b) If the answer to (a) is no: Is racial dispersal a possible legal means of fulfilling the constitutional mandate?

(c) And assuming the answer to (b) is yes: When and/or where integration is the most "effective" means and the means that can be achieved at the "earliest practicable date," is integration then mandated to fulfill the ends required by the Constitution?

We further suggest that the following two-part question is inherent in the second question posed by the Chief Justice:

(a) May or must local school attendance areas and other local school administrative units be altered to achieve constitutionally mandated ends?

(b) May or must state school districts be altered to achieve constitutional ends?

We respectfully submit that this Court has established that what the Constitution does mandate is equality under the law (Brown, Green, Alexander). And further, that the Constitution does not mandate specific means, per se, to attain that end (Green). The only means the Constitution has proscribed is segregation (Brown I). In general, where and/or when a means is the most "effective" pathway and the one that can attain the constitutionally required end at the "earliest practicable date," then that means is mandated; and specifically, where and/or when integration (racial dispersal) satisfies these criteria, it is mandated, and not otherwise.

In the past this Court has ordered the federal courts to intervene directly to bring about constitutionally required ends where and when state or local officials have displayed non-compliance or lack of good faith.

When and where within an existing district a significantly large group of citizens is denied their right to equal protection under the law and where the alteration of school district lines is the most "effective" pathway toward achieving the constitutional requirement at the "earliest practicable date," in order to grant them those ends guaranteed by the Constitution--the right to attend a non-discriminatory, unitary school system--alteration of district lines should be mandated.

Fifteen years ago, this Court suggested the "revision of school districts and attendance areas" to facilitate constitutionally mandated ends (Brown II).

2. THE "ROOT AND BRANCH" OF THE PUBLIC SCHOOL SYSTEM

(a) An analysis of the dual (segregated) school system

This brief strongly supports the judicial holding that there must be a unitary school system within every school district (Alexander). We respectfully suggest that it would aid the resolution of the problem confronting the Court in Brown and still confronting it today to define the "unitary and dual systems" in the context of the true nature of the public educational establishment.

A dual school system may be defined as the case where, overtly or covertly, in one state school district one board of education maintains control of two school systems with racial exclusivity.

The Court has correctly declared that a unitary system is the antithesis of a dual school system:

> Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. Alexander, supra.

The dual (segregated) system must be viewed not simply in terms of spatial relationships, but primarily in light of existing socio-econo-political dynamics.

The problem is not simply that Blacks and Whites attend different schools. A look at dual (segregated) school systems, whether de jure or de facto, will show that they generally have, aside from attendance

of White and Black pupils at different schools, three common characteristics which make segregation the obnoxious and unconstitutional system that it is.

The first of these is that Whites set Blacks apart, by law or in fact, without their choice or consent. This constitutes the arbitrary imposition of authority from without. The act of Whites telling Blacks what schools they can or cannot attend stigmatizes Blacks and imposes intolerable restraints on their constitutional rights.

Secondly, the local school board, usually all White or predominantly White, exercises control over both White and Black schools and favors the White schools. The school board enjoys a more intimate relationship with the White community and White parents than it does with the Black community and Black parents. It is more sensitive to their problems, their needs and aspirations than it is to those of Blacks. This deprives Black educators and pupils of much-needed support from the policy makers and managers of the schools and literally guarantees the failure of the Black school to achieve excellence in education. A positive relationship between parents and those who govern the school is one of the most important factors affecting the quality of schools. Under segregation, Black parents have not enjoyed that kind of relationship.

Finally, the local school board systematically deprives Black schools of resources. The money allotted by law to each and every school district when received by the local board is directed as the local board sees fit. Traditionally, part of the money intended for Black schools has been directed by the local board to White schools.

In short, it is the local school board, the dispenser and regulator of money, rewards, good will, and other benefits--"tangible" and "intangible"--which makes Black schools inferior. Under segregation, Blacks have been locked into a system over which they exercise no control, for which they have no responsibility and for which they are powerless to effect meaningful change.

When segregation is placed in its proper context and defined in terms of who manages and controls the schools, it becomes apparent that the chief characteristic of a segregated school system--the imposition of oppressive outside authority--makes de facto dual systems in one district no less unconstitutional than formerly de jure dual systems in that district.

Now, if we ponder the question, what is the full structure and true nature of the educational establishment; i.e., what is a school district, what is a school system, what is a school board, and what are the components of them; i.e., what is the faculty, what is the student body, what is the physical structure? And if we ask: What is the dynamic relationship between them; e.g., how do they function together to guarantee the constitutional end of equality, then should not a test of equality be applied to that establishment, to part and whole, to root and branch?

In light of this construct, how should different "communities of educational interest" satisfy their legitimate educational needs? Should that process be subject to equal protection? Does not this construct bear implications as to what constitutes a non-discriminatory, non-exclusionary unitary school system? Does this not suggest the need

for a fundamental restructuring, not of the "branches"--the Black schools, but of the "root"--the districts and the school boards, which represent the needs of the majority "community of educational interest."

Is it not then reasonable to suggest that the surest measure of how much Blacks can trust any school system to give their children an education equal to that of Whites is how much actual--not illusionary--opportunity to effect change and elicit responsiveness from that system exists. Does this not suggest that whatever is proposed to replace segregation must be measured also in terms of how much control is held by the Black community itself. This is a necessary guide to determining the potential success of any proposed new means.

(b) Some considerations for establishing a unitary system

The following is a minimal definition of a unitary school system:

> A state school district in which one board of education maintains and controls one school system, that does not discriminate racially and is not racially exclusive (Brown, Green, Alexander).

As this Court is well aware, too many school districts which have complied "on paper" with desegregation orders don't afford Blacks even a semblance of equal protection. In some cases this is so as a result of bad faith on the part of local authorities. (See Appendix A, pp. 5-6.) We would submit that in other cases all the good faith on God's earth would still result in injury to Blacks. The latter case may involve the attempts to establish a version of a unitary plan which doesn't take account of several realities.

Viewed from the previous analyses of the dual school system other considerations must be examined in establishing unitary systems if we

are to be offered equal protection under the Fourteenth Amendment:

1. The fact that Blacks are a valid special-interest group with needs that are unique.
2. The fact that wherever there exists a sizeable Black community Blacks constitute a "community of educational interest."
3. The fact that Black communities are increasingly and ever more clearly demanding the opportunity to fulfill their educational interests and not have them always subordinated to the White "community of educational interest."
4. The fact that equal education implies more than just sharing equal physical space with Whites in the same classroom, with the same teacher, or sharing the same principal. Equal education further implies opportunity equal to Whites to structure curriculum, to equal access to all available resources, and to equal access to and equal representation among school policy makers and managers.
5. The fact that an integrated setting can be as potentially damaging psychologically as a segregated setting. To assume that integration cures all the evils of segregation does not take into account the essentially racist character of American society which the National Advisory Commission on Civil Disorders affirmed.

(c) A plan to disestablish segregation in the Mobile schools, Root and Branch, and to establish two non-discriminatory, non-racially exclusive unitary school districts

Mobile County, Alabama, is a relatively large southern urban-rural

area, not unlike Charlotte, N. C., with a population of over 300,000 people in a Black/White ratio of 40/60 percent. The school district, whose boundary is coterminous with the county's, has a public school population of approximately 70,000 Black and White students in a 40/60 percent ratio. Two non-gerrymandered communities--natural sociological units--one Black and one White, but not exclusively so, can be easily discerned.

To desegregate the Mobile County dual school system, we propose that: The Mobile County school district be restructured (reapportioned) along natural community lines; so that each "community of educational interest" would constitute a bona fide state school district; so that where one state school district formerly existed there would be two state school districts, equal in rights, privileges, duties, obligations, authority, and power to each other and to any other district in the State of Alabama. That this should be initiated by the petitioning "community of educational interest" when it has been discriminated against invidiously. That this should be done when it has been determined, by petition and/or referendum, that this is the desired option (means) for that "community of educational interest" to satisfy and guarantee its constitutional rights in the field of education. That any student who wishes to pursue educational aims in the other (old) district be allowed to do so, and vice versa. That each of the districts (new and old) operate a unitary, non-racially exclusive, non-discriminatory school system. That the managing board (board of education) of the new district be elected by its residents.[1]

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[1] See Exhibits A and B.

3. RACIAL DISPERSAL SHOULD NOT BE HELD TO BE A CONSTITUTIONAL REQUIREMENT PER SE.

(a) Arguments made in support of a constitutional requirement of racial dispersal in the schools are fallacious.

Distinction between what is required by the Constitution and desirable as a matter of policy must be maintained. What is unconstitutional is not the clustering together of people, whether voluntarily or as a result of the workings of impersonal social factors, but the forced separation of people by the state along racial, or even ethnic or religious lines, or invidious discriminations imposed upon people by the state on the basis of differences in their social, economic, and political conditions.

Another contention that is made in support of the proposition that the Constitution requires racial dispersal begins with the remark by this Court in Brown that racial segregation in the schools results in inherently unequal educational opportunities. This statement, it is said, has been subsequently substantiated by the Coleman Report, which shows an inequality in educational opportunities whenever there is forced racial separation in the schools, whether the separation is imposed by law as segregation or not.

But the remark of the Court in Brown must be understood in context. The Court found legally segregated education to be inherently unequal, because it imposed a stigma, and because in dual school systems which results from it, the Black part of the system was, overtly or covertly, but always systematically, short-changed. As for the Coleman Report, its data show a measurable, if not a very substantial, improvement in the education of Black children in "integrated" as opposed to forced

racially separated (segregated) situations. But whether what was measured was a difference between the education of Black children in one and the other situation, or a difference between the learning capacity of middle-class as opposed to lower-class Black children in a particular kind of learning experience is uncertain. (See Bowles and Levin.) If the latter, then the Coleman data are irrelevant on the issue of whether racial dispersal (integration) is required by the Constitution. Moreover, even if relevant, the Coleman data, on Dr. Coleman's own interpretation of them, show only that Black lower-class children integrated into a White middle-class school, and integrated into it in percentages not exceeding the neighborhood of 30 percent, show better educational results. (It is reasonable to assume that the same results would obtain if White lower-class children were to be integrated into a Black middle-class school.)

Dr. Coleman makes no claims of educational improvement for random racial dispersal, without regard to socio-economic class in the receiving school, or without regard to percentages. If a constitutional requirement were to be based on the Coleman Report, therefore, it would have to be not a requirement simply of racial dispersal, or of reflecting in each school the racial composition of a school system as a whole, which of course may run well beyond Dr. Coleman's preferred percentages, but a requirement of dispersal in the school system in stated percentages of pupils by socio-economic class as well as race. That would be an enormous undertaking to base on the somewhat slender and arguable findings of a single work of social research.

(The interpretation of the Coleman Report in terms of racial

mixing has subtle racist implications that should be carefully noted. There is no suggestion that White pupils showed improvement in the situation studied. Rather, Black pupils are the supposed beneficiaries of exposure to White pupils.)

The Coleman Report hints at an important observation: That change in a school ("community of educational interest") caused by a shift in the student population of more than 30 percent results in a decrease in the general educational performance of the students in that school. One can assume that "community of educational interest" can absorb a limited amount of change before it becomes unstable. Also, that stability of an "educational community of interest" is a factor in educational achievement. If a new look at Coleman's data and additional research can support this theory, then: What are the implications for movement toward integration as opposed to movement toward community control of schools--both non-discriminatory, non-racially exclusive--when and where there exists a choice? Is there a link between the failure of Black schools under segregation and the fact that the Black community doesn't control their schools? Shouldn't social scientists explore further Coleman's suggestion that pupils learn in proportion to their feeling of security and control over their environment?

(b) Any argument that integration is a constitutional requirement suggests the legitimation of the inferior status of Blacks.

In 1954, this Court in Brown held that segregation of schools when mandated by law created conditions which made the education obtained by Black children "inherently" unequal. The correctness of that ruling is not at issue. Clearly, the stigma which attaches when

invidious mandatory discrimination is imposed is one which creates scars which are impossible to remove. It is one thing, however, to proscribe legal segregation and its effects, and another to require racial dispersal as a constitutional command.

To argue that a school in which the vast majority of children are Black--where this condition did not arise by invidious operation of law--is by its very nature inferior, is to validate the very condition which Brown sought to remove. Such an approach suggests that only when Blacks are in the presence of Whites can they be truly equal. This approach--at the very least--implies that Black children cannot prosper educationally even if all other conditions are truly on a par with those prevailing in White schools. Of course, to be truly on par, each group would have to control its educational environment.

Voluntary separation and separation arising out of the operation of market forces are not the same thing as enforced separation. There is no evidence to the effect that an inferior education must by necessity result from the former one.

(c) The results of attempts to enforce by law racial dispersal in the schools are often counter-productive.

A constitutional rule that the dispersal of racial and socio-economic groups throughout school systems is required would, of course, not be enforced under laboratory conditions. The attempt to enforce it would have to be made, rather, under social, economic, and political conditions prevailing in the United States today, and within the established legal order in the United States today. There is ample evidence that the middle class in the United States, among whom the

dispersal of other groups would be required to take place, shies away from schools in which its children are not the dominant or even overwhelming majority; it flees schools in which lower-class Blacks constitute more than 25 or 30 percent of the student body. This is the phenomenon of resegregation which has been strikingly evident throughout the country, particularly in urban areas, most strikingly, for example, in cities like Washington, D. C., Atlanta, Baltimore, Cleveland, but evident as well in some rural areas and in medium-sized Northern cities, as for example New Haven, Connecticut.

We are not dealing here with ordinary or overt racism; racism is only one component of the phenomenon--racism is unlawful only when it is institutionalized and state-supported. We are not dealing with unlawful resistance to the law of the land, or resistance that could readily be made unlawful. We are dealing with a social fact, and with the exercise by countless people of established legal rights that this Court is not likely to deprive them of. Taking refuge from desegregation in thinly disguised so-called private schools which are in truth publicly supported has been declared unlawful, to be sure (Louisiana Financial Assistance Commission v. Poindexter, 389 U.S. 571 [1968], affirming, 275 F. Supp. 833 [E.D. La., 1967]; Brown v. South Carolina State Board of Education, 296 F. Supp. 199 [D.S.C., 1968], affirmed, 393 U.S. 222 [1968].) But the right as such to withdraw from the public schools and attend a parochial or other genuine private school is constitutionally protected. (See Pierce v. Society of Sisters, 268 U.S. 510 [1925].) And the right to change residence is surely unquestionable. The exercise of these rights is a major cause of

public school children being Black and poor in major cities and even in many smaller cities of the United States.

Paradoxically, residential separation does not create "racially isolated" schools necessarily; many attempts at integrating the schools racially creates residential separation. The argument from these facts is merely that by and large, under present conditions, the goal is unattainable and the attempt to attain it achieves the opposite result. It may be conceded that as we enlarge the geographic area over which any single attempt to attain the goal of racial dispersal is made, the possibility of success in attaining it increases. In theory, at any rate, the fleeing middle-class Whites can be pursued into the suburbs, however distant, into which they have fled. But private schools still constitute a protected refuge. For this and other reasons its success is still problematic. What is most important, transportation of children over really substantial distances would incur very high costs, not only material, but very likely in educational terms and in terms of coercively running counter to the wishes of Black parents as well as the White ones whose children would need to be transported. The upsurge of racial pride in the Black community has made Black parents increasingly reluctant to chase White middle-class parents fleeing to the suburbs. Racial dispersal in the schools under present conditions in the United States cannot be regarded as simply a desirable goal which it may cost some money to attain, but which is not seriously in competition with other goals that may as a matter of constitutional law and of public policy in general be regarded as equally desirable. The truth is that other desirable goals are

seriously competitive with the objective of racial dispersal. When this Court set the constitutional goal of abolishing legally enforced racial separation (segregation), it stated a moral imperative which in the eyes of men of good will and in light of the purposes of the Fourteenth Amendment clearly rose above all other competing considerations. Indeed, the competing considerations consisted entirely of material costs--money and inconvenience--and of offense to the prejudices of some people who insisted on treating other people invidiously. The same might be said--and even so, not as unqualifiedly--of racial dispersal if it were possible in the United States today to achieve it successfully over moderate distances, or even if it were true that White middle-class people will flee a school in which Black lower-class children constitute more than a certain percentage only because they are infected with racial prejudice. The Coleman Report seeks to demonstrate that after a certain percentage tipping point, there is a deterioration of the educational situation <u>from the point of view of White middle-class educational objectives</u>, which may not be the only legitimate ones, but which are, for Whites, assuredly legitimate. Moreover, not everyone's educational needs and aspirations are the same, and our Constitution protects the right of any given group to obtain its particular educational objectives--hence, the protected position of the parochial and other private schools. So unlike the disestablishment of legally enforced separation, integration in the schools is at best a legitimate approach competing with other legitimate approaches. In some places at some times it may be workable without serious damage to the other goals, and then we may well think

it should be tried. In most places at this time a high price must be paid in terms of the other goals. We have suggested here that for a large minority like Black people in the United States, there may be competing approaches to the goal of desegregation which may be as good or better as those of integration.

(d) Establishment of a constitutional requirement of racial dispersal in the public schools would foreclose other developments in the evolution of public school education which might prove desirable from an educational point of view as well as for other reasons.

Though the word is overused, it is fair to say that the public schools in the United States are in crisis. At any rate, they are, like so much else, in ferment, and ready for many changes and reforms.

Over the past few decades in many parts of the country, there has been structurally a movement toward consolidation, toward enlargement and centralization of school systems, rendering them less and less subject to the control of, and more and more removed from, the community and the family. But a counter trend is now also in being, toward control of schools in relatively much smaller districts by cohesive, concerned communities. Such communities must be self-defining, strictly on a voluntary basis, so that any family not wishing to form part of the community must be free to transfer its children out to other schools without having to move physically, and of course they may not be coercively formed by the state along racial, or ethnic, or even socio-economic lines. If they are to exist, they can rest only on the principle of voluntarism. But a trend toward community control of schools under the conditions mentioned is clearly visible, and in the

judgment of many qualified observers may have highly beneficial educational results, as well as broader desirable consequences by contributing to other self-reliant and constructive community activities. One aspect of this trend is represented by the voucher plan which the Office of Economic Development has launched on an experimental basis.

Establishment of a constitutional requirement of racial dispersal would foreclose any further development of the community-control idea, and of many other possibly desirable options in the reorganization and reform of public school education. To begin with, the effort to abide by the requirement of racial dispersal on a nationwide basis would surely absorb all possible resources--material, political and of all other descriptions--available to the public schools, for it would be an effort of unprecedented proportions. Secondly, racial dispersal could only be accomplished through more and more consolidation of school systems and centralization of control over them. Inevitably it would constitute a choice of one option to the exclusion of other ones.

We do not remotely know enough about how best to solve the problem of our schools to do that--to put the force of the Constitution behind one objective, one technique, to the exclusion of other ones. This Court should decline to impose a requirement of racial dispersal, unless in a particular situation there is no other means of satisfying the constitutional end of equality.

We are confronted here with a many-faceted problem to which one definitive solution has not been found. This Court has in the past been sympathetic to the desire of local areas to develop new approaches to difficult problems. We hope the Court will extend that sympathy to the desire of local Black communities to develop their own means of achieving the constitutionally mandated ends.

CONCLUSION

We respectfully submit that the findings indicate that:

1. The Constitution does not mandate school integration, but outlaws segregation.
2. The Constitution has not anointed integration over other means as a way to establish a unitary school system.
3. When integration (or any other legitimate means, is the only means, or most "effective" means and the one that can bring about, at "the earliest practicable date" the Court-ordered end, a unitary system in a district, then it is mandated.
4. As to the questions of racial balance, the alteration of school zone and district lines, and the providing of transportation: All are legitimate means, but while they are constitutionally permissible, they are not constitutionally mandated to achieve the ends sought by the prior holdings of this Court--unless they pass the test of "effectiveness" and "earliest practicable date."

We respectfully submit to this Court a plan for the desegregation of Mobile County schools as a model which passes a strict application of the test of compliance with the constitutional requirement.[1] If in the opinion of this Court, this plan is not proscribed by the Constitution: We pray that this Court consider this plan which we believe applicable to areas other than Mobile--to wit, the areas covered by some of the consolidated cases, companion to Birdie Mae

[1] See Exhibits A and B.

We further pray that this Court remand Birdie Mae Davis v. Mobile Board to the lower court to permit time for other aggrieved citizens of Mobile to petition for that plan that can best meet the test of "good faith," "effectiveness" and "earliest practicable date" (Brown II) in their quest for their constitutional rights.

And finally we pray that in school districts where a pattern of invidious discrimination has been found, that the right to prepare and submit desegregation plans to the court or the government not be held exclusively by the school board.

Respectfully submitted,

Charles S. Conley

EXHIBIT A

A TRUE ALTERNATIVE TO SEGREGATION--

A PROPOSAL FOR COMMUNITY SCHOOL DISTRICTS

<u>Preliminary Proposal</u>

Issued by:

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February 1970

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INTRODUCTION

Education in its deepest sense is the improvement of man so that he will be a thinking individual, not afraid of the validity of his conclusions even though they may deviate from what may be acceptable and safe at the moment.
--Heald

This proposal for a pragmatic, achievable alternative to school segregation is motivated by the conclusion that:

> All pet theories--be they liberal or racist--which have contributed to the present impasse in the public schools must be debunked and scuttled if we are to get on with the important business of educating our children.

And is informed by the further conclusions that:

> The attendance of White and Black pupils at different schools does not constitute segregation, ipso facto.
>
> An integrated school system is not a guarantee, ipso facto, of equal or quality education for all pupils, Black and White.
>
> Segregation, when properly defined, should be equated with inequality of education.*
>
> Desegregation should not be equated with integration to the exclusion of other possible ways of organizing a school system. Integration is but one of the forms desegregation can take.

The history of the Black man in America has been marked by a constant struggle for equality. Yet in most areas of American life, the enjoyment of opportunity equal to that of any other American continues

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*Because of the social dynamics peculiar to segregation, it should be defined not so much in general terms of spatial relationships, but in more specific terms of the socio-political-economic relationship between the producers and managers of goods and services and those who are the recipients of those goods and services.

to remain outside his grasp. But it is in the crucial area of education that inequality of opportunity has caused the most damage. It has been said that the future of a people rides on the shoulders of its youth, and that if those shoulders rest on a weak foundation, a doomed future for all concerned is the inevitable result.

It is therefore no simple accident that so much of the overall fight for equality has been directed at the schools during the past two decades. Even though Blacks cheered that most significant fruit of their effort, the 1954 Supreme Court School Desegregation Decision, they have had ample reason for wondering if that celebration was somewhat premature, for it has taken the courts sixteen years to level the first significant attack on the vicious system of school segregation.

In the period since 1954 when no change seemed imminent, we could afford to make any demand whatever in the hope of inducing even minimal movement away from segregation. However, now that the courts are moving to back up earlier rulings, it is of the highest importance that Black people sharpen their perspective and make the clearest possible assessment of their aims. They must chart their own course before they enter any new phase of the struggle, and they must make one final examination of even the most cherished beliefs and assumptions.

Keeping their eyes fixed on the goal of dignity and equality, Black people must choose the path which will be in the best possible interest of their children and, ultimately, of the entire race. It is too costly an indulgence to make decisions based on the heat of emotion and hurt generated by the brutal system of segregation. Rather, it should be in the light of cold reason and hard facts that decisions are made.

Today, it is not a matter of why we won't wait; but, in the words of

Martin Luther King, why we can't wait. We cannot afford to wait any longer for some long-promised, but still distant, Utopia. We cannot allow our minds to be imprisoned by old assumptions and pet theories, and we cannot allow those who have become prisoners of their own futile rhetoric to throw stumbleblocks in our path as we attempt to devise and implement dynamically new solutions to the problems of Black people.

Historically, man has been motivated more by self-interest and that which is achievable than by what should be. We see this as the crux of the school desegregation struggle.

The ideas presented in this paper grew out of firsthand observation of public school systems in the North and the South. These observations plus discussions with parents, teachers, school administrators, community leaders, etc., substantiate our belief that this proposal for COMMUNITY SCHOOL DISTRICTS structured along natural, geographic lines is the best possible way of destroying segregation and insuring equal education for Black children.

SCHOOL SEGREGATION: ITS TRUE NATURE

School segregation is a system designed and structured to serve the needs of Whites at the expense of Black pupils. When normal standards of educational excellence are applied to Black schools under segregation, it becomes clear that they are inferior to White schools. This is a fact with which no one can argue. Unfortunately, it has caused those who did not in the past and do not now understand the true nature of segregation to arrive at the faulty conclusion that all-Black schools are inherently inferior under any set of circumstances. A simple extension of logic prompts the following questions:

If racial exclusivity means inferior schools, then why are the schools--White and Black--not equally inferior? If the racial composition of a school in and by itself causes that school to be inferior, where then are our inferior all-White schools?

Let us take the "isolation equals inferior schools" theory to its farthest logical extension: President John Kennedy and many of his socio-economic class attended schools that were not just isolated from Blacks, but from Whites belonging to different socio-economic classes as well. Needless to say, one would not even consider looking for the kind of inferiority in Mr. Kennedy's schools that so often characterizes Black schools.

The "inherently inferior" theory is not only spurious on its face but insidiously racist in its implication that Black children alone among the different races and groups of the world must mix in order to be equal.

Blacks who subscribe to this theory are suffering from self-hatred, the legacy of generations of brainwashing. They have been told--and they believe--that it is exposure to Whites in and by itself that makes Blacks equal citizens.

Years of heavy propaganda from liberal well-wishers on one side, and ugly declarations from racists on the other have further confused the issue. This confusion must be cleared up now if we are to proceed in an orderly fashion toward the achievement of true equality in education.

Whether or not a given school is inferior or superior has nothing, as such, to do with whether or not it has an admixture of racial and/or ethnic groups, but it has everything to do with who CONTROLS that school and in whose best interest it is CONTROLLED.

Many social scientists who have issued papers and written books on education have missed this very salient point. They have shown too much concern with spatial relationships, and not enough or none at all with the relationship between those who govern a school and those who are served by that school.

No, the problem is not simply that Blacks and Whites attend different schools. A look at segregated school systems, whether de jure or de facto, will show that they generally have, aside from attendance of White and Black pupils at different schools, three common characteristics which make segregation the obnoxious system that it is.

The first of these is that Whites set Blacks apart, by law or in fact, without their choice or consent. This constitutes the arbitrary imposition of authority from without. The act of Whites telling Blacks what schools they can or cannot attend stigmatizes Blacks and is a slap at their dignity.

The second characteristic of a segregated system is that the local school board, usually all White or predominantly White, exercises control over both White and Black schools and favors the White schools. The school board enjoys a more intimate relationship with the White community and White parents than it does with the Black community and Black parents. It is more sensitive to their problems, their needs and aspirations than it is to those of Blacks. This deprives Black educators and pupils of much-needed support from the policy makers and managers of the schools and literally guarantees the failure of the Black school to achieve excellence in education. A positive relationship between parents and those who govern the school is one of the most important factors affecting the quality of schools. Under segregation, Black parents have not enjoyed that kind of relationship.

Finally, the local school board systematically deprives Black schools of resources. The money allotted by law to each and every school district when received by the local board is directed as the local board sees fit. Traditionally, part of the money intended for Black schools has been directed by the local board to White schools. This is true of Southern schools as well as Northern schools.

In short, it is the local school board, the dispenser and regulator of money, rewards, good will, and other benefits, which makes Black schools inferior. Under segregation, Blacks have been locked into a system over which they exercise no control, for which they have no responsibility and for which they are powerless to effect meaningful change.

When segregation is placed in its proper context and defined in terms of who manages and controls the schools, it becomes apparent that the chief characteristic of a segregated school system--the imposition of oppressive outside authority--makes school systems in the North no different from those in the South.

The surest measure of how much Blacks can trust any school system to educate their children is how much actual--not illusionary--control they have over that system. Therefore, whatever is proposed to replace segregation must be measured strictly in terms of how much control is held by the Black community itself. This is the surest possible guide to determining the potential success of any proposed new system.

SCHOOL INTEGRATION: IS IT A GOOD ASSUMPTION?

Having learned from bitter experience that White schools are favored by White school boards and having become tired of the stigma attached to being told where their children could go to school, it was natural that Black people considered sending their children to White schools. Since 1954 at least, the assumption has been that the segregated and unequal treatment of Black children could be rectified by integrating them into White schools. What is basically wrong with this assumption?

1. There is a failure to recognize Black people as a valid special interest group with needs that are unique to Black people.

2. There are a number of agreed upon components of a good education. It has not been established that integration guarantees these components.

3. Equal education implies more than just equal physical space in the same classroom, the same teacher, or the same principal. It implies equal right in the curriculum; equal access to all available resources; and equal access to school policy makers and managers. The question is: Does integration guarantee Black parents these additional rights?

4. An integrated setting is as potentially damaging psychologically as a segregated setting. The assumption that integration cures all the evils of segregation does not take into consideration what the National Advisory Commission on Civil Disorders affirmed--that is, the essentially racist character of American society. Since there is no indication that racism will disappear overnight, Blacks must approach all institutional settings with extreme caution.

Where integration is mandated and there is unwillingness on the part of Whites to integrate schools, Black people lose much more than they gain in such a merger. One such community was studied by the National Education Association. The following is an excerpt from their report:

> The desegregation of East Texas schools is proceeding at a faster pace than in most southern states. School officials of most districts studied can report that they are in compliance either with federal desegregation guidelines or with court orders. But, as the study made abundantly clear, it is only a paper compliance. As desegregation continues, the grievances of the black community become more wide-spread and more severe. There is every evidence of racial discrimination in the continuing displacement and demotion of black educators; there is every evidence of racial discrimination in the increasing employment of white teachers in preference to blacks; there is every evidence of racial discrimination in the frequent exclusion of black students from participation and leadership positions in the student organizations of desegregated schools; and there is every evidence of racial discrimination in the treatment that black students commonly receive from white classmates and, in some instances, from their white teachers and principals as well.
>
> These grievances have long remained unresolved; they continue to be unrecognized by school officials. And finally, now that the Supreme Court has ordered the immediate elimination of dualism in all southern districts the prospect is that the situation will become worse--in East Texas and throughout the South. The frequency of teacher displacement and student mistreatment that accompanied desegregation "with all deliberate speed" is likely to accelerate as the rate of desegregation accelerates. The laws, including desegregation laws, have never worked well for black people. Unless present trends are halted, the new Supreme Court ruling will serve them no better than did the Brown decisions of 1954-55.

The fact is that the court can offer Black children, teachers and administrators very little protection from the crippling abuses which arise daily in an integrated setting where Whites don't favor the union. Some of the stories of injustices and psychological abuse emerging from integrated settings in the South are difficult to fight with litigation, but that does not make them any less damaging to the psyches of Black children, parents, teachers, and administrators:

Item: White teachers have been known to absolutely refuse to look at Black children when addressing them in the classroom.

Item: The principal of an all-Black school became the assistant principal of an elementary school under integration in one Southern town.

Item: The principal of a Black high school was replaced by a younger White man with less experience and fewer formal credentials. The principal became an assistant principal under the new White principal.

Item: Examinations are geared to favor the White child. In fights, Black children are always assumed to be in the wrong.

The sad fact of the matter is that in most cases where integration has been tried, the same White board of education that once ran the dual school system--one White, one Black--is the same board that runs the integrated system. The superintendent of education under the old system becomes the superintendent of education in the new system. The policy makers and managers are therefore the same. Since their negative attitudes towards Blacks and favoritism towards Whites remain the same, Black parents can hardly expect that any attempt will be made to change the curriculum to reflect the needs of Black pupils, or that they will have any say in the running of the school. In other words, even where integration has come about, the schools remain White-controlled.

It must not be assumed that things will get better with time. The dynamics of <u>forced</u> school integration are very different from those of <u>forced</u> desegregation of hotels, restaurants, buses, and other public facilities and services. These are what might be called transient settings of Blacks and Whites sharing or functioning in the same approximate space. Integrated schools, on the other hand, constitute an ongoing situation that is seen as far more threatening. This is underscored by the fact that the relatively mild and short-lived resistance to the desegregation of public

facilities and services was nothing compared to the massive resistance that has been mounted and that will be continually mounted against integration of the schools. Moreover, when integration does occur in the schools, the few strengths Blacks did have are rapidly eroded so that with time they operate less and less from a position of strength.

Blacks who have gone along with integration have done so in search of dignity, but have found humiliation at the end of the rainbow. They integrate for equality but find they are <u>together but still unequal</u>. They have less control and less influence, if that is possible, than ever before. In short, the integration that Blacks are likely to get in most instances, North or South, has proven to be token equality, mere show and pure sham.

What about those areas where White resistance is not so high as to frustrate the integration effort? Even then we should keep in mind that effective integration is more than mere physical proximity of White and Black students. We should seriously consider whether the dispersal of Black pupils would help or hinder the chances of meeting their unique needs.

Integration, as it is designed, placed the Black child in the position of implied inferiority. Not only is he asked to give up much of his culture and identity, but with the dispersal of Blacks he loses many of the communal ties which have traditionally been the cornerstone of the Black community. Moreover, there can never be true integration between groups until there is a real parity relationship existing between them.

It is an established fact that children learn best in a supportive environment--one in which they can develop an appreciation and acceptance of self. Self-appreciation must come before one can truly appreciate others.

White schools at this time do not constitute the kind of environment which can foster the healthy development of Black children. White school boards make it difficult for even Black schools to respond to the special needs of Black children. In this respect, however, many Black teachers and administrators have tried, within the narrow limits allowed them, to satisfy these needs.

With the guarantee of equal resources and with the freedom to proceed as is expedient, Black schools would be a superior learning environment and could graduate students who can succeed in an interracial world.

What about the stigma attached to going to an all-Black school? That stigma was half destroyed when Blacks succeeded in smashing the laws which restricted their freedom to choose. Inasmuch as the stigma arises in part from the established inferiority of Black schools, the remaining stigma would be destroyed completely once the Black community has a board of education which could be called theirs and which would guarantee a truly equal, truly democratic education for its children.

Furthermore, Black people today have a very healthy attitude towards themselves as a people. They are not ashamed of being Black and see nothing wrong in being together and doing things together. They see strength in unity, not guaranteed failure. More than ever, Blacks place a premium on working together for progress. They are beginning to feel that it is through their strength as a group that they will win human dignity and power. If reality is taken into account when Blacks chart their course, it will become abundantly clear that in some situations school integration may not be the most effective means to equality.

From a financial, legal, economic, political, social, psychological, and most important, educational standpoint, the integrated school emerges

wanting. This set of parameters must be consistently used when examining integration, segregation, and any proposed alternative to the tw .

THE NEED FOR A NEW ALTERNATIVE

Desegregation is now the law of the land. Because the road is rocky and treacherous, Blacks need to chart a careful course if they are to land on their feet. The next section will offer a desegregation approach applicable primarily to urban areas, North and South. In these areas we generally find natural definable communities made up of persons with common interests and special problems.

Within Mobile County, Alabama, for example, there is a natural community comprising the Davis Avenue, Toulminville, Bullshead area. This community alone has more students than do many existing school districts throughout the state. The citizens and students in this community happen to be Black Americans. The schools attended by the youth from this community have been badly run by the Mobile County School Board. For years, the talent and energies of the best citizens of the community have been expended in fighting the school board--but without significant results. This community has many special needs different from those of the general population of Mobile County. A healthy pride and sense of purpose is evident and growing in this community. The educational hopes of the residents, however, are continually frustrated by a school board which has shown no sensitivity to their problems. The residents of this community have lost irretrievably all faith in the school board's capability of being responsive to their needs.

The tragedy is that the human input needed to solve the major educational problems which have plagued this community are within the reach of

this community. The talent and energy displayed over years of struggle for relief prove that. The material input needed to solve this area's school problems lies in the public money the law presently allows if the money were to arrive directly from the source to a truly local school board. The rising aspirations, the dashed hopes, and the displaced energy will result in a steadily rising level of hostilities which will inevitably spill over into the surrounding communities.

We contend that it is possible to bring dignity and true equality of opportunity to this community without denying the human and constitutional rights of any other community. Only good sense and meaningful alteration of a faulty structure can avert this. It is in the spirit of attempting to avert chaos and establishing harmony that this proposal is presented.

THE SOLUTION: NATURAL COMMUNITY SCHOOL DISTRICTS

The people of the above-mentioned community are seeking to exercise their basic human and constitutional right to form an institution that is accountable to them. They are seeking to be delegated by the State of Alabama to exercise its exclusive competence to determine its own educational needs and set its own educational policy, as do other peoples in America, by becoming a duly constituted state school district under the state law.

This move is not without considerable precedent in American history. One such precedent occurred early in the history of this country and culminated in a document which begins with the words, "We hold these truths to be self-evident," and includes the statement, "That whenever any form of government becomes destructive of these ends"--these ends being the securing of certain inalienable rights and "governments being instituted

deriving their just powers from the consent of the governed. . . . It is the Right of the People to alter or abolish it, and to institute new government, laying its foundations on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

THE PLAN: To desegregate public schools by creating state school districts which correspond to natural community lines, where the parties affected are in agreement.

THE SCHOOL BOARD: Within each school district so formed the residents would elect a school board. Each school board would be a legal entity enjoying all the rights, privileges, and obligations as provided for by the State Education Law. Each school board would run a unitary school system within its district.

The community school board would, pursuant to state law and as every other school district in the United States does, seek out persons with educational expertise--a superintendent who meets state qualifications as chief executive officer of the board of education, and a staff of professionals to administer and execute the policy established by the board. The board would seek the best man possible to fill the position of superintendent by selecting from a special screening committee and would solicit advice on candidates from the leading universities and professional associations as well as other organizations and individuals. Once employed, the superintendent would submit names to fill the other top-level administrative positions to the screening committee of the board and the board would choose from among the resultant list of candidates.

For the position of superintendent, the board would seek a man of unquestioned executive ability who indicates an openness to new solutions to the desperate educational problems of the community's children, and a willingness to all newly available educational innovations such as the reading program developed by the Institute for Behavioral Science for the Washington, D. C., public schools, programmed instruction with audio-visual teaching machines, and use of media techniques. Most important of all, the board would seek a superintendent who is community oriented.

The community school district would hope to attract the best minds as consultants to the staff to help design the program. This would be a truly pioneering effort in the field of education.

THE TEACHING STAFF: The community school district would welcome all teachers presently in their schools, who are excited by the prospect of being a part of this pioneering effort. Every attempt will be made to recruit to the teaching staff the best teachers regardless of race, creed or national origin. The community school district will offer in-service training programs, for up-grading, if necessary, so that all teachers in the district will have the security of having skills and training that are relevant to the unique needs of the children of the community.

The community school board would adopt fair practices with respect to teachers employed in that it is in the interest of the district to satisfy the most essential ingredient of a school system--the classroom teacher.

The community school board would seek to allow for maximum participation in the school program by encouraging strong parent associations and establishing people from the community as teacher aides and teacher apprentices so that every child will have in-depth contact with a caring adult, and the teacher will be freed to teach.

FINANCING: The community school district will receive public funds directly from the presently existing sources of education money--the state, the federal government and the local government unit.

State. The community school district would receive state moneys according to the existing provisions in the state law prescribing state money to school districts.

Federal: Federal moneys would come to the school districts according to the existing provisions described in the Federal Elementary and Secondary Education Act.

Local: A legal and formal agreement will be made whereby the local educational dollar will be directed to each school district on a per student basis.

IS THIS PLAN LEGAL?

It is of extreme importance that the Supreme Court's ruling on school desegregation be clearly understood. Confusion on this point has abounded, aided and abetted by those who have fallen into the trap of viewing desegregation as synonymous with integration. Integration is only one possible way--not necessarily the best or most pragmatic way--of desegregating and creating a unitary school system. The plan herein described is another way of desegregating and creating a unitary school system in a school district. It would destroy segregation, and it clearly provides for equal protection under the law. Moreover, unlike integration, this plan makes it easier to guarantee equal protection under the law.

A careful and unprejudiced reading of the decisions of the Supreme Court on school desegregation shows that this plan does not violate the letter or the spirit of the law.

The Supreme Court has ruled that each school board must run a unitary school system in a school district. That is, if there are White and Black children in a school district, the school board may not set them apart.

Each district proposed in this plan would be run as a unitary system. Moreover, the process of redistricting proposed here can only be done with the consent of the persons affected and with the legal agreement of the state. This is equivalent to the parties to an action arriving at a settlement out of court, without violating any law.

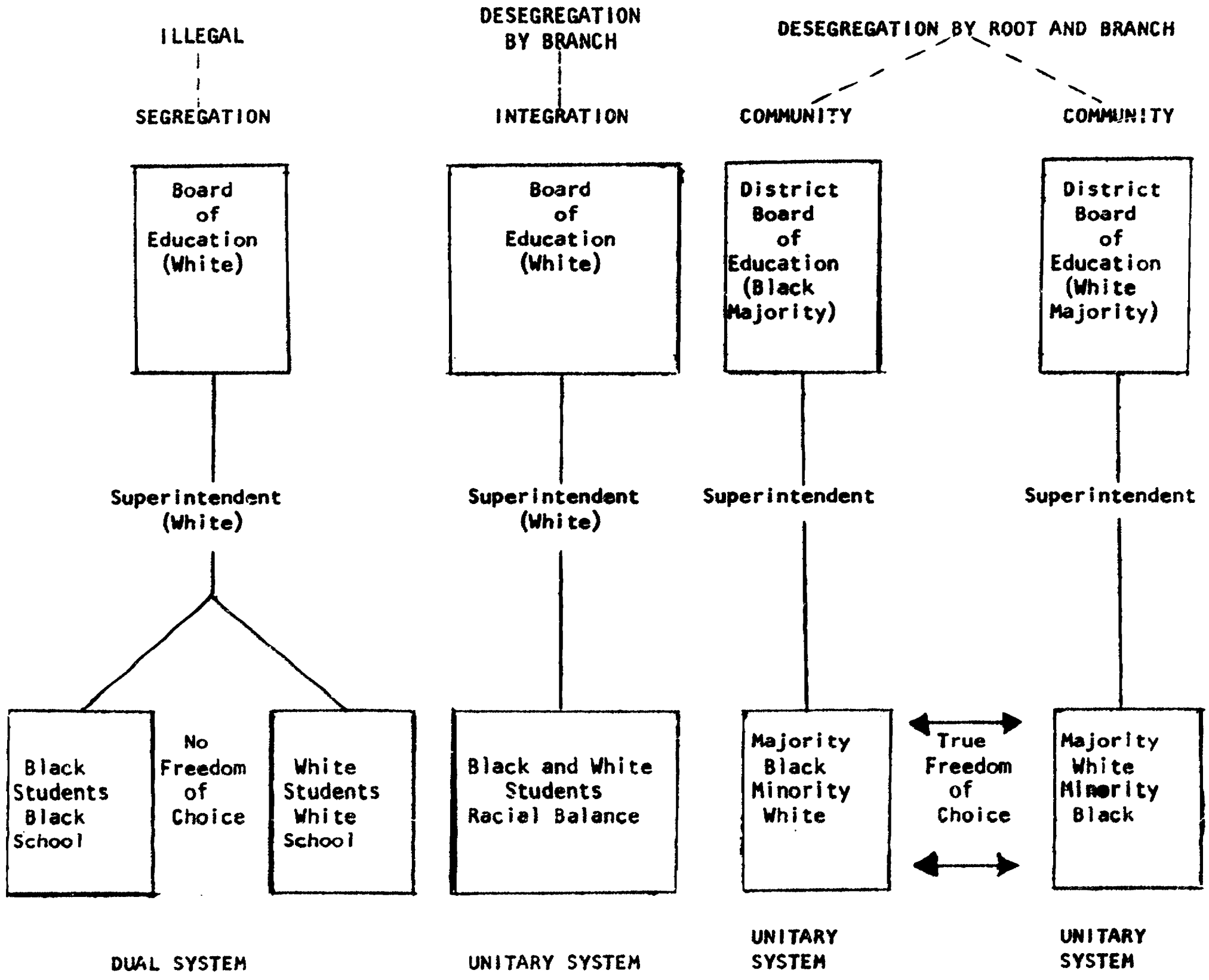
CONCLUSION

Schools are the transmitters of values, the molders of self-image, the instrument for providing youngsters with the technical and psychological equipment necessary to function properly in this highly competitive society. The schools in most Black communities have failed dismally on all three counts. They have not and will not, under the present school system, perform their proper function.

Integration as the means of addressing the educational problems of Black people, even if attainable, is of questionable worth. Where integration has occurred, the results suggest that it causes more problems than it solves.

Black people have tried everything there is to try under the present school structure. The escalating school crisis and the unprecedented hostility between Blacks and Whites are vivid reminders that patience is wearing thin all around. Blacks are now searching for a real solution, one which can provide dignity and true equality. We submit this plan as that solution.

EXHIBIT B


ILLEGAL
SEGREGATION
DESEGREGATION BY BRANCH
INTEGRATION
DESEGREGATION BY ROOT AND BRANCH
COMMUNITY
COMMUNITY
Board of Education (White)
Board of Education (White)
District Board of Education (Black Majority)
District Board of Education (White Majority)
Superintendent (White)
Superintendent (White)
Superintendent
Superintendent
Black Students Black School
No Freedom of Choice
White Students White School
Black and White Students Racial Balance
Majority Black Minority White
True Freedom of Choice
Majority White Minority Black
DUAL SYSTEM
UNITARY SYSTEM
UNITARY SYSTEM
UNITARY SYSTEM

CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing motion has been served on Julius Chambers or James M. Nabrit, III, attorneys for the Petitioners, by personal service.

This 12th day of October, 1970.

Charles S. Conley

OF COUNSEL