DOCUMENT RESUME

ED 102 285 UD 014 889

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TITLE Twenty Years After Brown: Equality of Educational Opportunity. A Report of the U.S. Commission on Civil Rights, March 1975.
INSTITUTION Commission on Civil Rights, Washington, D.C.
PUB DATE Mar 75
NOTE 106p.; Second in a series

EDRS PRICE MF-$0.76 HC-$5.70 PLUS POSTAGE
DESCRIPTORS Academic Achievement; *Civil Rights; Discipline Policy; *Educational Opportunities; Employment Practices; Federal Aid; Integration Effects; *Integration Litigation; Integration Methods; Longitudinal Studies; *National Surveys; Public Policy; Racial Discrimination; *School Integration; Spanish Speaking

ABSTRACT

On the twentieth anniversary of Brown vs. Board of Education, it seems appropriate for the Commission on Civil Rights to commemorate the Supreme Court's decision with an examination of the civil rights progress between 1954 and 1974. The first report in the series provided a brief historical background. This second report covers equality of educational opportunity. Among the report's findings are the following: school desegregation has progressed substantially in the South; progress in the North has been minimal; without positive action, segregation in urban areas (both North and South) appears likely to increase, and urban-suburban racial subdivisions will be intensified; most fears about school desegregation have proved groundless, and desegregation is working where it has been genuinely attempted; "freedom of choice" has proved a totally ineffective method of school desegregation; the federal government's commitment to desegregation must include the termination of federal assistance to school systems maintaining segregated schools; desegregation of dual school systems has often resulted in displacement or demotion of black school staff; and, there is evidence that disciplinary action against minority pupils in some desegregated schools has resulted in high numbers of expulsions and suspensions. (Author/JM)

TWENTY YEARS AFTER BROWN: EQUALITY OF EDUCATIONAL OPPORTUNITY

A Report of the
U.S. Commission on Civil Rights
March 1975

Second in a series

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.
March 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This is the second in a series of reports which will examine the extent of civil rights progress in the United States since Brown v. Board of Education, the Supreme Court's landmark school desegregation decision of May 17, 1954. The first report provided historical background for the series. This report covers the evolution of educational opportunity during the 20 years since Brown. Subsequent reports will offer specific recommendations for achieving equal opportunity, where it is lacking, in employment, housing, public accommodations, and the administration of justice.

We believe that these reports, issued in commemoration of the 20th anniversary of Brown, may be of help to Federal, State, and local officials, as well as to all Americans concerned with racial justice. We hope that these reports will contribute to an informed public discussion of Brown, the status of civil rights today, and paths to racial equality in our Nation.

We urge your consideration of the information, findings, and recommendations presented here.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

PREFACE

On September 9, 1957, President Dwight D. Eisenhower signed into law the first civil rights act in the United States in 82 years. Under Title I, the U.S. Commission on Civil Rights was established as a temporary, independent, bipartisan, Federal agency. Former Secretary of State Dean Acheson hailed the entire piece of legislation as the greatest achievement in the field of civil rights since the 13th amendment,[1] and historian Foster Rhea Dulles described the Commission as "but one manifestation of the belated response of a conscience-stricken people to the imperative need somehow to make good the promises of democracy in support of equal protection of the laws regardless of race, color, religion, or national origin."[2]

In fact, both the Civil Rights Act of 1957 and the U.S. Commission on Civil Rights were primarily the result of Brown v. Board of Education,[3] the Supreme Court's landmark school desegregation decision in 1954. It was Southern resistance to compliance with Brown which led to mounting civil rights pressure and the consequent decision of the Eisenhower administration to introduce the civil rights legislation.[4] And it was this same resistance which produced almost a 2-year delay in passage of the civil rights act and creation of the Commission.

The President, in his 1956 state of the Union message, had asked Congress to create a civil rights commission[5] to investigate charges "that in some localities...Negro citizens are being deprived of their

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1. Dean Acheson, "A Word of Praise," Reporter, Sept. 5, 1957, p. 3.

2. Foster Rhea Dulles, The Civil Rights Commission: 1957-1965 (Lansing: Michigan State University Press, 1968), p. ix.

3. 347 U.S. 483 (1954).

4. Dulles, The Civil Rights Commission, p. 3.

5. To Secure These Rights, the 1947 report of President Harry S. Truman's Committee on Civil Rights, previously had recommended creation of such a commission to study the whole civil rights problem and make recommendations for its solution.

right to vote and are likewise being subjected to unwarranted economic pressures." A draft of the administration's proposal then was sent to the Senate and House of Representatives on April 9, 1956. The bill was passed by the House in July but died in committee in the Senate after threat of a filibuster. President Eisenhower resubmitted the bill as he began his second term, and an acceptable compromise version of the legislation finally was approved despite Southern attacks and characterization of the proposed Commission on Civil Rights as an agency "to perpetuate civil wrongs."

Initially established for a period of 2 years, the Commission's life has been extended continuously since then, most recently on October 14, 1972, for a period of 5½ years.

Briefly stated, the function of the Commission is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, sex, or national origin. (Discrimination on the basis of sex was added to the Commission's jurisdiction in 1972.) The Commission has no power to enforce laws or correct any individual injustice. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

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

> its existence is to find facts which may subsequently be used as the basis for legislative or executive action.[6]

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

> Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
>
> Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
>
> Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
>
> Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin;
>
> Submit reports, findings, and recommendations to the President and Congress.

The facts on which the Commission's reports are based have been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys, and related research, the Commission has drawn on the cooperation of numerous Federal, State, and local agencies. Private organizations also have been of immeasurable assistance. Another source of information has been State Advisory Committees that, under the Civil Rights Act of 1957, the Commission has established throughout the country.

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6. Hannah v. Larche 363 U.S. 420, 441 (1960). Louisiana voting registrars sought to enjoin the Commission from conducting a hearing into discriminatory denial of voting rights. When the lower court held that the Commission's procedural rules were not within its authority, the Commission appealed to the Supreme Court. The Court reversed the judgment below and held that the Commission's rules did not violate the due process clause of the fifth amendment.

Since its creation, the Commission has issued more than 200 reports and made over 200 recommendations to the President and the Congress. These recommendations have encompassed the fields of voting, housing, employment, education, administration of justice, equality of opportunity in the armed forces, and Federal enforcement of civil rights laws. The majority of these recommendations eventually have been included in Federal Executive orders, legislation, and program guidelines. It has been reported that the "Civil Rights Act of 1964 and the Voting Rights Act of 1965 were built on the factual foundations of racial discrimination portrayed in the Commission's reports and in part they embodied these reports' specific recommendations for remedial action."[7]

Throughout its 17-year history, the U.S. Commission on Civil Rights has "established national goals, conceived legislation, criticized inaction, uncovered and exposed denials of equality in many fields and places, prodded the Congress, nagged the Executive, and aided the Courts. Above all, it has lacerated, sensitized, and perhaps even recreated the national conscience."[8] The extent to which the Commission has achieved its results perhaps may be attributed in large measure to its continuing concern with specific constitutional rights on a nationwide basis and in all fields affected by race and ethnicity. "The interrelationship among discriminatory practices in voting, education, and housing made it impossible to think that equal protection of the laws could be maintained by action in one field alone: the overall problem had to be simultaneously attacked on all fronts."[9]

On the 20th anniversary of Brown v. Board of Education, then, it seems appropriate for the U.S. Commission on Civil Rights to commemorate the Supreme Court's decision with an examination of civil

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7. Dulles, The Civil Rights Commission, p. xi.
8. Berl Bernhard, "Equality and 1964," Vital Speeches, July 15, 1963.
9. Dulles, The Civil Rights Commission, p. 79.

rights progress between 1954 and 1974. The Commission wishes to honor Brown by showing that it is a decision which continually affects one of the most vital areas in the life of our Nation. The Commission wishes to call to mind clearly the meaning and promise of Brown as intrinsic elements in the fulfillment of American ideals. The Commission wishes to commemorate Brown by relating the Supreme Court's judicial pronouncement to the lives of human beings.

During this anniversary year, the Commission will publish a series of concise reports summarizing the status of civil rights in education, employment, housing, public accommodations, political participation, and the administration of justice. In which ways, and to what extent, have the lives of black Americans and members of other minority groups changed? Where has progress been made, where has it been limited, where has it been nonexistent, and why? How is Brown as yet largely unfulfilled? What must be done to bring about the facial equality affirmed by the Supreme Court 20 years ago?

The Commission seeks through these reports to commemorate Brown v. Board of Education as a landmark, a divide in American race relations--as the starting point for a second American revolution. If that revolution, inspired by American law and based upon the law, has not been concluded, this is more a comment on those of us who have been called upon to complete the task than on the judgment which set the task in the beginning.

The first report in the series provided a brief historical background. This second report covers equality of educational opportunity.

ACKNOWLEDGEMENTS

The Commission is indebted to the following staff members who participated in the preparation of this series of reports:

Eugene S. Mornell
Project Director

Sonja Butler
Eleanor Clagett
*Ruby Daniels
Wanda Hoffman
Wanda Johnson
*Esther Lucas
Cynthia Matthews
Ulysses Prince III
Gail Ross
Mary Watson
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Special assistance also was provided by Caroline F. Davis and Mabel M. Smythe.

The reports were prepared under the overall supervision of John Hope III, Assistant Staff Director, Office of Program and Policy Review.

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THE LAW SINCE BROWN

In the 20 years prior to Brown v. Board of Education, the Supreme Court rendered decisions that whittled away at the doctrine of "separate but equal," thereby preparing for the sweep of the 1954 pronouncement. An examination of the cases leading to Brown provides perspective on both Brown itself and the decisions following from it.

The duty of the States to provide equal educational opportunity is a constitutional imperative which did not arise for the first time in 1954. Numerous earlier decisions of the Supreme Court and lower Federal courts held that inequalities between black and white schools in physical facilities, course offerings, duration of school terms, extracurricular activities, and the like violated the equal protection clause of the 14th amendment.[10]

In 1938 [11] and again in 1948 [12] the Supreme Court invalidated school segregation when tangible facilities provided for blacks were found unequal to those provided for whites. In 1950, however, the Court made clear that equality in physical structures and other tangible aspects of a school program was not the only consideration in determining equality in educational opportunity. The totality of the educational experience needed to be considered, the Court said.

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10. See, e.g., Sipuel v. Board of Regents, 332 U.S. 631 (1948); Missouri ex rel Gaines v. Canada, 305 U.S. 337 (1938); Gong Lum v. Rice, 275 U.S. 78 (1927); Carter v. School Board, 182 F. 2d 531 (4th Cir. 1950); Davis v. County School Board, 103 F. Supp. 337 (E.D. Va. 1952), rev'd sub nom. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954); Butler v. Wilemon, 86 F. Supp. 397 (N.D. Tex. 1949); Pitts v. Board of Trustees, 84 F. Supp. 975 (E.D. Ark. 1949); Freeman v. County School Board, 82 F. Supp. 167 (E.D. Va. 1948), aff'd, 171 F. 2d 702 (4th Cir. 1948). See also Leflar and Davis, "Segregation in the Public Schools--1953," Harvard Law Review, vol. 67 (1954), pp. 377, 430-35; Howoritz, "Unseparate but Unequal--The Emerging Fourteenth Amendment Issue in Public School Education," UCLA Law Review, vol. 13 (1966), pp. 1147, 1149.

11. Missouri ex rel Gaines v. Canada 305 U.S. 337 (1938).

12. Sipuel v. Board of Regents 332 U.S. 631 (1948).

In Sweatt v. Painter,[13] the Court ruled that Texas could not provide black students with equal educational opportunity in a separate law school. The fact that the facilities at the University of Taxas Law School were superior to those at the black law school was not the key factor upon which the decision turned. Instead, the crucial point was the fact that the University of Texas "possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school."[14]

Among the items considered by the Court in its evaluation of the two law schools was their comparative "standing in the community." In addition, the Court said:

> Moreover, although the law is a highly learned profession, we are well aware that it is an extremely practical one. The law school, the providing ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85 percent of the population of the State and include most of the lawyers, witnesses, jurors, judges, and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.[15]

In another case the same year, McLaurin v. Oklahoma State Regents for Higher Education,[16] the Court required that a black student be treated like all other students and not be segregated

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13. 339 U.S. 629 (1950).

14. Ibid. at 634.

15. Ibid.

16. 339 U.S. 637 (1950).

within the institution. Engaging in discussions and exchanging views with other students, the Justices declared, are "intangible considerations" indispensable to equal educational opportunity.

These cases led to the Brown ruling, where it was held that school segregation, which the Court had invalidated in Sweatt and McLaurin because of the particular harm demonstrated in those cases, was universally detrimental to black children. The Court quoted those passages from Sweatt and McLaurin in which it had stressed intangible considerations affecting equal educational opportunity, declaring:

> such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.[17]

Brown was a consolidated opinion covering cases arising in four States: Kansas, Delaware, Virginia, and South Carolina. A common issue justified their consideration together and resulted in a ruling that legally-compelled segregation of students by race is a deprivation of the equal protection of the laws as guaranteed by the 14th amendment. Although the holding in Brown clearly was directed against legally-sanctioned segregation, language in Brown gives support to a broader interpretation. The Court expressly recognized the inherent inequality of all segregation, noting only that the sanction of law gives it greater effect.

Finding that Topeka, Kansas, operated a dual school system with separate schools for whites and blacks, the Court said: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal" (emphasis added). Here, Brown reflected concern for segregation resulting from factors other than legal compulsion. For

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17. 347 U.S. at 494.

those drawing a sharp distinction between de facto and de jure segregation, a critical thrust of Brown is, therefore, ignored, although the Supreme Court has not yet ruled that racial imbalance or de facto segregation is unconstitutional and, therefore, illegal.

De jure segregation refers to deliberate, official separation of students on the basis of race, as in the school districts covered by the Brown cases and in other school systems operated under State laws requiring separation. De facto segregation refers to racial separation that arises adventitiously, without official action or acquiescence. Such "accidental" segregation has often been said to exist in Northern and Western school districts where no history of legal compulsion or State action has been found. However, illegal segregation may be caused by actions of school officials--for example, through gerrymandering of attendance boundaries--even though such segregation is not officially recognized.

One year after Brown I, the question of a remedy for segregation was argued before the Supreme Court. The standard for implementation of desegregation then established by Brown II required a "good faith" start in the transformation from a dual to a unitary system, under the jurisdiction of district courts, "with all deliberate speed." The Court also permitted limited delays in achieving complete desegregation if a school board could "establish that such time is necessary in the public interest."

On the level of higher education, however, the Court made no such concessions, ruling in Hawkins v. Board of Control of Florida[18] that "all deliberate speed" was applicable only to elementary and secondary schools. The immediate right to equal education remained intact at all levels of education beyond secondary school.

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18. 350 U.S. 413 (1956).

POST-BROWN CASES IN THE SOUTH

Despite the slow pace of desegregation under "all deliberate speed," fierce and concerted resistance followed the implementing decree. Black plaintiffs had to return to the courts repeatedly to secure implementation of Brown. The doctrine of "all deliberate speed" provided a mechanism for delay, but the Supreme Court did make clear in Cooper v. Aaron[19] that unequivocal resistance would be firmly condemned.

In that case, the Little Rock, Arkansas, school board requested a stay of its 1958 integration plan because of pervasive public hostility. The Governor had dispatched National Guard units to prevent black students from entering the high school, and President Eisenhower subsequently had federalized the Guard and sent paratroopers to make it possible for the black students to attend school. The school board argued that school activities could not be conducted in the atmosphere caused by the black students.

The Court, in a unanimous unsigned opinion, reaffirmed Brown, denying the requested delay despite recognition of chaotic conditions during the 1957-1958 school year. Finding that the tension had been caused by behavior of State officials, the Justices declared that those conditions could be brought under control by State action. The Court cited Buchanan v. Warley,[20] saying:

> the constitutional rights of /black children/ are not to be sacrified or yielded to the violence and disorder which have followed upon the actions of the Governor and the Legislature. Thus, law and order are not here to be preserved by depriving the Negro children of their constitutional rights.[21]

The Court rejected the position of the Governor and legislature that they were not bound by the holding in Brown, citing Article 6 of

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19. 358 U.S. 1 (1958).

20. 245 U.S. 60 (1917).

21. 358 U.S. 16.

the Constitution, which makes the Constitution the supreme law of the land. Under Marbury v. Madison,[22] the Court stated,

> The Federal judiciary is supreme in the exposition of the law of the Constitution....no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it....[23]

Other efforts to delay school desegregation included passage of numerous State antidesegregation laws, including "interposition acts."[24] Although the Supreme Court declared interposition acts unconstitutional, the measures permitted evasion for a time.[25]

Another form of evasion and delay involved the use of pupil assignment and freedom of choice policies. These included elaborate processes that black parents generally had to comply with to secure transfers or assignments of their children to formerly all-white schools. The use of pupil assignment was generally upheld by the Court, as in the Shuttlesworth case,[26] where the district court held that the Alabama pupil placement statute was not unconstitutional on its face. Under that law in determining eligibility standards for transfer, there was provision for consideration of psychological

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22. 1 Cranch 137 (1803).

23. 358 U.S. 18.

24. The interposition concept concludes that the United States is a compact of States, any one of which may impose sovereignty against the announcement within its border of any decision of the Supreme Court or act of Congress, irrespective of the fact that the constitutionality of the act has been established by decisions of the Supreme Court. The doctrine denies the constitutional obligation of the States to respect decisions of the Supreme Court with which they do not agree.

25. Bush v. New Orleans Parish School Board, 188 F. Supp. 916 (E.D. La.), aff'd, 365 U.S. 569 (1961).

26. Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372 (N.D. Ala. 1958), aff'd 358 U.S. 10 (1958).

qualifications of pupils, possibility or threat of friction or disorder among pupils, and maintenance or severance of established social or psychological relationships with parents and teachers.

In Goss v. Board of Education,[27] a 1963 case involving pupil transfer, the Supreme Court held unanimously that plans for two Tennessee counties ran counter to Brown. The provisions permitted students, assigned to schools without reference to race, to transfer from their assigned school if a majority of students in that school, or in their grade, were of a different race. It is apparent that the proposed transfer system perpetuated segregation. Indeed, there was no provision whereby students might transfer upon request to a school in which their race was in a minority. Classifications based on race for purposes of transfer between public schools, as here, violate the equal protection clause.

Another 1963 case, McNeese v. Board of Education,[28] eliminated the necessity for exhausting administrative remedies before seeking redress in the courts. This halted the continued use of bureaucratic procedures to delay implementation of constitutional rights under Brown.

An even clearer indication that the Supreme Court was becoming impatient with school board tactics designed to delay or evade school desegregation came in a reexamination of Griffin v. County School Board of Prince Edward County, Virginia.[29] In this case (which had been consolidated in the original Brown decision in 1954)

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27. 373 U.S. 683 (1963). In Knoxville, Tenn., East High School, a formerly black school desegregated under geographic assignment, became all-black within 5 years under this transfer policy. The school was renamed Austin East, the name it had carried as a segregated school. The Reverend Frank Gordon, former president, Knoxville NAACP, and Mrs. Nannie Roberts, mother of Patricia Roberts, one of the first blacks to attend East High together with Josephine Goss, interviews in Knoxville, Oct. 23, 1973.

28. 377 U.S. 668 (1963).

29. 377 U.S. 218 (1964).

the Court rejected continued delay in achieving desegregation: "The time for mere 'deliberate speed' has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia."[30]

Prince Edward County, a fervent supporter of Virginia's "massive resistance" stance, had closed its public schools rather than permit any black and white children to attend schools together. The Court held that the action of the county school board in closing the public schools while, at the same time, contributing to the support of private segregated schools, resulted in a denial of the equal protection of the laws to black children.

The Court said:

> A State, of course, has a wide discretion in deciding whether laws shall operate statewide or shall operate only in certain counties....But the record in the present case could not be clearer that Prince Edward's public schools were closed and private schools operated in their place with State and county assistance, for one reason, and one reason only: to ensure, through measures taken by the county and State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional.[31]

The Supreme Court affirmed the lower court order enjoining "the county officials from paying county tuition grants or giving tax exemptions and from processing applications for state tuition grants so long as the county's public schools remained closed."[32] In a similar Louisiana case, Judge John Minor Wisdom framed the issues:

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30. Ibid. at 229.

31. Ibid. at 231.

32. Ibid. at 232.

"Has the state, by providing tuition grants to racially discriminatory academies, significantly involved itself in private discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment?"[33] His answer was yes, and the Supreme Court upheld his decision.

Another delaying tactic was the use of the stair-step or grade-a-year plan for school desegregation. Such plans were usually developed in conjunction with freedom of choice policies or, as in Rogers v. Paul,[34] with pupil assignment plans. The Court, in a unanimous unsigned opinion, held that a school district whose grade-a-year plan had not reached high school was compelled to honor the requests of black high school students for admission to desegregated schools so that they could take courses not offered at the all-black schools to which they were initially assigned. The Court also held that faculty desegregation was part of the relief required by Brown.

The decade following Brown, then, was characterized both by the failure of the "all deliberate speed" doctrine and by veiled as well as open resistance to desegregation, reflected in "massive resistance" activities, procedurally complicated pupil assignment procedures,[35] grade-a-year plans used in conjunction with pupil

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33. Poindexter v. Louisiana Financial Commission, 275 F. Supp. 833 (E.D. La. 1967), aff'd per curiam, 389 U.S. 215 (1968).

34. 382 U.S. 198 (1965).

35. Pupil assignment plans generally followed two formats. One directed that assignment of pupils to particular schools was to be graded by: orderly and efficient administration of the school; effective instruction; and the health, safety, and general welfare of the pupils. A second format provided for detailed criteria which did not include race. These criteria fell generally into the following classifications: available school plants, staff, and transportation; school curricula in relation to each pupil's academic preparation and scholastic abilities; the pupil's morals, conduct, health, personal standards, and home environment; and effect of admission of the pupil on other pupils and the community. For a detailed discussion of pupil assignment plans, see U.S., Commission on Civil Rights, 1961 Report, vol 2, Education, pp. 22-31.

assignment or free choice, and tuition grant devices permitting escape from desegregating public school systems. These techniques permitted evasion and delay until black plaintiffs exhausted leisurely legal processes. The result, despite consistent victories by black plaintiffs in the courts, was that only 1.2 percent of black students in the 11 Southern States attended schools with whites in 1963-1964. That figure had increased to only 2.2 percent in the following school year[36] when the Civil Rights Act of 1964 was passed by the Congress.

Progress in the first decade following Brown, consequently, was frustratingly slow. Resistance to desegregation placed great pressures on Federal judges in States having constitutionally impermissible dual systems of public education. Generally, however, these men transcended the sanctions applied by their communities and met their responsibilities as Federal officers courageously and honorably.[37]

Then, shortly after passage of the Civil Rights Act of 1964, the Supreme Court stated categorically that "delays in desegregating school systems are no longer tolerable."[38] While the Court appeared to have had enough of delay, however, ineffective desegregation

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36. U.S. v. Jefferson County Board of Education, 372 F. 2d 836, 903 (5th Cir. 1966); and U.S., Commission on Civil Rights, Southern School Desegregation, 1966-67, pp. 5-6 (hereafter cited as Southern School Desegregation).

37. For a detailed account of the performance of the judges charged with implementing Brown, see J. W. Peltason, Fifty-eight Lonely Men, Southern Federal Judges and School Segregation (New York: Harcourt, Brace and World, 1964). Also see a forthcoming book on the Fifth Circuit Court of Appeals by Thomas Reid of Duke University Law School analyzing this active court, which has handed down many important opinions on school desegregation.

38. Bradley v. School Board of Richmond, 382 U.S. 103, 105 (1965).

persisted, and the lower courts continued to accept techniques which postponed full realization of constitutional rights.

The Civil Rights Act of 1964 provided additional support for the desegregation process through Titles IV and VI. Under Title IV, technical assistance may be given to applicant school boards in the preparation, adoption, and implementation of plans for desegregation of public schools. The title also provides for grants or contracts to institutes or university centers for training to improve the ability of teachers and other personnel to deal with special educational problems occasioned by desegregation. The Commissioner of Education may also make grants to local school boards, upon their request, to pay for staff training to deal with problems accompanying desegregation and for employment of desegregation specialists.

If efforts to secure a school district's voluntary desegregation failed, administrative enforcement proceedings under Title VI would be initiated. Title VI compliance procedures begin with a review of districts where data indicate substantial segregation or where complaints of discrimination have been filed. If deficiencies are found, letters of probable noncompliance which define the deficiencies then are sent to the districts involved. Negotiations subsequently are initiated with each district to secure correction of the deficiencies and development of a desegregation plan, although there are no time schedules for such negotiations or for followup reviews. If satisfactory results are not obtained through negotiations, enforcement action may be taken--either through administrative enforcement proceedings or referral to the Justice Department for litigation. The administrative enforcement proceedings include a hearing, a decision by an administrative judge, and an appeal process. If noncompliance with Title VI is found, Federal funds may be terminated. In short, Title IV represents the carrot and Title VI the stick.

An additional section of Title VI permits suits by the Attorney General, upon receipt of meritorious written complaints from parents that their children, as members of a class of persons similarly

situated, are being deprived by a school board of the equal protection of the laws. A similar provision covers college admission and retention, authorizing the Attorney General to intervene in equal protection suits of public importance.

Following approval of the Civil Rights Act, with the Title VI provision for administrative enforcement, progress in desegregation accelerated as school districts sought to avoid termination of Federal financial assistance. Section 601 of Title VI provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Both the threat and the fact of termination helped to secure compliance from wavering districts so that funds made available under such legislation as the National Defense Education Act and the Elementary and Secondary Education Act of 1965 would not be lost.

Between 1964 and 1968, freedom of choice plans were the principal means school districts used to desegregate under U.S. Department of Health, Education, and Welfare (HEW) voluntary plans and court-ordered plans. Such plans permitted a parent or a child (if 14 years of age or older) to select any school in the district for attendance in the ensuing school year.

The HEW guidelines of 1965 [39] required desegregation of at least four grades by September 1965. In 1966 the guidelines were amended to include specific percentages of desegregation for measuring plan effectiveness.[40] The Title VI guidelines were again modified in 1968, providing that, if "under a free choice plan, vestiges of a dual school structure remain...additional steps are necessary to complete the

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39. U.S., Department of Health, Education, and Welfare, General Statement of Policies under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools (1968).

40. U.S., Department of Health, Education, and Welfare, Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964 (1966).

desegregation of its schools," including the use of geographic attendance zones, reorganization of grade structures, school closings, consolidation, and construction.[41]

Although resistance remained strong, particularly to statistical guidelines developed to assess the effectiveness of the freedom of choice plans, recalcitrant school districts eventually complained less about these plans inasmuch as few students exercised their right to choose. Freedom of choice plans, always considered a transitional device by HEW officials, basically were a starting mechanism for most desegregation efforts. Rarely under such HEW plans was desegregation of 25 percent of all pupils achieved. More often than not, actual desegregation was less, although even this desegregation technique accomplished more than had been secured previously. Some formerly white schools were minimally desegregated, but black schools remained, leaving intact the dual character of the school systems.

Many reasons are advanced for the failure of freedom of choice plans. Since most whites chose to have their children attend a predominantly white school, the burden of desegregation fell on black students. Further, as the U.S. Commission on Civil Rights reported in 1967:

> During the past school year, as in the previous year, in some areas of the South, Negro families with children attending previously all-white schools under free choice plans were targets of violence, threats of violence and economic reprisal by white persons, and Negro children were subjected to harassment by white classmates notwithstanding conscientious efforts by many teachers and prin-

41. U.S., Department of Health, Education, and Welfare, Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964 (1968).

cipals to prevent such misconduct...[42]

The Commission concluded that such activities led many black families to keep their children in all-black schools.

Harold Howe II, U.S. Commissioner of Education, stated in testimony before a congressional subcommittee:

> When our fieldworkers investigate free-choice plans which are not producing school desegregation they find that in almost all instances the freedom of choice is illusory. Typically the community atmosphere is such that Negro parents are fearful of choosing a white school for their children.[43]

Another important reason for reluctance of black children to attend traditionally all-white schools (particularly high schools) was the feeling that extracurricular participation available at black schools would not be available at white schools. Some additional pressures came from black teachers and administrators who feared the loss of jobs if complete desegregation occurred.[44]

The HEW guidelines on school desegregation were soon upheld and adopted by the courts.[45] This lessened the protest by school officials damaged by the alleged stringency of the guidelines.

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42. Southern School Desegregation, p. 88. The U.S. Commission on Civil Rights often was critical of HEW desegregation enforcement during the 1964-1968 period, citing the ineffectiveness of free choice plans, the small number of districts subjected to enforcement action, failure to monitor districts that had provided assurances of compliance, and generally inadequate enforcement standards. In Racial Isolation in the Public Schools (1967), the Commission also pointed out the failure to treat school segregation as a Northern as well as a Southern problem.

43. Testimony of Harold Howe II, United States Commissioner of Education, in U.S., Congress, House, Committee on the Judiciary, Hearing Before the Special Subcommittee on Civil Rights, 89th Cong., 2d sess., 1966, ser. 23, p. 24.

44. For a detailed discussion of the ineffectiveness of freedom-of-choice, see U.S., Commission on Civil Rights, Federal Enforcement of School Desegregation (1969), pp. 20-23.

45. U.S. v. Jefferson County Board of Education, 372 F. 2d 836 (5th Cir. 1966).

Another example of leadership came in an April 1968 memorandum to chief State school officers.[46] HEW directed that, where freedom of choice plans had not effectively eliminated dual school systems, the systems should adopt plans that would accomplish this task. The memorandum supported the March 1968 guidelines in stating that complete desegregation should not be delayed beyond the 1969-1970 school year.

It was not until Green v. County School Board of New Kent County[47] in 1968, however, that the Supreme Court undergirded this HEW position. The Virginia county in Green had only two schools, one black and one white, and no residential segregation. Under the county's freedom of choice plan over 3 years, no white child had chosen to attend the black school, and only 15 percent of the black children had chosen to attend the formerly white school. The issue was whether, under these circumstances, a freedom of choice plan was adequate to meet the command of Brown "to achieve a system of determining admission to public schools on a nonracial basis."[48]

The Court found continued existence of an illegal dual school system and stated:

> Brown II was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch....The burden of a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now....It is incumbent

46. Ruby Martin, Director of the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, "Publications of Choice Periods," memorandum to Chief State School Officers with Districts Operating Under Voluntary Free Choice Plans, HEW files, Apr. 22, 1958.

47. 391 U.S. 430 (1968).

48. Brown v. Board of Education, 349 U.S. 294, 300-301 (1955).

> upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand, in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief.[49]

The Court concluded that what the school board had done through its freedom of choice plan was

> simply to burden children and their parents with a responsibility which Brown II placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a "white" school and a "Negro" school, but just schools.[50]

Although the Supreme Court did not expressly rule out the use of freedom of choice plans, the effect of the Green decision was to do so, since freedom of choice plans did not result in prompt conversion to a system without black or white schools "but just schools." By requiring the development of a plan that promised realistically to work immediately, HEW's position that terminal desegregation plans be implemented no later than the 1969-1970 school year was reinforced. There is evidence that HEW was prepared to recede, and in fact did recede, from this position under certain circumstances. Nevertheless, on balance it is clear that with the use of the guidelines and threatened or actual cut-off of Federal funds, desegregation increased for 5 years after passage of the 1964 Civil Rights Act, especially in the South.

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49. 391 U.S. 430, 464 (1968).

50. Ibid. at 466.

Despite cautious use of the enforcement mechanism, HEW had made more progress toward desegregation than had been achieved through litigation in the 10 years following Brown. But the emphasis in Government enforcement of desegregation soon shifted as the policy of the new national administration, in 1969 and thereafter, apparently was to move away from the "administrative fund cut-off requirements and return the burden, politically as well as actually, to the courts for compliance...."[51]

On July 3, 1969, the Attorney General and the Secretary of Health, Education, and Welfare reported that the Government was minimizing use of administrative enforcement under Title VI in favor of a return to litigation. In conformity with the statement, a change in Federal efforts to secure desegregation at the elementary and secondary level occurred.

The joint statement also declared that desegregation plans for school districts "must provide for full compliance now--that is, the 'terminal date' must be the 1969-70 school year." Yet, the statement continued, "limited delay" might be permitted: "In considering whether and how much additional time is justified, we will take into account only bona fide educational and administrative problems. Examples of such problems would be serious shortages of necessary physical facilities, financial resources or faculty."[52] The two Cabinet members said that "additional time will be allowed only where those requesting it sustain the heavy factual burden of

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51. Marian Wright Edelman, "Southern School Desegregation, 1954-1973; A Judicial-Political Overview," Blacks and the Law, Annals of the American Academy of Political and Social Science, May 1973, p. 40.

52. Statement by Robert H. Finch, Secretary of the Department of Health, Education, and Welfare, and John N, Mitchell, Attorney General, Press Release, July 3, 1969, p. 8.

proving that compliance with the 1969-70 time schedule cannot be achieved; where additional time is allowed, it will be the minimum shown to be necessary."[53]

In the same statement, however, more than a year after the Supreme Court's decision in Green, freedom of choice was declared an acceptable means to desegregate if the school district could "demonstrate, on the basis of its record, that...the plan as a whole genuinely promises to achieve a complete end to racial discrimination at the earliest practicable date."[54]

The changed policy on enforcement of school desegregation was illustrated in the case of 33 Mississippi school districts. In July and August 1969, the Office of Education in HEW had drafted "terminal" desegregation plans for implementation in fall 1969. This was in accordance with a July 3, 1969, court of appeals' order which directed these school districts to cooperate with HEW in developing desegregation plans.[55] The plans were to be submitted to the district court by August 11, ruled on September 1, and plans adopted by the court were to be implemented in the 1969-1970 school year.

The plans were submitted on August 11, as required. They called for an end to freedom of choice and, in almost all cases, complete desegregation in the 1969-1970 school year. Later in August, however, the Secretary of Health, Education, and Welfare wrote to the three district court judges of the Southern District of Mississippi, who were to decide which plans to adopt, and to a judge on the court of appeals. The Secretary requested that the submitted plans be withdrawn from consideration and that HEW be given until December to

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53. Ibid.

54. Ibid.

55. United States v. Hinds County School Board 417 F. 2d 853 (5th Cir. 1969).

submit new plans. On August 28, 1969, the court of appeals suspended its previous order and postponed the date for submission of the new plans to December 1, 1969.

The Secretary's letter stated that the major reasons for requesting withdrawal of the plans were that "the time allowed for the development of these terminal plans has been much too short" and that implementation of the plans "must surely, in my judgment, produce chaos, confusion, and a catastrophic educational setback." The court of appeals noted, however, that the timetable established had been proposed by the Government and that Government witnesses had stated unequivocally that the timetable was reasonable.

Although, as a condition of the delay granted, school districts were to take "significant action" to desegregate in 1969-1970, the districts continued to operate under their ineffective freedom of choice plans. Private plaintiffs sought to vacate the postponement order, but Supreme Court Justice Hugo Black denied the request, at the same time inviting the applicants to "present the issue to the full court at the earliest possible opportunity." The petition for a hearing by the Supreme Court was granted on October 9, set down for argument on October 23, and decided October 29, 1969.[56]

In the hearing before the full Court in Alexander, a case in which the Department of Justice intervened against black students, the Supreme Court refused to accede to the Government's request for delay, stating in a unanimous unsigned decision:

> The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of the Supreme Court. Against this background the Court of Appeals

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56. Alexander v. Holmes County Board of Education, 396 U.S. 1218 (1969).

> should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under the 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.[57]

The Court held that local school systems are constitutionally required to desegregate first and litigate later. By staying the implementation of plans for full desegregation, the court of appeals had illegally frozen the status quo of past discrimination, even if for a short period.

On December 1, 1969, following the Supreme Court's order in Alexander, the court of appeals, in Carter v. West Feliciana Parish School Board,[58] ordered the Louisiana school board to adopt plans for desegregating faculty completely but authorized a delay in pupil desegregation until September 1970. Further review by the Supreme Court resulted in a January 14, 1970, unanimous unsigned opinion that stated:

> Insofar as the Court of Appeals authorized deferral of student desegregation beyond February 1, 1970, that court misconstrued our holding in Alexander... the judgments of the Court of Appeals are reversed, and the cases remanded for further proceedings consistent with this opinion. The judgments in these cases are to issue forthwith.[59]

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57. 396 U.S. 19, (1964). The Mississippi case was not unique. In 1969, for example, HEW also acquiesced in delaying desegregation in Alabama and South Carolina. See U.S., Commission on Civil Rights, Federal Enforcement of School Desegregation (1969), pp. 52, 56. Alexander, however, also has been cited by HEW as a reason for unwillingness to use its single sanction, fund termination, based on an interpretation of the "at once" mandate as incompatible with its own administrative enforcement proceedings. Taylor Co., Fla. v. Finch also has been noted in this regard. Letter from Peter E. Holmes, Director, Office for Civil Rights, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Sept. 25, 1974.

58. 396 U.S. 290 (1970).

59. Ibid.

Although the Mississippi plans and those covered in Carter were implemented, HEW soon began to place primary emphasis on the first step in the enforcement process, namely, negotiation with school districts to secure voluntary compliance. However, few enforcement proceedings were initiated when compliance was not secured, and those proceedings already underway did not result in termination of Federal financial assistance, even after a determination of noncompliance. As a result, HEW failed to use its authority to achieve the objective established by Alexander, which was to eliminate dual school systems at once. In only 15 school districts have funds been terminated since 1968.

The Office for Civil Rights (OCR), which handles Title VI compliance for HEW, reports that no aggregate data are available on results achieved through the emphasis on negotiation to secure voluntary compliance. Such data may be compiled in the near future. National statistics on desegregation since 1968, provided later in this report, sometimes are cited as measures of the effectiveness of negotiation. These statistics, however, reflect not only the contribution of this emphasis, but also the contribution of other policies initiated and followed prior to 1968. The only way in which a judgment can be made on the impact of negotiation as a separate and distinct process is for the Office for Civil Rights to provide specific data on the results of negotiation.

In fact, between May 1969 and February 1971, the files of 60 school districts were transferred by HEW to the Justice Department for legal action, yet between February 1971 and June 1973 no files were transferred.[60] An independent study of HEW data on Northern desegregation, secured after months of negotiation and litigation, cites a total of 84 compliance reviews between 1965 and 1973 in

60. From a forthcoming report by the U.S. Commission on Civil Rights which fully examines the role of OCR as one aspect of Federal civil rights enforcement.

more than 5,000 Northern and Western school districts.[61] From a peak of 23 reviews in 1968, there was a steady decline to no reviews in 1973.

Of the 84 reviews, only 32 had been closed by the end of fiscal year 1973. In three districts, discriminatory practices were changed immediately, while 4 cases were closed when private litigants successfully obtained court relief. The Justice Department acquired jurisdiction in 4 cases, and 2 cases were brought to an administrative hearing.

For the 52 districts where compliance reviews were still open in 1973, in 37 cases a letter of probable noncompliance had not yet been sent. In 10 cases, the letter had been sent, but only 2 had reached the stage of administrative hearing. In 5 cases, the investigation had been stayed pending private litigation.

In these 84 Northern districts, HEW found discrimination and sent letters of probable noncompliance to 22, involving 513,000 pupils. In contrast, in 20 of 32 Northern districts where cases were initiated by private litigants, the courts found discrimination affecting 921,000 pupils.

Comparable data are not yet available for the South.

Following Alexander and Carter, on March 24, 1970, the President issued a statement on elementary and secondary desegregation in which the question of busing was raised. The President cautioned that desegregation must proceed with the least possible disruption and emphasized the desirability of maintaining the neighborhood school principle.

Subsequently, in 1971, the President disavowed an HEW desegregation plan which included the transportation of children and restated his position. The President said that he "consistently opposed busing

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61. This material is based on Center for National Policy Review, School of Law, Catholic University of America, Justice Delayed and Denied: HEW and Northern School Segregation (Washington, D.C.: September 1974).

of our nation's school children to achieve racial balance" and that he was "opposed to the busing of children simply for the sake of busing." Finally, the President said that he had instructed the Attorney General and the HEW Secretary "to hold busing to the minimum required by the law."[62]

The Supreme Court dealt with these issues the same year, in Swann v. Charlotte-Mecklenburg Board of Education.[63] The Charlotte-Mecklenburg, North Carolina, school system is a consolidated one, including the city of Charlotte and surrounding Mecklenburg County. The plan approved by the district court and upheld by the Supreme Court in Swann attempted to desegregate the system by distributing students throughout the 107 schools of the district so that the schools' compositions reflected the overall racial pattern of the system.

In Swann, the Court noted that busing of students is "a normal and accepted tool of educational policy"[64] and announced that "desegregation plans cannot be limited to the walk-in school."[65] The Court, in effect, placed its approval on busing as an appropriate remedy for use in school desegregation. The Court carefully recognized that busing may be validly objectionable "when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."[66] The Court also discussed appropriate limits on transportation, stating, "limits on time of travel will vary with many factors, but probably none more

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62. Statement by the President, White House Press Release, August 3, 1971.

63. 402 U.S. 1 (1971).

64. 402 U.S. 1, 29 (1971).

65. Ibid. at 30.

66. Ibid. at 30-31.

than the age of the students."[67]

In eliminating illegally segregated school systems, the Justices pointed out, the neighborhood school or any other assignment plan "is not acceptable simply because it appears to be neutral." The Court also said:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems....[68]

The Court also concerned itself in Swann with remedies generally, outlining the following techniques, in addition to transportation, which were permissible and appropriate:

> "a frank--and sometimes drastic--gerrymandering of school districts and attendance zones," resulting in zones "neither compact nor contiguous; indeed they may be on opposite ends of the city."
>
> "'pairing', 'clustering', or 'grouping' of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of white students to formerly all-Negro schools."

The Court found that the use of a mathematical ratio of white to black students (71 percent to 29 percent) in the schools was "no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement."[69] The Court continued: "Awareness of the racial composition of the whole school system is likely to be a

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67. Ibid. at 31.

68. Ibid. at 28.

69. Ibid. at 25.

useful starting point in shaping a remedy to correct past constitutional violations."[70] If the ratio had been read as requiring "any particular degree of racial balance or mixing," the Court said, "that approach would be disapproved and we would be obliged to reverse."[71]

Reactions to Swann have varied. One commentator found four advances enunciated in the case:

> (1) the rejection of geographic proximity (neighborhood schools) as a criterion for school assignments where such policy fails to bring about a "unitary nonracial school system";
>
> (2) the creation of an evidentiary presumption that segregated school patterns are the result of past discriminatory conduct;
>
> (3) the requirement that school boards take all feasible steps to eliminate segregation, including massive, long distance transportation programs;
>
> (4) The validation of using race in student assignments to achieve school desegregation.[72]

A different and more pessimistic view held:

> ...the Court seemed unwilling to take a vigorous anti-segregation stand. It stressed it would not condone the strict use of mathematical ratios by courts to ensure racial balance throughout a school system since "/t/he constitutional command to desegregate schools does not mean every school in every community must always reflect the racial composition of the school system as a whole." Furthermore the Court indicated that the continuation of an indefinite but small number of one race schools within a district would not be viewed as evidence of continued de jure segregation....Finally, although Swann ruled that the busing of students to achieve racial balance was permissible within the confines of the case, there was a strong implication that at some point busing might become violative of the Constitution.[73]

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70. Ibid.

71. Ibid. at 24.

72. Owen Fiss, "The Charlotte-Mecklenburg Case," cited in Derrick A. Bell, Jr., Race, Racism and American Law (Boston: Little Brown, 1973), p. 509.

73. "School Busing and Desegregation: The Post Swann Era," cited in Bell, Race, Racism and American Law, p. 509.

Following the Swann decision, HEW remained inactive despite the mandate provided.[74] Swann required, for example, appropriate affirmative steps to correct constitutional abuses by use of such techniques as noncontiguous zoning and transportation of students. The Court also had indicated that, although precise racial balance was not required to dismantle dual school systems:

> in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition.[75]

In addition, the Court placed the burden upon the school district to justify the continued existence of any schools that are "all or predominantly of one race."

After Swann was decided, HEW attempted to ascertain which school districts had "racially identifiable" schools. Ultimately, 650 were identified, of which 300 were under HEW's primary jurisdiction. HEW then analyzed its data on these districts:

> A school system which is 45 percent black, and which has only one majority black school which is 52 percent black, (was) eliminated from the group subject to potential enforcement...Of the initial 300 districts, about 75 were eliminated on this basis alone

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74. Although HEW enforcement is discussed here in the context of Swann, HEW had been criticized for failing to: stop grants to segregated institutions at the elementary, secondary, and higher education levels; begin a single enforcement proceeding in higher education; use Title VI against noncomplying districts either as a threat or in actuality; prevent racial discrimination and segregation in vocational and other schools operated by State departments of education with Federal financial assistance; assure that school districts operating under judicial desegregation orders are in compliance with Title VI; and in districts where HEW formerly prosecuted enforcement proceedings against school districts, its failure to exercise and its disavowal of full remedial power to suspend or recapture aid from the defaulting districts. See Civil Action No. 3095-70 Plaintiff's Points and Authorities in Support of Motion for Summary Judgment in Adams v. Richardson, 4-5; and see decision in Adams v. Richardson, 356 F. Supp. 92 (1973).

75. 402 U.S. 1, 26 (1971).

> at first review, leaving the balance for further analysis.[76]

In the remaining 225 school districts having one or more predominantly minority schools, HEW did not shift the burden of proof to the school districts. It was unnecessary to satisfy HEW that the composition of the schools was not the result of the district's present or past discriminatory action, despite the fact that the racial composition of these schools could not satisfy the requirements of the Court.

Letters relating to Swann were sent to 91 school districts.[77] In only 37 of these districts did HEW secure desegregation plans. In 3 instances administrative enforcement proceedings were initiated, and in 9 Swann was found applicable. The remaining 42 districts remained "under review" well after the commencement of the 1971-1972 school year, several months subsequent to the decision in Swann. The Office for Civil Rights director described the situation:

> In other words, in those cases where we didn't get plans that met Federal standards, we did not accept what was proposed. Instead, we held tight and are currently in the process of continuing our negotiations and law enforcement action against those districts.[78]

The immediate desegregation mandate of Alexander and the insistence in Swann that schools having disproportionately minority enrollment were presumptively in violation, thus, were not acted upon by HEW, which permitted these districts to remain "under review." In 134 other districts, HEW did not even send a letter requesting an explanation of racially disproportionate schools. HEW attempted to secure

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76. Stanley Pottinger, "HEW Enforcement of Swann," Inequality in Education, no. 9 (Aug. 3, 1971), p. 8. Stanley Pottinger was Director of the Office for Civil Rights of the Department of Health, Education, and Welfare and is now Assistant Attorney General for Civil Rights.

77. See, for example, J. Stanley Pottinger, Director, Office for Civil Rights, U.S. Department of Health, Education, and Welfare, letter to Dr. Carl W. Hassel, Superintendent, Prince George's County Public Schools, HEW files, June 23, 1971.

78. Pottinger transcript in Adams v. Richardson suit, Tr. 766, quoted in Plaintiff's Points and Authorities in Support of Motion for Summary Judgment, Civil Action No. 3095-70 at 44.

compliance through persuasion and negotiation, and the Title VI enforcement mechanism fell into disuse. These conditions led to the initiation of Adams v. Richardson.[79]

This suit alleged that HEW had defaulted in the administration of its responsibilities under Title VI of the Civil Rights Act of 1964. The district court stated on February 16, 1973, that, where efforts to secure voluntary compliance with Title VI failed, the limited discretion of HEW officials was exhausted. Where negotiation and conciliation did not secure compliance, HEW officials were obliged to implement the provisions of the Title VI regulation: provide for a hearing; determine compliance or noncompliance; and, following a determination of noncompliance, terminate Federal financial assistance.

The district court's decision was modified and affirmed by the court of appeals.[80] Essentially, the district court order requires that HEW properly recognize its statutory obligations, ensuring that the policies it adopts and implements are consistent with those duties and not a negation of them.[81]

A final post-Brown case[82] of note in the South involved Richmond, Virginia. To desegregate the Richmond city schools, the district court, on January 5, 1972, ordered the merger of the Richmond school system of 43,000 pupils, 73 percent black, with the systems in two surrounding counties--Henrico County with 34,000 pupils, 92 percent white, and Chesterfield County with 24,000 pupils, 91 percent white.

The order would have created a metropolitan school system covering 752 square miles and containing 101,000 pupils, with a ratio of 66 percent white to 34 percent black. Each school was to have a black minority of between 20 and 40 percent. Only 10,000 additional

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79. 356 F. Supp. 92 (1973).

80. 480 F. 2d 1159 (D.C. Cir. 1973).

81. Ibid. at 1163-64.

82. Bradley v. School Board of City of Richmond 462 F. 2d 1058, 1061 (4th Cir. 1972).

pupils would have been bused, making a total of 78,000 children bused in the larger school system. Some significant distances would have been involved because of the rural areas in which some white children lived.

The court of appeals stayed the order, accelerated the appeal, and then reversed the order. The court of appeals overruled the district court judge on the grounds that "in his concern for effective implementation of the Fourteenth Amendment he failed to sufficiently consider a fundamental principle of federalism incorporated in the Tenth Amendment and failed to consider that the Swann v. Charlotte-Mecklenburg decision established limitations on his power to fashion remedies in school cases."[83]

The 10th amendment provides that powers not specifically delegated to the Federal Government or specifically prohibited to the States by the Constitution are reserved to the States or to the people. One of these powers reserved to the States is the power to structure their internal governments. If the exercise of this power resulted in a direct conflict with the 14th amendment's equal protection clause, then the 14th amendment would prevail. However, the Court of Appeals stated:

> The facts of this case do not establish, however, that state establishment and maintenance of school districts coterminous with the political subdivisions of the city of Richmond and the counties of Chesterfield and Henrico have been intended to circumvent any federally protected right. Nor is there any evidence that the consequence of such state action impairs any federally protected right, for there is no right to racial balance within even a single school district but only a right to attend a unitary school system.[84]

The Supreme Court divided four to four on the issue. (Justice Lewis F. Powell, a former Richmond City and Virginia Board of Education member, disqualified himself from the case.) Hence, the court of appeals' decision remains in effect.

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83. Ibid. at 1061.

84. Ibid. at 1069.

POST-BROWN CASES IN THE NORTH

In 1967 the U.S. Commission on Civil Rights issued Racial Isolation in the Public Schools, a report that discussed the extent of "racial isolation," evaluated its deleterious effects on young people, and assessed existing and proposed remedies. Sometimes, but not consistently, the terms segregation and racial isolation now are used interchangeably, but the former is a legal description and the latter is perhaps more prevalent in the social sciences.

Black parents in various Northern cities had begun filing lawsuits, similar to those in the South, in order to move their children from racially isolated schools into desegregated schools so that they might receive a better education. Although there were some victories in the courts, these Northern suits were generally unsuccessful,[85] perhaps because of the basic theory behind the suits. The lawyers who handled the early Northern cases argued that racial isolation in the public schools, whether caused directly by school officials or not, unconstitutionally deprived black children of equal educational opportunity.[86] In more recent cases that have proved successful, NAACP Legal Defense and Educational Fund staff and other lawyers have set out to show that existing school segregation is a result of State action by school authorities that, although not arising from segregation laws, has similar effect and intent.

Keyes v. School District No. 1, Denver, Colorado[87] was the first Northern school desegregation case decided by the Supreme Court. The

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85. See Bell, Race, Racism and American Law, p. 532 ff.

86. Robert L. Herbst, "The Legal Struggle to Integrate Schools in the North," Blacks and the Law, Annals of the American Academy of Political and Social Science, May 1973, p. 43.

87. 413 U.S. 189 (1973).

outcome of Keyes, both in the lower court and in the Supreme Court, lay in the carefully detailed proof of intentional actions by the Denver school board that resulted in segregation. Both courts ruled that, despite the fact that Colorado had never had a school segregation law, and in fact had a specific antidiscrimination clause in its constitution, the actions of the school authorities were sufficient to establish de jure segregation.

Justice Brennan, writing for the majority explained that the Denver school system:

> has never been operated under constitutional or statutory provision that mandated or permitted racial segregation in public education. Rather, the gravamen of this action...is that respondent School Board alone, by use of various techniques such as the manipulation of student attendance zones, school site selection and a neighborhood school policy, created or maintained racially or ethnically (or both racially and ethnically) segregated schools throughout the school district, entitling petitioners to a decree directing desegregation of the entire school district.[88]

The case arose when a newly elected school board rescinded three resolutions passed by the old board, which were designed to desegregate schools in the northeast portion of the school district. The new board replaced the resolutions with a voluntary student transfer program. An injunction against the new board's action was granted in district court. But the petitioners, recognizing that segregation was not limited to one segment of the city, also requested an order directing that all schools in the system be desegregated.

The lower court, however, required that a fresh showing of de jure segregation be made for each section for which the plaintiffs sought additional relief. The district court also held that its finding of intentional segregation in the area where it granted relief was not material to the question of intent to segregate in other areas of the city.

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88. 413 U.S. 192 (1973).

The Supreme Court, however, held that the school district could not be divided in such a manner. The Court noted how specific actions directed to a portion of a school system have "reciprocal" effects throughout the entire system. The Court wrote:

> ...where plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system. Several considerations support this conclusion. First, it is obvious that a practice of concentrating Negroes in certain schools by structuring attendance zones or designating "feeder" schools on the basis of race has the reciprocal effect of keeping other nearby schools predominantly white. Similarly, the practice of building a school...to a certain size in a certain location, "which (sic) conscious knowledge that it would be a segregated school" has a substantial reciprocal effect on the racial composition of other nearby schools. So also, the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.

Thus, the Supreme Court held that school authorities had the burden of proving that the other segregated schools within the system were not the result of intentional actions, even if it were determined that the different sections of the system could be viewed as independent entities. On return of the case to the lower court, it was decided on December 11, 1973, that the Denver school district was segregated by the action of the school board or, in effect, had been operated as a dual school system. The court then set a schedule for the development of a desegregation plan by the fall of 1974, and it was implemented successfully and without incident.

Another important finding by the Supreme Court in Keyes was that the lower court erred in not placing "Negroes" and "Hispanos" in the same category for purposes of defining "segregated" schools, since both groups suffer the same educational inequities when their treatment is compared with the treatment afforded "Anglo" students.[89] Denver's school population is about 66 percent Anglo, 14 percent Negro, and 20 percent Hispano. The lower court had said that only schools which were predominantly Negro or predominantly Hispano could be called segregated and that only those schools with a 70 to 75 percent concentration of one of these groups would be a school considered likely to provide an inferior education.

The Supreme Court had held in several earlier cases that Hispanos constituted an identifiable class for purposes of the 14th amendment. Since both Negroes and Hispanos suffer "economic and cultural deprivation and discrimination,"[90] educational inequities, and discrimination in treatment when compared to Anglos, the Supreme Court concluded that schools with a combined predominance of the two groups should be included in the category of segregated schools.

The issue of Northern metropolitan desegregation was considered by the Supreme Court for the first time in Milliken v. Bradley.[91] Although reaffirming previously established constitutional principles, including the use of transportation to overcome segregation, the decision represented a setback in efforts to desegregate urban school districts, particularly in the North but apparently in the South as well.

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89. These are the racially descriptive terms used by the parties in Keyes and in the Supreme Court opinion.

90. Language of lower court quoted in Keyes, 413, U.S. 189, 197-198 (1973).

91. 42 U.S.L.W. 5249 (U.S. July 25, 1974).

In this case, the Court majority, in a 5 to 4 judgment on July 25, 1974, found that a district court order for metropolitan desegregation was not supported by evidence that acts of suburban school districts, or acts of the State in these districts, had any effect on the discrimination found to exist in the Detroit city schools. Imposition of a multidistrict, areawide remedy was denied on grounds that such evidence was lacking.[92]

On April 7, 1970, the Detroit Board of Education had adopted a voluntary plan for partial high school desegregation. Three months later, the Michigan legislature passed a statute, known as Act 48, that delayed implementation of the plan. Subsequently, a successful recall election removed four board members who had favored the plan, and the new board members, together with those who originally opposed desegregation, rescinded the plan altogether.

On August 18, 1970, the Detroit branch of the NAACP and individual parents and students filed a complaint against the Governor of Michigan, the attorney general, the State board of education, the State superintendent of public instruction, and the Detroit Board of Education, its members, and its former superintendent of schools. The complaint alleged that the Detroit school system was racially segregated as a result of the official policies and actions of the defendants, challenged the constitutionality of Act 48, and called for implementation of a plan that would "maintain now and hereafter a non-racial school system."[93]

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92. Following the Supreme Court's decision in Milliken, on July 31, 1974, the Congress completed action on a compromise school assistance measure authorizing $25 billion over a 4-year period. The bill placed restrictions on busing for desegregation but did not go as far as the House originally proposed. The restrictions would not apply where courts find that correction of a constitutional violation requires busing, and a proposed provision for the reopening of past busing cases also was dropped in the compromise. Busing under voluntary desegregation plans is not restricted.

93. 42 U.S.L.W. at 5251.

In response to plaintiff's motion for an injunction to restrain enforcement of Act 48, the district court denied the motion, did not rule on Act 48's constitutionality, and granted motions of the Governor and attorney general of Michigan for dismissal of the case against them. The court of appeals subsequently ruled that Act 48 was an unconstitutional interference with 14th amendment rights and that the State officials should not have been dismissed as defendants. The case was returned to the district court for trial on the merits of the substantive allegations of segregation in the Detroit schools.

In a decision on September 27, 1971,[94] the district court held that the Detroit public school system was racially segregated as a result of the unconstitutional practices of the Detroit Board of Education and the State defendants. The district court ordered the Detroit Board of Education to submit desegregation plans limited to the city and directed State defendants to submit desegregation plans for a three-county metropolitan area encompassing 85 separate school districts.

After consideration of the plans submitted, the district court rejected all Detroit-only plans, stating that "relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city." The district court held that "it must look beyond the limits of the Detroit school district for a solution to the problem" and that "district lines are simply matters of political convenience and may not be used to deny constitutional rights."

On June 14, 1972, the district court designated 53 of the suburban school districts plus Detroit as the "desegregation area." The court appointed a panel to design a desegregation plan in which no school, grade, or classroom in the area would be "substantially disproportionate to the overall pupil racial composition." The district court stated

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94. Ibid. at 5251, quoting Bradley v. Milliken, 338 F. Supp. 582 (Ed Mich., 1971).

clearly that it had "taken no proofs" on the issue of whether the 53 districts had "committed acts of de jure segregation."[95]

The court of appeals subsequently held that the record fully supported the findings of racial discrimination and segregation in Detroit, and that the district court was authorized and required to take effective measures to desegregate the school system. Further, it agreed that "any less comprehensive a solution than a metropolitan area plan would result in an all black school system immediately surrounded by practically all white suburban school systems."[96]

An effective desegregation plan, the court held, had to include nearby school districts, and it reasoned that such a plan would be appropriate because of the State's violations in Detroit and because of the State's authority to control local school districts. The court of appeals expressed no views on the composition of the "desegregation area" but said that all districts which might be affected must be given an opportunity to be heard with respect to the scope and implementation of the remedy.[97]

The Supreme Court decision in Milliken reaffirmed as the meaning of the Constitution and the controlling rule of law the finding in Brown that "separate educational facilities are inherently unequal."[98] While noting that the task in Milliken was acknowledged to be desegregation of the Detroit public schools, the Supreme Court held that both "the District Court and the Court of Appeals shifted the primary focus from a Detroit remedy to the metropolitan area only because of their conclusion that total desegregation of Detroit would not produce the racial balance which they perceived as desirable."[99] Desegregation in dismantling a dual school system, the Court said, does not require any

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95. Ibid. at 5254.

96. Ibid., quoting 484 F. 2d 215, 242, 245 (CA 6 1973).

97. Ibid. at 5255, quoting 484 F. 2d, at 251-252.

98. Ibid., quoting Brown v. Board of Education, 347 U.S. 483, 495 (1954).

99. Ibid. at 5256.

particular racial balance in each school, grade, or classroom.

The Court went on to hold that school district "lines may be bridged where there has been a constitutional violation calling for inter-district relief, but the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country." However, the Court continued, "School district lines and the present laws with respect to local control are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies."[100]

The Court also affirmed Swann, including the use of pupil transportation to overcome constitutional inequities. But the Court held that "the scope of the remedy is determined by the nature and extent of the constitutional violation," and:

> Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there had been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by the constitutional violation. Conversely, without an inter-district violation and inter-district effect, there is no constitutional wrong calling for an inter-district remedy.[101]

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100. Ibid. at 5257-58.

101. Ibid. at 5258.

The record in Milliken contained evidence only of de jure segregation in Detroit, according to the Court's majority opinion, with no showing of significant violation by the 53 suburban school districts and no evidence of interdistrict violation or effect. Indeed, there was no evidence covering the schools outside of Detroit except for their racial composition, according to the ruling, and thus the lower courts went beyond the case framed by the pleading. Justice Stewart, in a concurring opinion, added that an interdistrict remedy would be appropriate were it shown that State officials had contributed to segregation by drawing or redrawing schools lines, by transfer of school units between districts, or by purposeful and discriminatory use of State housing or zoning laws.

Based on these findings, the Supreme Court concluded that the relief ordered by the district court and affirmed by the court of appeals was based on an erroneous standard and was not supported by evidence of discriminatory acts by the suburban districts. The case was returned for prompt formulation of a desegregation plan for the schools within Detroit.

The minority opinion by Justice Marshall, joined by the other dissenting members of the Court, denied that racial balance was a primary focus in the case. The primary question, Marshall said, was the area necessary to "eliminate 'root and branch' the effects of state imposed and supported segregation and to desegregate the Detroit public schools."[102] Interdistrict relief was seen as a necessary part of any effort to remedy State-caused segregation within Detroit.

Evidence on the role of the State in supporting segregation was deemed adequate by Justice Marshall. He cited the Detroit school board's approval of attendance lines that maximized segregation, attendance

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102. Ibid. at 5269.

zones that allowed whites to flee desegregation, transportation of black students from overcrowded schools past closer white schools with available space, grade structures and feeder patterns that promoted segregation, and school construction that promoted segregation. He also cited State action in the supervision of school site selection that exacerbated segregation, passage of Act 48, and discriminatory involvement in interdistrict transportation of black students.

Justice Marshall judged the Detroit school board decisions to be acts of the State, since the board was an agency of the State. He also noted direct State control over education in a variety of specific ways: teacher credentialing, curriculum determination, textbook and bus route approval. He concluded: "Indeed, by limiting the District Court to a Detroit-only remedy and allowing...flight to the suburbs to succeed, the Court today allows the State to profit from its own wrong and to perpetuate for years to come the separation of the races it achieved in the past by purposeful state action."[103]

In summary, disagreement between majority and minority in Milliken apparently was not on the issue of the basic constitutional command or on evidence of State-supported segregation in Detroit. Rather, it appeared to center on the relationship between the scope of the constitutional violation and the scope of the remedy. The Court finally held that the case presented did not contain adequate evidence of discrimination in the school districts affected by the proposed desegregation plan, adequate evidence of interdisctrict discriminatory effects, or adequate evidence of discriminatory State action affecting districts other than Detroit.

The NAACP has already indicated an intent to return to the Court with just this kind of evidence, and previous study by the U.S. Commission on Civil Rights suggests that a direct relationship between governmental action and urban-suburban segregation is to be found in

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103. Ibid. at 5277.

the Nation's major metropolitan areas.[104] School segregation cases pending in Hartford, Connecticut, and elsewhere will provide opportunity to make such a showing.[105]

TWENTY YEARS OF DESEGREGATION LAW

In the first 10 years after Brown school desegregation cases involved Southern efforts to evade or delay the Supreme Court's mandate. Black plaintiffs returned to court on numerous occasions in efforts to obtain enforcement of their constitutional rights. It was not until 1964 that passage of the Civil Rights Act provided an administrative tool for enforcement of nondiscrimination in education.

During the next 5 years, the work of the Department of Health, Education, and Welfare, coupled with various court decisions, placed additional pressure on Southern school districts to increase the pace of desegregation. In 1969, however, the use of administrative enforcement procedures under Title VI was sharply curtailed and persuasion largely replaced sanctions. After 1971, there was a further curtailment in desegregation suits by the Government. This change of policy produced delays in desegregation and a lack of results with which the Supreme Court soon expressed its impatience. In Alexander, the Court ruled that the constitutional right of children to a desegregated education could no longer be postponed and that the "all deliberate speed" standard for desegregation enunciated in Brown II was no longer constitutionally permissible.

The 1970's brought increasing recognition that segregated schools were not a regional phenomenon but a national problem. School systems in the North, thought to have de facto segregation not subject to

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104. See for example, U.S., Commission on Civil Rights, Equal Opportunity in Suburbia (1974).

105. On August 22, 1974, the court of appeals gave a Federal district court judge in Indianapolis approval to consider a metropolitan desegregation plan involving 11 autonomous districts in the area. The three judge panel, in its ruling, quoted language from Justice Stewart's concurring opinion in Milliken. U.S. v. The Board of School Commissioners in Indianapolis, Indiana, Nos. 731968-731984 (7th Cir., Aug. 22, 1974).

redress by the courts under prevailing precedents, were found to have de jure segregated schools. Resistance to court-imposed remedies manifested itself in protests against busing, an integral part of the public education system prior to the desegregation issue.

But the Supreme Court remained undeterred in its commitment to constitutional principles, declaring in Swann that desegregation plans "could not be limited to the walk-in school." In Keyes, the Court said that intentional segregation in one area of a school system may have "reciprocal" effects throughout the system and that "Hispanos" suffer the same inequities as blacks and must be considered in identifying segregation. Ruling on Milliken in 1974, the Court continued to uphold the basic constitutional standards enunciated since Brown, yet now placed more stringent requirements on evidence necessary to support arguments for urban desegregation remedies. While sanctioning in principle the concept of crossing school district lines to achieve desegregation, including the use of pupil transportation, the Court indicated that the remedy must be appropriate to the violation and that evidence of discrimination must be clear for all districts affected.

THE SOUTHERN RESPONSE TO BROWN

"Separate educational facilities are inherently unequal...such segregation is a denial of the equal protection of the laws." Thus did Brown v. Board of Education provide a new answer to the continuing question of race in America.

Traditionally, black parents had viewed education as the means by which their children would achieve a better life. The plaintiffs in Brown had identified equal education with desegregated education, and they saw both as providing access to economic prosperity and all other elements of the American dream.[106] Now the Supreme Court of the United States had legitimated their struggle for equality.

The post-Brown cases, then, were brought by black parents and children who sought to protect their rights through Federal courts that had been charged with bringing public education into line with constitutional requirements. Only in a few States were the schools desegregated without further prodding by the courts.

The District of Columbia public schools were ordered to begin desegregation by September 2, 1954. Although the board of education in Topeka had voted to abolish optional elementary school segregation in September 1953, desegregation was postponed while it waited for Brown II to implement Brown I. In Delaware, where blacks had won in the State courts, the Brown decision became an excuse for slowing down desegregation. Some Border States moved to comply without significant opposition, but the Southern States went to battle with Federal district judges over desegregation.

Some States, such as Florida, North Carolina, Tennessee, Texas, and sometimes Arkansas, reacted against the decision while supporting the Supreme Court's authority with limited desegregation. Virginia

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106. Raymond Mack, Our Children's Burden: Studies of Desegregation in Eight American Communities (New York: Random House, 1968), p. xiii.

adopted a policy of "massive resistance" and allowed no desegregation for several years.[107] The greatest resistance was in the deep South--Alabama, Georgia, Louisiana, Mississippi, and South Carolina.

The Southern States adopted three major forms of legislative resistance to desegregation: (1) pupil assignment laws, (2) school closing laws, and (3) laws providing tuition grants and other aid to private schools. Eleven States passed laws that set forth rules determining how students would be assigned to schools. In 10 of the 11 States, the assignment power was given to the local school board so that there could be no statewide decree to desegregate.

The Supreme Court subsequently ruled that, although pupil assignment laws were not unconstitutional on their face, they might be in application. The elaborate procedures for admission to schools established by the assignment laws, in fact, were designed to discourage black students from applying to all-white schools. With but a few exceptions, the laws worked successfully to prevent even token desegregation.

School closings were viewed by some as a last resort against desegregation. These people believed that it was better to have no public schools at all than to have blacks and whites in class together. Only South Carolina and Tennessee did not pass school closing laws. But even in the most recalcitrant States these laws were seldom, if ever, implemented, and the courts eventually struck down as unconstitutional the statutes that allowed school closings designed specifically to avoid desegregation.[108] However, laws directly related to the school closing legislation in purpose, effect, and constitutionality allowed States to cut off funds to schools or districts that went ahead with desegregation. Laws that terminated funds in such cases were passed by seven States but proved to be ineffective in prohibiting desegregation.

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107. See Reed Sarratt, The Ordeal of Desegregation (New York: Harper and Row, 1966) for a detailed description of this period.

108. For Virginia and Arkansas, for example, see U.S., Commission on Civil Rights, 1961 Report, vol. 3, Education, p. 85.

Another tactic to avoid desegregation was to provide indirect aid to private schools. Tuition grants usually equaled the per pupil share of State and local expenditure for public schools. Other aid to private schools took the form of "tax deductions or credits for donations made to such institutions, extension of state retirement benefits to teachers employed by private schools, and even reimbursement for transportation expenses of pupils attending the school."[109] Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, Arkansas, and North Carolina adopted laws of this type following the Brown decision.

The Southern States also sought to curb the activities of the NAACP and its Legal Defense and Educational Fund. Every Southern State except North Carolina enacted a variety of anti-NAACP laws. Most of these laws were aimed at preventing NAACP lawyers from engaging in "barratry," a legal term for persistent incitement and solicitation of litigation. Southern officials felt that, as the NAACP was handling so many school cases, the organization must have solicited or "stirred up" the litigation, since Southern blacks presumably "knew their places" too well to dare sue for school desegregation.

A South Carolina State representative, Charles G. Garrett, described the antibarratry laws as designed "to protect our Negro citizens and colored public employees, most of whom are not members of the organization, from the intimidation and coercion of the NAACP, as well as to limit its activities against the best interests of our white citizens." Other laws designed to cripple the NAACP

> included racial lobbyist laws requiring NAACP officials to register with the State; laws making it a misdemeanor to employ a member of the NAACP, and making membership in an organization advocating integration ground for dismissal from public employment; laws saying that all public employees must list the organizations to which they belonged and to which they made contributions; laws requiring the NAACP to file a list of its membership which foreign corporations (those chartered in another state) could engage.[110]

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109. Ibid., p. 88.

110. Sarratt, The Ordeal of Desegregation, pp. 36-37.

The NAACP was investigated almost continuously by various State committees and avidly persecuted as being part of the "Communist conspiracy," a significant public concern during this period. Unsuccessful attempts were made to get NAACP membership lists, which would have been invaluable in segregationist efforts to intimidate blacks further. In fact, the very segregated schools black children desired to escape were the recruiting grounds for student NAACP members.

Although the NAACP won all the cases[111] involving anti-NAACP laws in appellate courts and in the Supreme Court, the harassment hampered the organization in terms of time lost and money spent defending itself rather than fighting to desegregate schools. In addition to curtailing suits, however, another objective of the anti-NAACP legislation was to "discourage Negro teachers--the best-educated, the most articulate and the most valuable segment of the Negro community--from actively participating in the desegregation struggle."[112]

Federal Judge Constance Baker Motley, formerly associate counsel of the Legal Defense and Educational Fund, recalls that "those were frightening years to work for the NAACP, but there was work to be done."[113] So the NAACP desegregation effort was carried on and has continued to this day.

SCHOOL DESEGREGATION

Although there are few statistics reflecting the racial composition of the public schools in 1954, data gathered since then indicate the extent of desegregation progress. Prior to 1954, 17 Southern and Border States, in addition to the District of Columbia, had laws requiring segregated schools; several other States also supporced such a system until after the Second World War. By 1964, however, despite

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111. See NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 357 U.S. 449 (1958); and Bates v. Little Rock, 361 U.S. 516 (1960).

112. Sarratt, The Ordeal of Desegregation, p. 38.

113. Interview in New York City, Nov. 11, 1973.

Brown, the school situation in the South was virtually unchanged. Some improvement occurred after the Civil Rights Act of 1964 was passed. But it has been only since 1968 that substantial reduction of racial segregation has taken place in the South.

In 1964, 9.3 percent of 3.4 million black school children in the 17-State area attended desegregated schools. Of these children, 89.2 percent were in Border States (Delaware, Kentucky, Maryland, Missouri, Oklahoma, West Virginia) and the District of Columbia. With the exception of Delaware, there was the least resistance to desegregation in these States. Yet, even here, 45.2 percent of black children still attended segregated schools.[114]

In 1964, only 1.2 percent of almost 2.9 million black pupils in the South (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia) attended school with whites, and over 50 percent of these pupils were in Texas. None of the almost 292,000 black pupils in Mississippi attended school with whites. In South Carolina, only 10 of nearly 259,000 black pupils attended school with whites. In Alabama, only 21 of more than 287,000 black pupils attended school with whites.

The number of black pupils attending school with whites in the 17 Southern and Border States had increased by an average of 1 percent a year until 1964. Then the rate accelerated somewhat with passage of the Civil Rights Act. By the end of the 1964-1965 school year, 10.9 percent of black pupils were in biracial schools. In the 11 States of the South, this figure reached 2.2 percent in 1964-1965 and 6 percent in 1965-1966. In the Border States it was 58.3 and 68.9 percent in those years, respectively.[115]

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114. The Southern Education Reporting Service is the primary source of the data summarized here; see Sarratt, The Ordeal of Desegregation, tables 1 and 2.

115. Southern School Desegregation, pp. 5-6.

Slow proportionate acceleration continued, but more than 2.5 million black pupils attended all-black schools in the South in 1966, a greater actual number than in 1954.[116] Moreover, the figures do not reflect the number of truly desegregated schools, since only one black pupil in a formerly all-white school caused the school to be considered desegregated.

National data compiled between 1968 and 1972 reflect significant changes in the South.[117] In 1968, 68 percent of black pupils attended all-minority schools in the 11 States of the South; but by 1970 this figure had been reduced to 14.4 percent, and by 1972, 8.7 percent. On the other hand, only 18.4 percent of black pupils in the South were in schools with less than 50 percent minority enrollment in 1968, but by 1970 this figure had increased to 40.3 percent and in 1972 stood at 46.3 percent. There had been more progress here than in the Border States, the North, or the West, and almost half of all black pupils in the South, 18 years after Brown, attended schools that were predominantly white.

In 1972 the percentage of black pupils in all-minority schools was 8.7 percent in the South, but 10.9 percent in the North and West, and 23.6 percent in the Border States. The proportion of black pupils in predominantly minority schools was 53.7 percent in the South, 68.2 percent in the Border States, but 71.7 percent in the North and West. In 1972, more than 3 million black pupils attended schools with more than 80 percent minority enrollment, but only some 865,000 of these pupils were in the South. On the other hand, 46.3 percent of black pupils in the South were in schools with less than 50 percent minority enrollment, compared to 31.8 percent in the Border States and only 28.3 percent in the North and West.

Between 1968 and 1972, the number of black pupils in schools with more than 50 percent white enrollment increased by almost 1 million.

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116. Ibid., p. 8.

117. See table 1 and charts 1 and 2. Unless otherwise indicated, the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, is the primary source for the data summarized here.

Table 1. BLACK SCHOOL ENROLLMENT BY GEOGRAPHIC AREA

Geographic Area	Total Pupils	Black Pupils		Black Pupils Attending Schools Which Are: 0-49.9% Minority		50.0-79.9% Minority		80-100% Minority	
		Number	Pct	Number	Pct	Number	Pct	Number	Pct
Continental U.S.									
1968	43,353,568	6,282,173	14.5	1,467,291	23.4	540,421	8.6	4,274,461	68.0
1970	44,910,403	6,712,789	14.9	2,225,277	33.1	1,172,883	17.5	3,314,629	49.4
1972	44,646,625	6,796,238	15.2	2,465,377	36.3	1,258,280	18.5	3,072,581	45.2
(1) 32 North & West									
1968	28,579,766	2,703,056	9.5	746,030	27.6	406,568	15.0	1,550,440	57.4
1970	30,131,132	3,188,231	10.6	880,294	27.6	502,555	15.8	1,805,382	56.6
1972	29,916,241	3,250,806	10.9	919,393	28.3	512,631	15.8	1,818,782	55.9
(2) 11 South									
1968	11,043,485	2,942,960	26.6	540,692	18.4	84,418	2.8	2,317,850	78.8
1970	11,054,403	2,883,891	26.1	1,161,027	40.3	610,072	21.1	1,112,792	38.6
1972	10,987,680	2,894,603	26.3	1,339,140	46.3	690,899	23.8	864,564	29.9
(3) 6 Border & D.C.									
1968	3,730,317	636,157	17.1	180,569	28.4	49,417	7.8	406,171	63.8
1970	3,724,867	640,667	17.2	183,956	28.7	60,256	9.4	396,455	61.9
1972	3,742,703	650,828	17.4	206,844	31.8	54,749	8.4	389,235	59.8

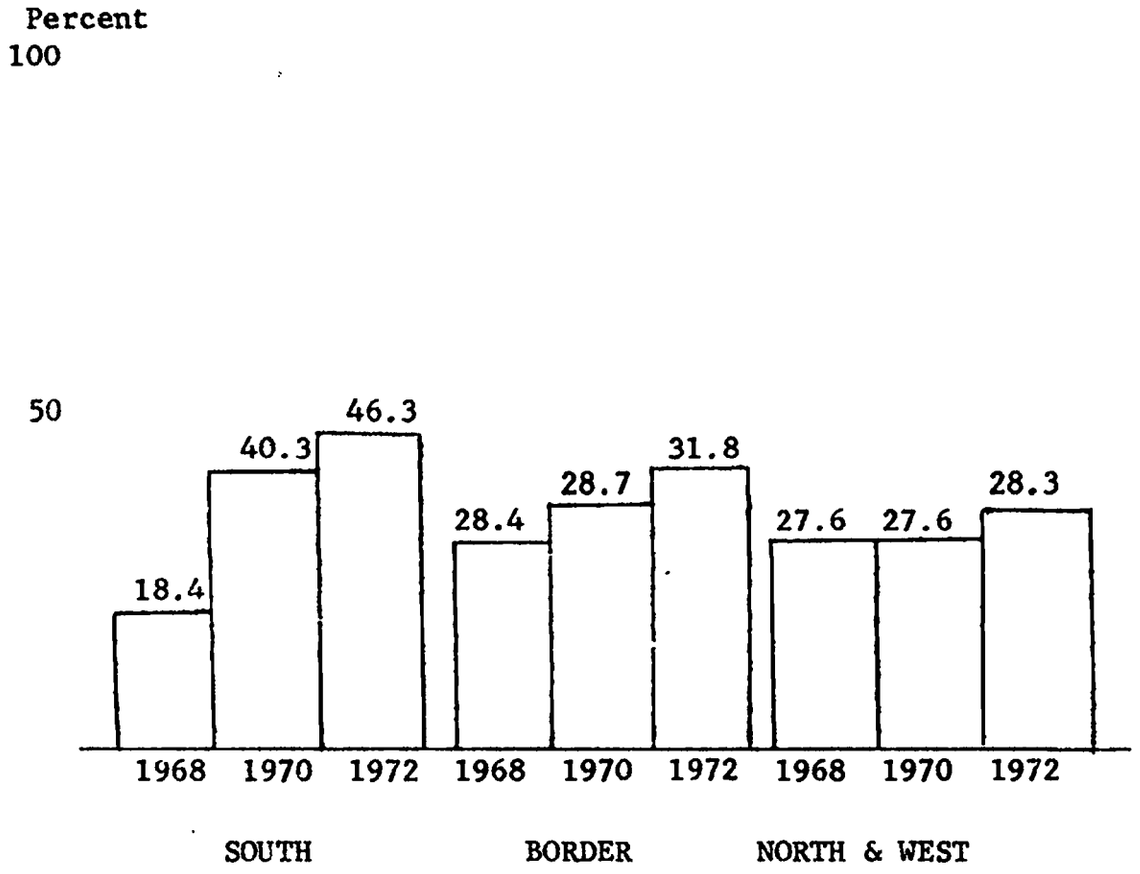
(1) Alas., Ariz., Cal., Col., Conn., Ida., Ill., Ind., Iowa, Kan., Maine, Mass., Mich., Minn., Mont., Neb., Nev., N.H., N.J., N.M., N.Y., N.D., Ohio, Ore., Pa., R.I., S.D., Utah, Vt., Wash., Wis., Wy.

(2) Ala., Ark., Fla., Ga., La., Miss., N.C., S.C., Tenn., Texas, Va.

(3) Del., D.C., Ky., Md., Mo., Okla., W.Va.

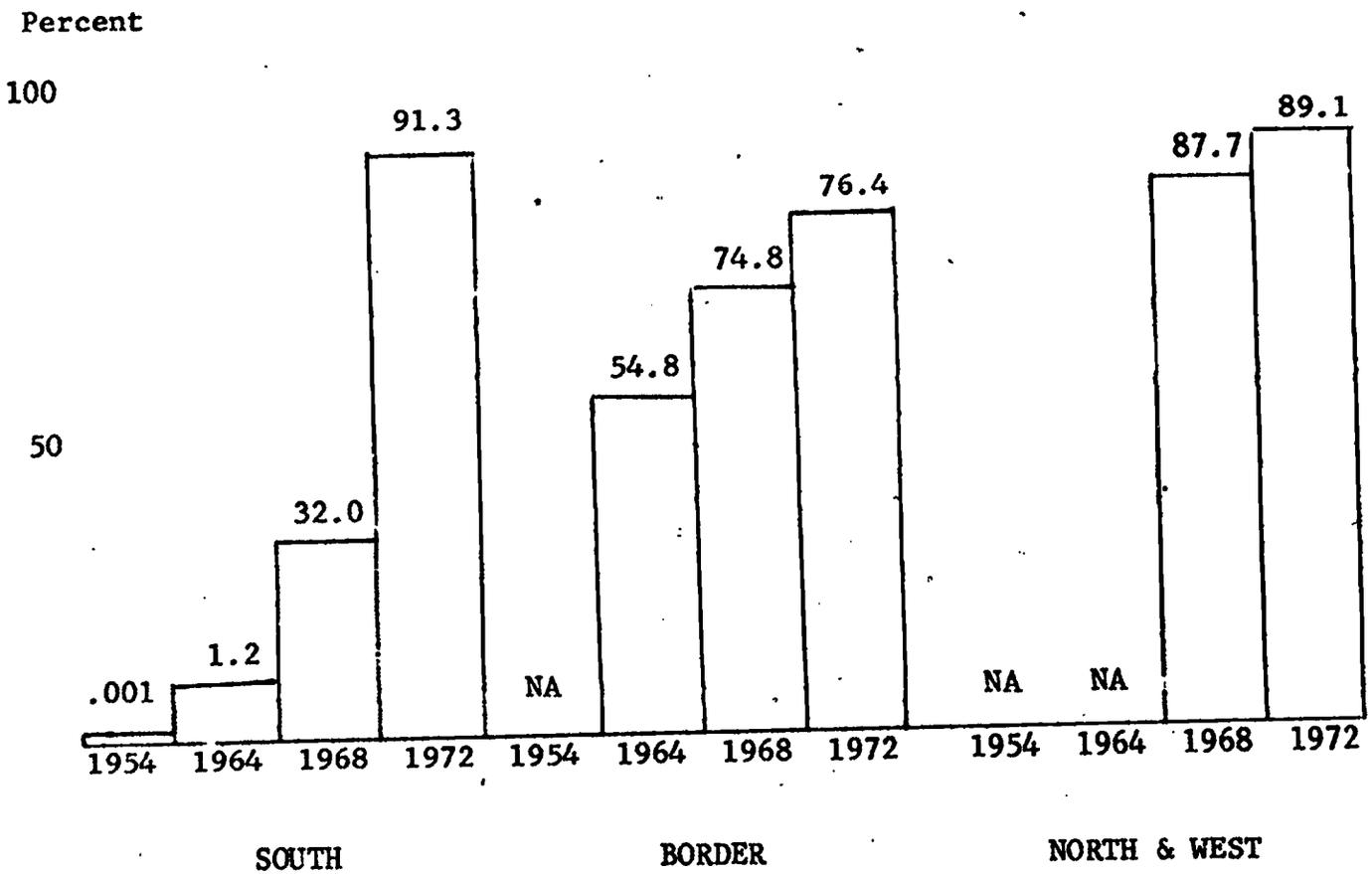
Office for Civil Rights, Department of Health, Education, and Welfare.

Chart 1. REGIONAL DESEGREGATION, 1968-72
Blacks attending schools with 50-99.9 percent white enrollment



Office for Civil Rights, Department of Health, Education, and Welfare.

Chart 2. REGIONAL DESEGREGATION, 1954-1972
Blacks attending schools with whites*



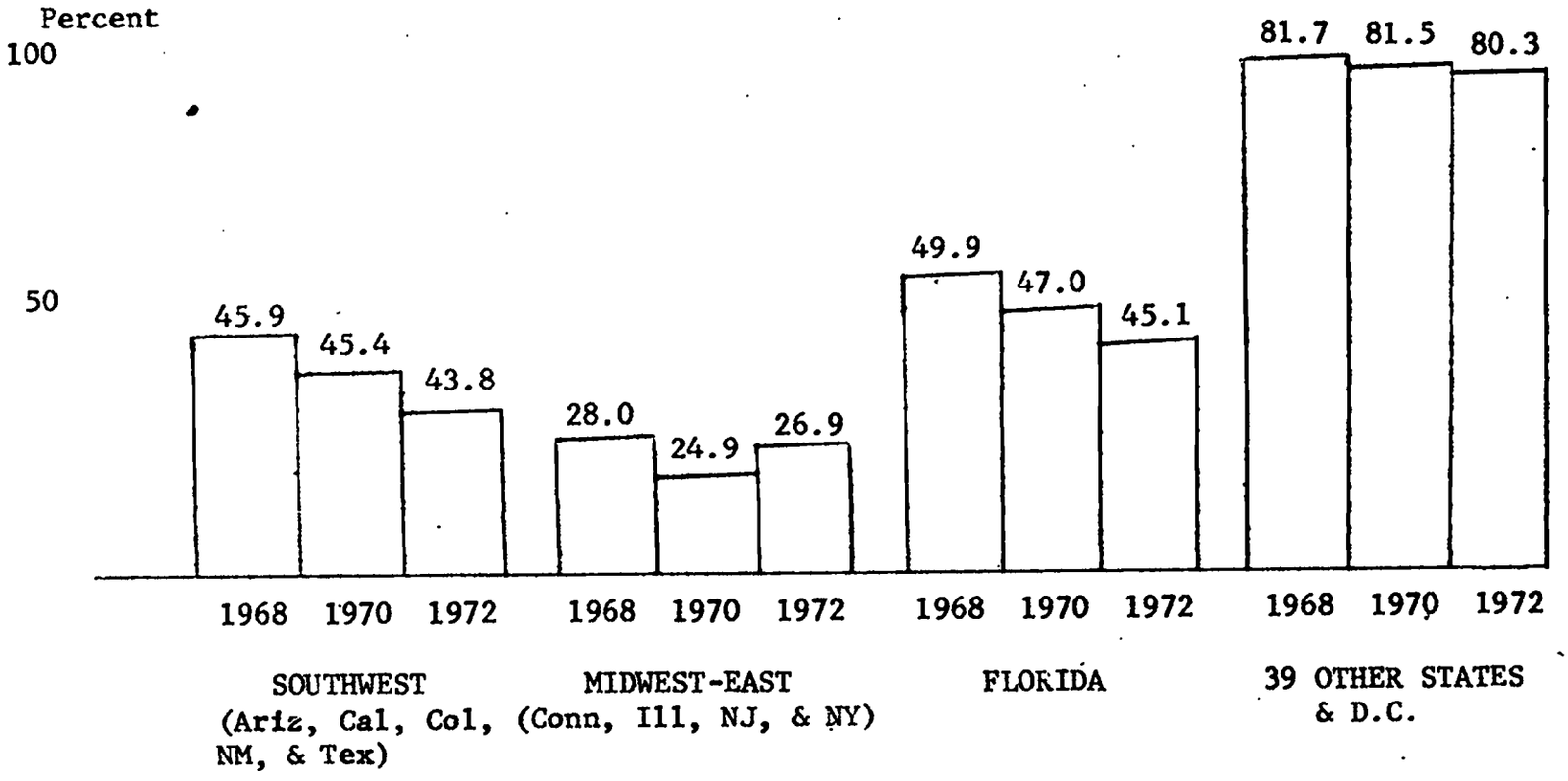
*May include schools with only one black or one white pupil; excludes only all-white and all-minority schools
NA = Not available.
Southern Education Reporting Service and Office for Civil Rights, Department of Health, Education, and Welfare.

Table 2. SCHOOL ENROLLMENT OF SPANISH-SURNAMED AMERICANS BY AREA OF SIGNIFICANT POPULATION

Geographic Area	Total Pupils	Spanish-Surnamed Americans		Spanish-Surnamed Americans Attending Schools Which Are:					
				0-49.9% Minority		50.0-79.9% Minority		80 - 100% Minority	
		Number	Pct	Number	Pct	Number	Pct	Number	Pct
CONTINENTAL U.S.									
1968	43,353,568	2,002,776	4.6	906,919	45.3	460,966	23.0	634.891	31.7
1970	44,910,403	2,275,041	5.1	1,006,148	44.2	515,586	22.7	753,307	33.1
1972	44,646,625	2,414,179	5.4	1,050,700	43.5	568,056	23.6	795,423	32.9
ARIZONA, CALIF., COL., N.M., TEX									
1968	8,144,330	1,397,586	17.2	640,943	45.9	341,954	24.4	414,689	29.7
1970	8,449,550	1,544,938	18.3	701,976	45.4	375,115	24.3	467,847	30.3
1972	8,359,435	1,601,706	19.2	702,336	43.8	424,765	26.6	474,605	29.6
CONN., ILL., N.J., N.Y.									
1968	7,650,697	394,449	5.2	110,587	28.0	86,273	21.9	197,589	50.1
1970	7,926,170	473,785	6.0	117,858	24.9	107,588	22.7	248,339	52.4
1972	7,862,074	516,636	6.6	138,989	26.9	101,442	19.6	276,205	53.5
FLORIDA									
1968	1,340,665	52,628	3.9	26,287	49.9	16,862	32.1	9,479	18.0
1970	1,437,554	65,713	4.6	30,918	47.0	14,984	22.9	19,811	30.1
1972	1,494,730	80,115	5.4	36,138	45.1	17,929	22.4	26,048	32.5
39 OTHER STATES & D.C.									
1968	26,217,876	158,113	0.6	129,102	81.7	15,876	10.0	13,135	8.3
1970	27,097,129	190,605	0.7	155,397	81.5	17,897	9.4	17,311	9.1
1972	26,930,386	215,722	0.8	173,237	80.3	23,920	11.1	18,565	8.6

Office for Civil Rights, Department of Health, Education and Welfare.

Chart 3. REGIONAL DESEGREGATION, 1968-1972
Spanish-Surnamed Americans attending schools with 50-99.9 percent Anglo enrollment



Office for Civil Rights, Department of Health, Education, and Welfare.

Yet, fewer than 174,000 of these pupils were in the 32 States of the North and West; and, in fact, total public school enrollment had increased by more than a million during this period. The proportion of black pupils in predominantly white schools had increased by 27.9 percent in the South, but only 3.4 percent in the Border States, and only 0.7 percent in the North and West. Even these figures often are viewed as deceptive,[118] since reporting by district or school has been found to mask the actual number of children within desegregated schools or classrooms.

Other data add to this picture. More than 1.36 million pupils of Spanish surname--almost 900,000 in five Southwestern States--remained in predominantly minority schools in 1972.[119] This reflected an increase in segregation of Spanish-surnamed pupils between 1968 and 1972, both nationally and in the Southwest.[120]

Much continuing or increasing segregation has resulted from economic restrictions, housing discrimination, white flight to the suburbs, and growth of minority populations in the central cities of the United States.[121] This is a pattern typical of the North and West but now extending into the South as well. In 1960, in 15 large

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118. See Southern Regional Council, The South and Her Children: School Desegregation 1970-71 (Atlanta: 1971) (hereafter cited as The South and Her Children); also "School Desegregation," Civil Rights Digest, vol. 4 (December 1971), p. 5.

119. The data in this report have been collected for "Spanish-surnamed Americans," although the U.S. Commission on Civil Rights believes that designation "Spanish speaking background" is more accurate. See U.S., Commission on Civil Rights, Counting the Forgotten: The 1970 Census Count of Persons of Spanish Speaking Background in the United States (1974).

120. See table 2 and chart 3.

121. See, for example, remarks of Senator Abraham Ribicoff in U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, Hearings on Metropolitan Aspects of Educational Inequality, 92d Cong. 1st sess., 1971, p. 10907.

metropolitan areas, more than 79 percent of the nonwhite public school enrollment was in central cities, while more than 68 percent of the white enrollment was suburban.[122]

Approximately 50 percent of all black pupils were enrolled in the Nation's 100 largest school districts by 1968, and these were also the Nation's most segregated districts. Between 1970 and 1972, the enrollment of these 100 districts dropped by a total of 280,000 pupils, but there was a gain of 146,000 black pupils during the same period. A similar pattern was apparent in large school districts with heavy concentrations of Spanish-surnamed pupils.[123] The minority populations in these areas are younger and have more children of school age, resulting to an even greater extent in school enrollments which are largely black or Spanish speaking.[124]

In 1972, in the Nation's 100 largest districts, 79.8 percent of black pupils attended predominantly minority schools. However, despite increasing black enrollment, the proportion of black pupils in these segregated schools had actually declined from 83.9 percent in 1970, and 87 percent in 1968. New York, Los Angeles, Detroit, and Houston were among the cities reflecting less segregation in 1972 than in 1970, although segregation in New York and Detroit had increased between 1968 and 1972. On the other hand, in most of these cities gains were extremely small, and very few black pupils in 1972 actually attended predominantly white schools: in New York, only 16.5 percent of black pupils were in predominantly white schools; in Los Angeles, 8.1 percent; in Chicago, 1.7 percent; in Philadelphia, 6.7 percent.

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122. U.S., Commission on Civil Rights, Racial Isolation in the Public Schools (1967), p. 3 (hereafter cited as Racial Isolation).

123. See, U.S., Department of Health, Education, and Welfare, Office for Civil Rights, Fall 1972 Racial and Ethnic Enrollment in Public Elementary and Secondary Schools.

124. "The Urban School Crisis: The Problems and Solutions Proposed by the HEW Urban Education Task Force," Washington Monitoring Service, Jan. 5, 1970, p. 32 (hereafter cited as "The Urban School Crisis").

In large Southern cities, the picture was little better: in Miami 23.6 percent; in Houston, 8.8 percent; in Dallas, 15.0 percent; in New Orleans, 4.9 percent; in Atlanta, 6.2 percent.[125]

Between 1970 and 1972, in 49 school districts with large Spanish-surnamed populations, total enrollment declined by 14,000 pupils, but there was a gain of 5,000 Spanish-surnamed pupils. In 1972 some 73.7 percent of Spanish-surnamed pupils attended predominantly minority schools, up from 73.3 percent in 1970 and 72.4 percent in 1968. In New York, only 11.9 percent of Spanish-surnamed pupils attended predominantly Anglo schools; in Los Angeles, 26.5 percent; in Albuquerque, 28.4 percent; in San Antonio, 5.1 percent.[126]

Segregation of black pupils in New York, New Jersey, Michigan, Ohio, California, and other large States also has increased significantly in recent years.[127] Kenneth Clark, using New York in 1973 as an example of segregation in large Northern urban communities, found "more black and Puerto Rican children--and probably a higher percentage of these children--are attending predominantly minority segregated and inferior elementary and secondary schools today than in the 1950s."[128] In fact, the large cities in New York State have an expanding minority school population, and in 1972 almost 90 percent of minority pupils were in the six largest cities. Nearly 75 percent of black and Spanish-surnamed pupils in New York State public schools attended schools that were predominantly minority, while more than 50 percent of minority pupils attended schools that were 80 to 100 percent minority.[129]

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125. See table 3.

126. See table 4.

127. U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, Toward Equal Educational Opportunity, 92d Cong., 2d sess., 1972, report no. 92-000, p. 111 (hereafter cited as Toward Equal Educational Opportunity).

128. Kenneth Clark, "DeFacto Segregation in the North--Pious Lawlessness and Insidious Defiance," May 17, 1973. (Mimeographed.)

129. State of New York, Education Department and University of the State of New York, Racial/Ethnic Distribution of Public School Students and Staff in New York State 1971-72, pp. 1-6 (hereafter cited as N.Y. Racial Distribution).

Table 3. BLACKS IN 100 LARGEST SCHOOL DISTRICTS, RANKED BY SIZE, 1972
(Percentages)

District	Total Blacks	Blacks Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
New York, New York	36.0	16.5	83.5
Los Angeles, Cal.	25.2	8.1	91.9
Chicago, Ill.	57.1	1.7	98.3
Philadelphia, Pa.	61.4	6.7	93.3
Detroit, Mich.	67.6	7.2	92.8
Dade Co., Fla.	26.4	23.6	76.4
Houston, Tex.	39.4	8.8	91.2
Baltimore City, Md.	69.3	7.8	92.2
Pr. Georges Co., Md.	24.9	39.7	60.3
Dallas, Tex.	38.6	15.0	85.0
Cleveland, Ohio	57.6	4.8	95.2
Washington, D.C.	95.5	0.4	99.6
Memphis, Tenn.	57.8	7.3	92.7
Fairfax Co., Va.	3.3	100.0	0.0
Baltimore Co., Md.	4.2	94.4	5.6
Broward Co., Fla.	22.8	83.9	16.1
Milwaukee, Wis.	29.7	15.4	84.6
Montgomery Co., Md.	6.4	96.3	3.7
San Diego, Cal.	13.2	32.5	67.5
Duval Co., Fla.	32.6	70.4	29.6
Columbus, Ohio	29.4	29.4	70.6
Hillsborough Co., Fla.	18.9	95.9	4.1
St. Louis, Mo.	68.8	2.5	97.5
Orleans Par., La.	74.6	4.9	95.1
Indianapolis, Ind.	39.3	25.1	74.9
Boston, Mass.	33.0	17.8	82.2
Atlanta, Ga.	77.1	6.2	93.8
Jefferson Co., Ky.	3.9	73.3	26.7
Denver, Colo.	17.2	45.5	54.5
Pinellas Co., Fla.	15.9	98.9	1.1
Albuquerque, N.M.	2.6	41.0	59.0
Dekalb Co., Ga.	9.7	51.2	48.8
Orange Co., Fla.	18.6	43.5	56.5
Nashville-Davidson Co., Tenn.	27.9	76.6	23.4
Ft. Worth, Tex.	29.7	20.8	79.2
San Francisco, Cal.	30.6	5.2	94.8
Charlotte-Mecklenburg, N.C.	32.4	97.8	2.2
Newark, N.J.	72.3	2.3	97.7
Cincinnati, Ohio	47.3	11.6	88.4
Anne Arundel Co., Md.	12.6	88.7	11.3
Seattle, Wash.	14.4	44.4	55.6
Clark Co., Nev.	13.4	100.0	0.0
Jefferson Co., Colo.	0.2	100.0	0.0
San Antonio, Tex.	15.8	8.1	91.9
Tulsa, Okla.	15.4	43.5	56.5

(continued)

Table 3. Continued

District	Total Blacks	Blacks Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
Pittsburgh, Pa.	41.8	22.7	77.3
Portland, Ore.	10.6	67.5	32.5
E. Baton Rough Par., La.	38.9	21.8	78.2
Palm Beach Co., Fla.	28.6	65.7	34.3
Mobile Co., Ala.	45.7	37.8	62.2
Jefferson Par, La.	21.2	93.0	7.0
Oakland, Cal.	60.0	6.8	93.2
Kansas City, Mo.	54.4	10.6	89.4
Buffalo, N.Y.	41.3	28.5	71.5
Long Beach, Cal.	11.1	45.4	54.6
Omaha, Neb.	19.4	39.4	60.6
Tucson, Ariz.	5.2	35.5	64.5
Granite, Utah	0.2	100.0	0.0
El Paso, Tex.	3.0	70.0	30.0
Brevard Co., Fla.	11.2	91.1	8.9
Toledo, Ohio	27.3	25.4	74.6
Minneapolis, Minn.	10.6	67.2	32.8
Oklahoma City, Okla.	26.3	77.1	22.9
Birmingham, Ala.	59.4	11.7	88.3
Wichita, Kan.	16.4	97.4	2.6
Polk Co., Fla.	21.9	76.3	23.7
Greenville Co., S.C.	22.3	98.7	1.3
Austin, Tex.	15.0	38.0	62.0
Charleston Co., S.C.	48.5	27.4	72.6
Jefferson Co., Ala.	24.4	56.0	44.0
Fresno, Cal.	9.3	28.8	71.2
Akron, Ohio	28.9	34.8	65.2
San Juan, Cal.	0.6	100.0	0.0
Caddo Par, La.	49.8	26.7	73.3
Kanawha Co., W. Va.	6.4	89.6	10.4
Dayton, Ohio	44.6	14.8	85.2
Garden Grove, Cal.	0.4	93.2	6.8
Louisville, Ky.	51.0	14.7	85.3
Sacramento, Cal.	16.8	63.8	36.2
Norfolk, Va.	49.5		61.4
St. Paul, Minn.	6.8	66.8	33.2
Escambia Co., Fla.	28.1	46.1	53.9
Virginia Beach, Va.	10.1	100.0	0.0
Cobb Co., Ga.	2.8	100.0	0.0
Winston-Salem Forsyth Co., N.C.	30.3	95.2	4.8
Mt. Diablo, Cal.	0.9	100.0	0.0
Flint, Mich.	44.4	17.1	82.9
Corpus Christi, Tex.	5.5	9.9	90.1

(continued)

Table 3. Continued

District	Total Blacks	Blacks Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
Gary, Ind.	69.6	4.1	95.9
Shawnee Mission, Kan.	0.4	100.0	0.0
Richmond, Va.	70.2	6.4	93.6
Rochester, N.Y.	37.9	31.0	69.0
Ft. Wayne, Ind.	16.1	51.3	48.7
Des Moines, Iowa	9.1	56.2	43.8
Rockford, Ill.	13.6	53.1	46.9
Spring Branch, Tex.	0.1	100.0	0.0
Richmond, Cal.	30.3	41.1	58.9
Jersey City, N.J.	45.4	10.6	89.4
Calcasieu Par, La.	26.8	30.7	69.3
Muscogee Co., Ga.	34.2	78.5	21.5
Total (100) Districts	33.7	20.3	79.8

Office for Civil Rights, Department of Health, Education, and Welfare.

Table 4. SPANISH-SURNAMED AMERICANS IN SELECTED LARGE SCHOOL DISTRICTS, RANKED BY SIZE, 1972 (Percentages)

District	Total Span. Amer.	Spanish-Surnamed Americans Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
New York, New York	26.6	11.9	88.1
Los Angeles, Cal.	23.9	26.5	73.5
Chicago, Ill.	11.1	28.6	71.4
Philadelphia, Pa.	3.4	15.4	84.6
Detroit, Mich.	1.6	59.4	40.6
Dade Co., Fla.	24.9	32.0	68.0
Houston, Tex.	16.5	28.6	71.4
Pr. Georges Co., Md.	0.7	91.7	8.3
Dallas, Tex.	10.3	47.9	52.1
Cleveland, Ohio	2.0	90.1	9.9
Broward Co., Fla.	1.6	93.3	6.7
Milwaukee, Wis.	3.5	61.6	38.4
Montgomery Co., Md.	2.1	98.0	2.0
San Diego, Cal.	11.3	62.8	37.2
Hillsborough Co., Fla.	6.1	86.8	13.2
Orleans Par., La.	1.6	29.7	70.3
Boston, Mass.	5.3	29.1	70.9
Denver, Colo.	23.3	40.6	59.4
Albuquerque, N.M.	37.6	28.4	71.6
Orange Co., Fla.	1.3	93.0	7.0
Ft. Worth, Tex.	10.7	43.1	56.9
San Francisco, Cal.	14.0	3.7	96.3
Newark, N.J.	15.3	17.0	83.0
Clark Co., Nev.	3.6	100.0	0.0
Jefferson Co., Colo.	2.5	100.0	0.0
San Antonio, Tex.	64.3	5.1	94.9
Palm Beach Co., Fla.	4.1	65.4	34.6
Jefferson Par., La.	1.7	99.5	0.5
Oakland, Cal.	8.3	13.5	86.5
Buffalo, N.Y.	2.9	50.9	49.1
Long Beach, Cal.	7.3	83.9	16.1
Omaha, Neb.	1.6	98.3	1.7
Tucson, Ariz.	25.7	33.1	66.9
Granite, Utah	2.8	100.0	0.0
El Paso, Tex.	57.7	18.6	81.4
Toledo, Ohio	3.2	88.5	11.5
Wichita, Kan.	2.4	87.2	12.8
Austin, Tex.	21.7	33.7	66.3
Fresno, Cal.	20.5	59.1	40.9
San Juan, Cal.	2.8	100.0	0.0
Garden Grove, Cal.	12.1	94.4	5.6
Sacramento, Cal.	12.8	64.1	35.9

Table 4. Continued

District	Total Span. Amer.	Spanish-Surnamed Americans Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
St. Paul, Minn.	3.6	84.8	15.2
Mt. Diablo, Cal.	3.5	100.0	0.0
Corpus Christi, Tex.	53.0	21.5	78.5
Gary, Ind.	8.1	22.1	77.9
Rochester, N.Y.	5.6	53.8	46.2
Richmond, Cal.	6.2	69.9	30.1
Jersey City, N.J.	17.9	19.1	80.9
Total (49) Districts	14.7	26.3	73.7

Office for Civil Rights, Department of Health, Education, and Welfare.

In California, with decreasing total pupil enrollment, minority enrollment has increased in recent years. The number of minority pupils in predominantly minority schools has also increased, as has the number of segregated schools. More than 50 percent of black pupils in 1971 were in schools with a predominantly black enrollment, while more than 93 percent of white pupils were in heavily white schools.[130] Michigan has reported an increase of black pupils, and almost 50 percent of all black pupils attend schools with 95 to 100 percent black enrollment.[131] Both Oregon and Colorado, with relatively small minority enrollments, find that racial segregation is high and not decreasing, and that minority pupils are not receiving equal educational opportunity.[132]

There appear to be legitimate fears that the South is in a transitional stage and is moving toward duplication of Northern residential segregation as desegregated schools are undercut by increasingly segregated neighborhoods and cities.[133] In 60 of the Nation's largest school districts, out of 76 surveyed, white enrollment dropped between 1970 and 1972. One-third of these districts were in the South.[134] In one recent reporting, Atlanta pupil enrollment had increased from 38.3 percent black to 51.3 percent black,

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130. State of California, Department of Education, Racial and Ethnic Distribution of Pupils in California Public Schools, Fall 1971, p. 6.

131. State of Michigan, Department of Education, School Racial-Ethnic Census 1970-71, 1971-72, pp. 9, 14, 16.

132. State of Colorado, Department of Education, Ethnic Group Distribution in the Colorado Public Schools 1971-72, pp. 102, 103; and State of Oregon, Department of Education, Racial and Ethnic Survey 1972, p. 9.

133. Abraham Ribicoff, "The Future of School Integration in the United States," Journal of Law and Education, January 1972, p. 1.

134. Atlanta Council on Human Relations and others, It's Not Over in the South: School Desegregation in 43 Southern Cities 18 Years After Brown (Atlanta: 1972), p. 122 (hereafter cited as It's Not Over in the South).

while its suburbs increased from 91.3 percent white to 93.6 percent white. Houston's suburbs were 90.7 percent white; New Orleans suburbs were 87.2 percent white.[135] These are but examples of a more general trend.

There further appears to be a clear relation between the adoption of desegregation plans and the growth of private segregated academies.[136] Although private schools always have played a role in American education, never before have they been a major factor in the South. Yet, Mississippi alone had a threefold increase in private schools between 1969 and 1970, to well over 100 in all. Louisiana had over 150,000 pupils in private white schools in 1969, while South Carolina had at least one private academy in 31 of 46 counties. This movement seems common throughout the South and private segregated schooling may not have reached its peak since dual systems have not yet been completely abolished.[137]

By 1972 the Southern academy movement had expanded to enroll between 450,000 and 500,000 white pupils.[138] Following a 1971 desegregation order, seven academies enrolling 1,850 pupils opened in Nashville, Tennessee. Savannah, Georgia, lost 5,000 white public school pupils in 1972 upon the announcement of a desegregation plan.

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135. Ribicoff, "The Future of School Integration," p. 10.

136. See It's Not Over in the South and James Palmer, Sr., "Resegregation and the Private School Movement," Integrated Education, June 1971. Also see Jerry DeMuth, "Public School Turnovers in the South," America, Nov. 7, 1970.

137. U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, Hearings, 91st Cong. 2d sess., 1970, part 3A, pp. 1195, 1196 (hereafter cited as Senate Select Committee Hearings).

138. The South and Her Children, p. 16.

In addition, the loss of middle-class white pupils to private and parochial schools is significant in other areas of the Nation. For example, some three-fifths of school-age children in Philadelphia and two-fifths of those in St. Louis and Boston attend nonpublic facilities.[139]

Desegregation, of course, raises the specters of busing and its attendant emotional impact on many white Americans. While 67 percent of American adults now say they favor integration, for example, 70 percent express opposition to busing.[140] However, residential segregation of urban minorities (owing to conditions noted earlier) apparently is not yet as serious a barrier to school desegregation as has been assumed--given a full commitment to desegregation and the resolution of busing fears.

A recent analysis of 29 urban school systems indicates that, even in the largest cities, elimination of segregation is possible without exceeding practical limits for student travel time or economically reasonable limits on the number of pupils bused.[141] By examining alternative methods of school desegregation that rely on a minimum of busing, busing to provide almost complete desegregation can be as little as one-third to one-fourth of the amount estimated by conventional rule-of-thumb techniques. If busing were increased only 3 percent and school attendance areas rearranged to promote integration, even in the largest cities the number of black pupils attending majority-white schools would increase to over 70 percent.[142]

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139. Senate Select Committee Hearings, part 2, p. 747.

140. Marvin Wall, "What the Public Doesn't Know Hurt," Civil Rights Digest, vol. 5 (Summer 1973), p. 25.

141. See Lambda Corporation, School Desegregation with Minimum Busing, December 1971, p. 4.

142. Eleanor Blumenberg, "The New Yellow Peril (Facts and Fictions about School Busing)," Journal of Intergroup Relations, Summer 1973, p. 37.

Total busing mileage, in fact, has decreased in many Southern States as desegregation has taken place,[143] since segregation required the extensive transportation of both black and white pupils to separate schools. Even today, in many cases white pupils attending segregated private schools require more busing than those attending desegregated public schools. Although the percentage of pupils transported to school nationally increased steadily from 1920 to 1970, less than 4 percent of all pupils bused are bused for purposes of desegregation. Former Secretary of Transportation John Volpe has stated that less than 1 percent of the increase in busing in 1972 was attributable to desegregation.[144] Although some 43.5 percent of all school children ride buses to school, only 3.7 percent of all educational expenditures are allocated for transportation,[145] and less than 1 percent of the rise in busing costs is due to desegregation.[146]

Yet, these facts are generally unknown, and myths about busing often continue to dominate public discussion.[147] A national survey in 1973 revealed not only vast misinformation about busing but also a close relationship between erroneous beliefs about busing and opposition to it. Asked six questions covering court-ordered desegregation, bus safety, the educational effects of desegregation, and the cost and extent of busing, only 16 percent of the respondents answered more than half of the questions correctly. Those with the most

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143. See Leonard Levine and Kitty Griffiths, "The Busing Myth: Segregated Academies Bus More Children, and Further," South Today, November 1973.

144. U.S., Commission on Civil Rights, Your Child and Busing (1972), p. 7 (hereafter cited as Your Child and Busing).

145. NAACP Legal Defense and Education Fund, It's Not the Distance; It's The Niggers (New York: 1972), p. 26.

146. Blumenberg, "The New Yellow Peril," p. 38.

147. See, Your Child and Busing.

knowledge about busing were least likely to support antibusing legislation and amendments.[148] Opposition to busing, in fact, seems to center on busing for desegregation--not on busing for reasons of distance, safety, or other educational purposes.

Most objections to busing, finally, ignore the fact that not even "integrationists" are committed to busing as an end in itself. Rather, busing is but one means of implementing the law by dismantling segregated school systems and achieving the major goal of "putting the divisive and self defeating cause of race behind us."[149]

INTEGRATION

Equal educational opportunity itself is not fully attained even if busing and other tools are used to achieve desegregated school systems:

> There is a sharp distinction between truly integrated facilities and merely desegregated. A desegregated school refers only to its racial composition. It may be a fine school, a bad one, perhaps a facility so racked with conflict that it provides poor educational opportunities for both its white and black pupils.
>
> Desegregation, then, is the mere mix of bodies without reference to the quality of the interracial interaction. While it is a prerequisite for integration it does not in itself guarantee equal educational opportunity. By contrast an integrated school refers to an integrated interracial facility which boasts a climate of interracial acceptance.[150]

Integration, then, is a realization of equal opportunity by deliberate cooperation without regard to racial or social barriers.[151] Integration, however, has not been realized in most schools with racially heterogeneous enrollments--schools which may have segregated educational

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148. See Wall, "What the Public Doesn't Know."

149. Reubin Askew, "Busing Is Not the Issue," Inequality In Education, March 1972, p. 3.

150. Senate Select Committee Hearings, part 2, p. 745.

151. Meyer Weinberg, Desegregation Research: An Appraisal (Bloomington, Ind.: Phi Delta Kappa, 1970), p. 3.

programs, use conventional ability grouping, preserve white school traditions while excluding black traditions, practice discrimination in activities and discipline, displace black administrators, or lack minority staff.

Of 467 Southern school districts monitored, according to a recent report, 35 percent of the high schools and 60 percent of the elementary schools had classroom segregation.[152] Such segregation is usually the result of tracking, grouping pupils on the basis of test results and teacher evaluations, even though the Department of Health, Education, and Welfare has concluded that only grouping by subject is legitimate. The value of such tracking, indeed, has come under frequent attack, as studies have revealed that students considered bright because of IQ test scores do not necessarily benefit academically in homogeneous classes.[153] Rather, poor and minority students who are disproportionately placed in lower tracks are deprived of self-respect, stimulation by higher-achieving peers, and encouraging teacher expectations. In turn, white middle-class students are deprived of the educational benefits, inside the classroom and outside of it, which stem from racial and social class interchange.

Academic placement decisions, in fact, often are made informally, based on teacher recommendations that reflect the child's attitude, cooperation, and response to teacher expectations. Quite often, teachers and counselors expect low-income and minority children to be slower, less responsive, and have lower aspirations than their middle-class peers, and so put them in lower tracks. Consequently, these children are given different materials and treatment, achieve poorly in response to low expectations, and become the high school students

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152. Winifred Green, "Separate and Unequal Again," Inequality in Education, July 1973, p. 15.

153. Toward Equal Educational Opportunity, p. 134.

whom the counselors advise against preparation for college or other post high school education.[154]

Just as ability grouping reinforces the effects of years of segregation in separate but unequal schools, persistent discriminatory discipline meted out to minority students has led many to believe that, despite Brown, another generation of black children is being "processed" through segregated schools which all too often do not educate but are mere custodial centers.[155] This frequently is manifested in the disproportionately high numbers of suspensions and expulsions of minority students. The Southern Regional Council, for example, has found that discriminatory and arbitrary actions by school authorities cause most of the problems which create "pushouts." These are "students who have been expelled or suspended from school, or because of intolerable hostility directed against them, finally quit school."[156]

Rejection of minority culture and language is often experienced by black, Spanish speaking, and other minority students upon entering a formerly white school. Chastisement by teachers, exclusion from activities, separate lunch periods, antagonistic symbols, curricula which encourage belief in majority racial and cultural superiority--all provoke withdrawal or hostility. As a result, minority children are often seen as unruly or apathetic, rather than able, active, and curious.[157] In the high school years, confrontations provoked by insensitive treatment or misunderstood behavior result in increased student expulsions. Yet, this often is due to the inability of some teachers to cope with students they do not understand.[158]

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154. Ibid., p. 135.

155. Robert Carter, "Equal Educational Opportunity," The Black Law Journal, Winter 1971, p. 197.

156. See Southern Regional Council and the Robert F. Kennedy Memorial, The Student Pushout: Victim of Continued Resistance to Desegregation (Atlanta: 1973).

157. Toward Equal Educational Opportunity, p. 130.

158. It's Not Over in the South, p. 6.

Inherent in this problem is the shortage of minority educators. Ironically, Southern school desegregation appears to be reducing professional opportunities for hundreds of black teachers and administrators. Typically, the reorganization from a dual to unitary system has been accomplished by consolidating black and white students in the previously all-white schools while partially or completely closing the all-black schools. "When schools are integrated through consolidation, principals of the Negro schools are likely to be demoted, if in fact retained; in many instances both teachers and principals are not reemployed."[159]

Several general conclusions concerning high displacement of black staff in the 11 Southern States have been drawn from the data available:

> Displacement is more widespread in small towns and rural areas than in metropolitan centers, in sections with medium to heavy concentration of black citizens than in predominantly white areas, and in the Deep South than in the Upper South.
>
> The number of black teachers being hired to fill vacancies or new positions is declining in proportion to the number of whites hired.
>
> Demotion is more prevalent than outright dismissal.[160]

Estimates show 12 to 14 percent of North Carolina's black teachers dismissed or demoted, while one-third of an estimated 10,500 black teachers in Alabama had been dismissed, demoted, or pressured to resign.[161] In Mississippi and Louisiana, displacement appears to be the practice.

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159. National Education Association, "Report of Task Force Appointed to Study the Problem of Displaced School Personnel Related to School Desegregation," December 1965, p. 55 (hereafter cited as "Report of NEA Task Force").

160. Robert Hooker, Displacement of Black Teachers in the Eleven Southern States (Nashville: Race Relations Information Center, 1970), p. 3.

161. Hooker, Displacement of Black Teachers, pp. 30. 18.

Discriminatory hiring practices, however, probably are more significant for blacks. In areas where resistance to desegregation has been most intense, the number of black teachers in reporting districts decreased by 2,560 (6.8 percent) between 1968 and 1972, while the number of white teachers increased by 3,387 (4.8 percent).[162] In 108 districts surveyed in six Southern States, 3,774 white teachers (77 percent of the total leaving) and 1,133 black teachers left their school systems in the fall of 1970 alone. In turn, 4,453 whites (86 percent of the total hired) and 743 blacks were hired as replacements.[163] Between 1954 and 1970, in 17 Southern and Border States, the black teaching force decreased while the black pupil population increased.

Displacement methods vary from nonrenewal of contracts to forced transfers, but most cases involve demotion, which leads to resignation or firing. Black educators apparently are being systematically excluded from Southern school systems, and the few remaining black staff are often assigned to all-black schools where desegregation has not occurred.[164] Desegregation, thus, appears to have resulted in reduced authority and professional status, menial responsibilities, and contact restricted to other blacks.

Hardest hit by demotion are black principals, whose ranks are rapidly diminishing:

> Alabama (1966 to 70) -- The number of black high school principals was reduced from 210 to 57, black junior high principals from 141 to 54.
>
> Arkansas (1963 to 71) -- The number of black high school principals was reduced from 134 to 14.
>
> Florida (1965 to 70) -- The number of black high school principals was reduced from 102 to 13.

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162. Brief for National Education Association as amicus curiae, Willie McLaurin v. The Columbia Municipal Separate School District, No. 71-3022 (U.S. Court of Appeals, 5th Circuit).

163. Hooker, Displacement of Black Teachers, p. 116.

164. See Senate Select Committee Hearings, part 10, pp. 4906-4908.

Georgia (1968 to 70) -- In 123 reporting school districts, 66 black principals were eliminated and 75 white principals added.

Kentucky (1965 to 69) -- The number of black principals was reduced from 350 to 36 (with 22 of the remaining 36 in Louisville).

Louisiana (1968 to 70) -- 68 black principals were eliminated and 68 white principals were added.

Mississippi -- Over 250 black administrators were displaced in a two-year period.

Maryland -- There were 44 black high school principals in 1954; 31 in 1968; 167 white high school principals in 1954, 280 in 1968.

North Carolina (1963 to 70) -- The number of black high school principals was reduced from 227 to 8.

South Carolina (1965 to 70) -- The number of black high school principals was reduced from 114 to 33.

Tennessee -- Black high school principals were reduced in number from 73 to 17.

Texas -- Although no statewide statistics are reported, one principal's comments, "The black principal is rapidly becoming extinct in East Texas."

Virginia (1965 to 70) -- The number of black high school principals was reduced from 170 to 16.

If elementary school principals were included in the data, the picture would be even worse.[165]

In the 11 Southern States, furthermore, few school systems have black administrators, and few State departments of education have black staff members with supervisory authority over whites.[166]

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165. John Smith and Betty Smith, "For Black Educators: Integration Brings the Axe," The Urban Review, May 1973, p. 7.

166. "Report of NEA Task Force," p. 55.

Though Northern school systems are not yet faced with such dismissals, the number of minority educators is markedly small. Because of discriminatory hiring, placement, and promotion practices, the segregation found among black and Spanish speaking students also is mirrored in the teaching staff.

Chicago, in 1966, reported approximately 54 percent black pupil enrollment taught by a 33 percent black teaching staff, with a 21 percent black administrative staff.[167] Spanish-surnamed pupils accounted for 16 percent of California school children in 1971, but only 2.7 percent of the total professional staff was of Spanish surname. Los Angeles County alone had 19.9 percent Spanish-surnamed pupils but only 3.1 percent Spanish-surnamed professional staff.[168] In 1972 in New York City, minorities accounted for 10.5 percent of the professional staff but 63.1 percent of the pupils.[169] The few minority educators are primarily in urban areas and minority schools.

Coupled with the lack of minority educators is the fact that many white teachers in predominantly minority schools are less experienced and less qualified by training or experience than those in predominantly white schools. Some of these teachers are not only unsure of themselves as teachers, but perhaps even more unsure of themselves when faced with pupils from different backgrounds. There often is hostility toward the pupils as well, if the teacher did not want to teach in a minority school and sees placement there as reflecting low status, the result of low seniority or disciplinary action. Such teachers also may come to their work with numerous

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167. "The Urban School Crisis," p. 34.

168. State of California, Department of Education, Racial and Ethnic Distribution of Pupils in California Public Schools (1972), table 3; and Racial and Ethnic Distribution of Staff in California Public Schools (1972), p. 2 and table 4.

169. N.Y. Racial Distribution.

racial stereotypes and have difficulty communicating with the class. Consequently, teacher loss is high in these schools, and those who remain often attempt to transfer as quickly as possible.[170]

The minority child suffers because classroom stability and adequate numbers of competent, understanding teachers are necessary for a good education. Moreover, an essential ingredient in equal educational opportunity for all pupils is exposure to teachers of varied backgrounds who can work together in an atmosphere devoid of racial or ethnic conflict. Thus, minority teachers are also needed in predominantly white schools to enhance the education of white pupils and faculty, as well as demonstrate that race and ethnicity are irrevelant to professional competence.

Of course, sensitive, experienced, and skilled white educators are needed in predominantly minority schools for the same reasons, and staffing problems in these schools do not negate the fact that many such teachers and administraters do exist. In fact, in many ways experience may be the least critical factor here, and many young and energetic staff members often relate to minority pupils as some experienced, more traditional, and perhaps more inflexible staff cannot.

The full achievement of equal educational opportunity has been described in terms of integration, not desegregation alone. Integration, in turn, "refers to an integrated interracial facility which boasts a climate of interracial acceptance."[171] What is suggested implies not assimilation of the minority by the majority but rather a pluralistic, multiracial society, reflected in the schools, in which

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170. See, "The Urban Crisis," for a description of these problems.

171. Senate Select Committee Hearings, part 2, p. 745.

individuals have the opportunity to learn from their own culture, other cultures, and other individuals, making personal choices without coercion and receiving recognition as human beings regardless of life or learning styles.

THE ATTACK ON DESEGREGATION

Opponents of desegregation, and many proponents as well, often suggest that, if desegregation was ordered to achieve equal educational opportunity, then desegregation must be justified primarily by the academic achievement of majority and minority pupils in desegregated schools. Achievement, in such cases, frequently is defined as the outcome reflected in cognitive test scores. The controversy surrounding testing itself, its meaning and cultural and language bias, generally is discounted. Even on these terms, however, the available data generally are supportive of desegregation.

There is some evidence that desegregation increases the academic achievement of blacks and other minority pupils, and the evidence is even more conclusive that there is no loss in achievement by white pupils under desegregation.[172] There is substantial evidence, of course, to show that minority pupils, conversely, are harmed by segregation:

> Negro children suffer serious harm when their education takes place in public schools which are racially segregated, whatever the source of such segregation may be.... Negro children who do attend predominantly Negro schools do not achieve as well as other children, Negro and white. Their aspirations are more restricted than those of other children and they do not have much confidence that they can influence their own futures. When they become adults, they are more likely to fear, dislike and avoid white Americans.[173]

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172. See Weinberg, Desegregation Research, perhaps the most comprehensive summary in a lengthy, technical, and continuing debate.

173. Racial Isolation, p. 193.

The most comprehensive study of desegregation effects, "The Coleman Report,"[174] confirms the value of social class integration in raising academic achievement, and such integration for minority pupils generally cannot be accomplished without racial and ethnic integration. Critics of the Coleman study, while attacking problems in numerous aspects of his work, nevertheless generally support his major findings.[175]

Perhaps the most consistent contrary position is the one suggesting that schooling has little impact on educational achievement, a position generally taken by Coleman himself except in regard to the integration of pupils from different backgrounds. Yet, even here, the argument is not clear:

> Research has not identified a variant of the existing system that is consistently related to student educational outcomes....We must emphasize that we are not suggesting that nothing makes a difference, or that nothing works. Rather, we are saying that research has found nothing that consistently and unamibiguously makes a difference in student outcomes.[176]

There is disagreement with this interpretation, of course, and many view teacher background and racial attitudes, educational programs and styles, level of racial tension, and numerous other factors as critical.[177] Those who support this view generally also consider

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174. James Coleman and others, Equality of Educational Opportunity (Washington, D.C.: U.S. Government Printing Office, 1966).

175. See Gary Orfield, "School Integration and Its Academic Critics," Civil Rights Digest, vol. 5 (Summer 1973), p. 8.

176. Harvey Averch and others, How Effective is Schooling? A Critical Review and Synthesis of Research Findings (Santa Monica, Calif.: The Rand Corporation, 1972), p. x.

177. See David Cohen, "Policy for the Public Schools: Compensation or Integration?", U.S. Commission on Civil Rights, November 1967; Toward Equal Educational Opportunity; and "The Urban School Crisis."

measures of self-concept, aspiration, ability to relate to persons of other backgrounds, and similar noncognitive variables as necessary as academic achievement in assessing the impact of desegregation.

In the midst of what some researchers consider inconclusive and contradictory findings, a lack of evidence on minority attitudes toward desegregation, and a Southern desegregation experience virtually untouched by research or systematic evaluation, what certainly appears clear to most scholars is that:

> Integration of a child from a low income background into a predominantly middle class school has more impact than any other factor in narrowing the gap in achievement scores, but the gap remains large.
>
> Newly desegregated school systems seldom show substantial increases in minority student performance during the first year of integration.
>
> The test scores of white students are not affected by the desegregation process.
>
> Social class integration is usually impossible for minority group students without racial integration.
>
> Racial and class integration are desirable objectives of national policy, everything else being equal.[178]

On the other hand, if social science research eventually demonstrates that measurable academic achievement is increased as a result of desegregation, so much the better. But conclusive evidence is not a prerequisite for desegregation.

The same argument obtains in another area. Perhaps as a consequence of the school desegregation controversy, and certainly contributing to it, is a renewed interest in the genetic aspects of intelligence. Discussions about racial differences, if not the alleged inferiority of blacks, have persisted.[179] More importantly, some recent evaluations of data on intelligence and achievement attempt to provide academic support for some of these arguments and for

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178. Orfield, "School Integration," p. 4.

179. See, for example, James J. Kilpatrick, The Southern Case for School Segregation (New York: Crowell-Collier, 1962), pp. 43-72; also John R. Baker, Race (New York: Oxford, 1973).

educational policy based on them.[180] The preponderance of scientific opinion obviously is contrary to such views,[181] which generally are considered racist regardless of source, yet increasingly it is possible to find serious discussion of them. In what way, however, would national policy be changed by findings in this regard? Indeed, would separate schools be provided for the allegedly more intelligent and less intelligent, as determined by test scores of limited meaning and disputed value?

All such considerations avoid the basic issue: the 14th amendment to the Constitution, not scientific findings, governs both desegregation of the public schools and the transportation, if required, to achieve it.[182] Decisions affecting desegregation rest on legal and moral grounds, rather than on scientific research, regardless of its results. The point is clearly made in a 1970 court opinion: "Brown articulated the truth that Plessy chose to disregard: that relegation of blacks to separate facilities represents a declaration by the State that they are inferior and not to be associated with."[183] The same opinion goes on to deal with the

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180. See, for example, Arthur R. Jensen, "How Much Can We Boost IQ and Scholastic Achievement?" Harvard Educational Review, vol. 39, no. 1 (Winter 1969), pp. 1-123. Also see H. J. Eysenck, The IQ Argument (Freeport, N.Y.: The Library Press, 1972).

181. See, for example, Jerome S. Kagan and others, "Discussion: How Much Can We Boost IQ and Scholastic Achievement?" Harvard Educational Review, vol. 39, no. 2 (Spring 1969), pp. 273-356. Also see Margaret Mead and others, eds., Science and the Concept of Race (New York: Columbia University Press, 1968) and Melvin M. Tumin, ed., Race and Intelligence (New York: Anti-Defamation League of B'nai B'rith, 1963).

182. Thomas Pettigrew and others, "Busing: A Review of 'The Evidence,'" The Public Interest, Winter 1973, pp. 113-114.

183. Concurring opinion by Judge Sobeloff in Brunson v. Board of Trustees, 429 F. 2d 820, 825 (4th Cir. 1970).

the argument that minorities should be placed in majority white schools for educational reasons:

> This idea, then, is no more than a resurrection of the axiom of black inferiority as justification for separation of the races, and no less than a return to the spirit of Dred Scott.
>
> The inventors and proponents of this theory grossly misapprehend the philosophical basis for desegregation. It is not founded upon the concept that white children are a precious resource...it is not that black children will be improved by association with their betters. Certainly it is hoped that under integration members of each race will benefit from unfiltered contact with their peers. But school segregation is forbidden simply because its perpetuation is a living insult to the black children and immeasurably taints the education they receive. This is the precise lesson of Brown....This is no mere issue of expert testimony. It is no mere question of "sociology and educational theory." There have always been those who believed that segregation of the races in the schools was sound educational policy, but since Brown their reasoning has not been permitted to withstand the constitutional command.[184]

EDUCATIONAL ATTAINMENT

Regardless of racial segregation or isolation, during the past 20 years the gap between blacks and whites has narrowed significantly in terms of sheer educational attainment. Educational opportunity has been greatly expanded since Brown, and discrimination greatly reduced, in a variety of ways.

In 1950, for example, 37.8 percent of all whites in the United States had completed high school, compared to only 14.8 percent of all blacks.[185] By 1972, 63.8 percent of whites had completed high school, but 43.7 percent of blacks now were high school graduates.

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184. Ibid. at 824, 826.

185. All data in this section are based on reports by the Bureau of the Census, U.S. Department of Commerce: 1950 Census of Population, 1960 Census of Population, and Current Population Reports, various series.

During this period, the proportion of whites who finished high school almost doubled, but the proportion of blacks almost tripled. Among persons 20 to 24 years of age, the gain was even greater: in 1972, 84.9 percent of whites and 67.9 percent of blacks in this age group had completed high school.

Similar advances were made among the college-educated population. In 1950, 6.4 percent of all whites had completed 4 or more years of college compared to only 2.2 percent of all blacks. By 1972, 12.6 percent of whites and 6.9 percent of blacks were college graduates. The proportion of whites had almost doubled, but the proportion of blacks had more than tripled. Among persons 25 to 29 years of age, 19.9 percent of whites and 11.6 percent of blacks had completed college in 1972.

The college undergraduate enrollment also reflected these advances. In 1950, 10.8 percent of all whites between 18 to 24 years of age were enrolled in college but only 4.4 percent of blacks. By 1972, however, 23.9 percent of young whites were enrolled, but now 18.3 percent of young blacks were enrolled. The proportion of whites had more than doubled, but the proportion of blacks had increased by over four times.

It is possible, of course, that these figures reflect schooling only and indicate little regarding quality of educational performance. There are some figures which point in this direction. In 1972, for example, only 0.8 percent of all black male pupils 6 to 9 years of age fell 2 or more years behind their modal grade level, the same proportion as among white male pupils in that age range.[186] Among 17-year-old black males, however, 15.7 percent fell 2 or more years

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186. The source of this material is unpublished Bureau of the Census data. The modal grade for a group of students of a given age is the grade in which the largest proportion of students at that age are enrolled.

behind their modal grade level, while only 5.2 percent of white males of that age were this far behind. (The figures for females are somewhat better but demonstrate the same black-white disparity.) Starting at approximately the same educational level, then, blacks are permitted to fall increasingly behind whites as they move through school.

Higher education affords another example. Blacks are more likely than whites to attend public and junior colleges and to attend college part time. Two of every five black college students are enrolled in black colleges, while almost half of black college students are in schools with less than 2,500 students, compared to a quarter of white students. They are more likely to attend poorly-rated colleges (according to freshmen aptitude scores), and less than 3 percent of the enrollment on the main campuses of State universities is black. Blacks are much less likely than whites to go on to graduate school.[187]

Apart from these important problems, however, black educational attainment obviously has increased over the last 20 years, both in public schools and in higher education. Significantly more blacks are in school at every grade level than in 1954. Questions about the quality of this advance, however, suggest that only integrated schools can provide full equality of educational opportunity.

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187. See Sar A. Levitan, William Johnston, and Robert Taggert, Still a Dream: A Study of Black Progress, Problems and Prospects (Washington, D.C.: Center for Manpower Policy Studies, 1973), pp. 144-150.

TOWARD EDUCATIONAL EQUALITY

The disparate data on school desegregation 20 years after Brown present a conflicting picture of success and failure. On balance, however, the picture is much at odds with the expectations of many American citizens who looked upon the decision as a turning point in the racial life of the Nation. For almost 14 years, there was little change in the schools, owing primarily to resistance in the South and apathy or self-congratulation elsewhere, where it was assumed that problems of segregation did not exist. For a few years after 1968, under the prodding of the courts and to a lesser extent the Federal Government, some progress was achieved.

In the South, particularly, total segregation gave way to a situation that, in 1972, found almost half of black pupils enrolled in predominantly white schools. In the North and West, however, change was minimal, and here more than 70 percent of black pupils still attend predominantly minority schools. In a number of large States, segregation is increasing in many cases, despite some significant progress in other areas, and there are indications that the urban-suburban racial divisions of the North are being duplicated in the South.

There has been substantial loss of black educators, in the South at least, and a segregated private school movement flourishes in some regions. In many situations, desegregation is yet to be followed by integration.

While a substantial proportion of all Americans publicly express support for school desegregation generally, there also is substantial opposition to the transportation of pupils in order to achieve it. Even though more than 43 percent of all pupils are bused to school, less than 4 percent of these children are bused for purposes of desegregation. In fact, desegregation has reduced busing in many areas of the South, and segregated private schools often are dependent on busing.

In contrast with this overall situation, however, school desegregation actually has proved successful in many areas of the Nation. Discouraging aspects of the desegregation picture over the last 20 years should not negate the results achieved and the lessons learned. Recent studies by the U.S. Commission on Civil Rights[188] indicate that desegregation remains the most certain guarantee of equal opportunity for all children, improved programs of public education, and constructive race relations throughout American society.

Desegregated schools in Hillsborough County (Tampa), Florida; Jefferson Township, Ohio; Union Township, New Jersey; Riverside, California; Glynn County (Brunswick), Georgia; and numerous other districts--particularly smaller districts and districts in the South--provide a number of positive examples of progress since Brown. Their experience suggests that:

--School desegregation is working where it has been attempted, and most fears about desegregation have proved groundless. Desegregation can succeed not just in physically bringing pupils of different races together, but also in enabling them to understand and respect each other.

--In a number of communities, desegregation has contributed to substantial improvement in the quality of education.

--There is a need for careful and sensitive community preparation for desegregation.

--The technical problems of achieving desegregation--such as drawing up a specific desegregation plan and dealing with problems incident to desegregation--are far less formidable than previously believed.

--The needs of both majority and minority communities must be considered, including staff desegregation and the equitable distribution of transportation requirements among both majority and minority pupils.

--The way in which school officials, civic leaders, and news media respond to desegregation and racial incidents can serve either to preserve an atmosphere of calm or heighten tension.

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188. See Five Communities: Their Search for Equal Education (1972); The Diminishing Barrier: A Report on School Desegregation in Nine Communities (1972); and School Desegregation in Ten Communities (1973).

--Most parents are satisfied with desegregation as it affects their children, although they may express general opposition to desegregation as a political issue.

--Controversy and confusion at the national level has fostered uncertainty at the local level.

--To some extent, each community must determine for itself what will work.

In addition to these conclusions, Commission findings from various sources also indica' that, for desegregation to be effective and for communities to move from desegregated to integrated school systems, other key elements are required:

--Educational officials must demonstrate clearly that the quality of education will not suffer from desegregation. Leadership must be exercised in using the occasion of desegregation to upgrade facilities, curricula, and staff. These officials--most importantly, the superintendent, principals, and school board members--must unequivocally demonstrate commitment to both desegregated and quality education.

--Student disciplinary practices must be firm but fair and equitable. Perceptions of discriminatory discipline, by both students and parents, blacks and whites, are a great source of tension in newly desegregated schools. Dealing adequately with this issue often becomes a major problem for administrators and faculty, and the involvement of parents and local citizens often is of considerable benefit.

--Special efforts to recruit more minority staff, and both minority and majority staff who are sensitive to the problems of students in a multiracial educational environment, become increasingly critical. In order to accomplish this, within the budget limitations of most school systems, particular attention to recruitment, transfer, and promotion policies often is required.

--There often will be a sharp difference between the reality of desegregation in the schools, and what the community, sometimes including school board members, mistakenly thinks is the reality. There is need for a continual exchange of information and public discussion of what is actually happening in the schools, including efforts to confront openly the problems that inevitably occur. School desegregation cannot bear the same silence under which education in this country traditionally has taken place.

During the 17 years of its existence, the U.S. Commission on Civil Rights has endeavored to bring to the attention of the

President, Congress, and the American people the problems involved in providing all citizens with the equal protection of the laws. To this end, the Commission has offered a variety of recommendations, both general and specific. Among the first recommendations presented by the Commission, and subsequently approved, was a recommendation that the Commission serve as a national clearinghouse to collect and make available information on school desegregation. The studies of school desegregation just cited represent examples of this function.

Among the other recommendations on school desegregation that were offered by the Commission, and subsequently enacted in various forms, were recommendations for a Federal racial census of school enrollment, authorization for the Attorney General to initiate school desegregation suits, technical and financial assistance to school systems implementing desegregation plans, provision of educational programs designed to assist teachers and students who are handicapped professionally or scholastically as a result of inferior training and educational opportunity, teacher training programs for districts attempting to meet problems incident to desegregation, and the use of school construction in urban renewal areas in order to promote desegregation.

Other recommendations, however, have not been acted upon to date, and several of these recommendations, in revised form, serve as the basis for the recommendations which follow.

Even with those recommendations which were enacted, however, positive results have not been immediate. After the Supreme Court's 1954 decision, for example, many observers believed that, if desegregation were to be successful, a new and intensive effort would have to be made to change the racial attitudes of teachers and students. For this reason, the Commission recommended in 1961 that technical and financial assistance be provided to school systems involved in implementing desegregation plans. Title IV of the Civil Rights Act of 1964 offered such assistance, and grants subsequently were made

available to institutions of higher learning for teacher and administrator training programs, development of curricula, and other purposes.

In a 1973 report,[189] the Commission pointed out that Title IV "offers help in meeting problems that are attitudinal and emotional as well as behavioral." However, that report also described Title IV as a "neglected" program, and the Commission concluded that the opportunity provided had been significantly lost. Several recommendations were made by the Commission to revitalize the program to deal with the problems of racial attitudes, which inevitably affect the success of such a major undertaking as desegregation. Any failure of desegregated schools to work successfully can be traced, in large part, to failures in the preparation of staff, students, and parents to deal effectively with each other across racial lines. Much of the previously mentioned misunderstanding about busing, and resistance to it, may be attributed to these same problems.

Where there is not outright despair, there are many who still look upon the 20 years since Brown v. Board of Education with mixed feelings in spite of the progress which has been achieved. It is small comfort to the present victims of segregation and discrimination to report that within several generations the members of their groups will have achieved educational parity with their neighbors. It is small comfort to report that the members of their group have made more progress, proportionately, than their neighbors, when their neighbors still are enjoying significantly more benefits. It is small comfort to extol the limited areas of progress and urge continued patience when, after 20 years, members of minority groups still have not attained full equality. Kenneth B. Clark, for example, after participating in the work on Brown in 1954, now says:

> Social progress does not go in a straight line upward--there are ebbs and flows. After awhile--and certainly

189. U.S., Commission on Civil Rights, Title IV and School Desegregation (1973).

> 20 years is a pretty long while--you not only become tired, but you have to struggle desperately against a serious cynicism tempered only by bullheadedness. This seems particularly true in looking at the North. The developments are not conducive to despair or cynicism because what you see in the South is a rate of social movement that is not fast but at least seems solid and honest and right. But when I look at the North, I see a depth of racism, and a coolness in racism, and an hypocrisy of racism, which does not seem characteristic of the South. And that is what bothers me. It is so insidious in the North.[190]

But there are many, unlike Dr. Clark, who have responded to the pace of the past 20 years with cynicism. In addition to the white segregationists of the South and more recently of the North, there now are black advocates of separate schooling. Dr. Clark says:

> Among the complicating factors in northern urban racial segregation is the fact that in the north educational racism is now supported by the rhetoric and manipulations of black nationalists and separatists. The separatist blacks argue successfully for their own segregated schools. White decision makers grant these demands with suspicious alacrity. Separatist blacks ask for segregation under the guise of racial control and black power. They insist that racial pride can be developed only within the context of racially segregated social and educational institutions.[191]

Dr. Clark disagrees with the rationale of these separatists. In his view,

> They refuse to answer the critical question: What magic now exists that will make racially segregated schools effective educational institutions when the entire history of American racism supports the Gunnar Myrdal contention that racial segregation in American life can exist only under conditions of clear inequality? Racially segregated schools attended by blacks are inevitably inferior whether they are imposed by white segregationalists or demanded by black separatists. This is true because they exist in a

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190. Interview in New York City, Nov. 12, 1973.

191. Clark, "De Facto Segregation in the North," pp. 10-11.

> history and in a context of racism and the function of racism is to impose inequality on the lower status groups. In a racist society the lower status minority group does not have and will not be given the ultimate power necessary to control the quality of its alleged "own" institutions.[192]

The Commission concurs.

But there also are some contemporary black advocates of separate schooling who, beneath their despair, cling to the goal of an integrated multiracial society. They find it difficult to live with half-measures. Twenty years after Brown, they still see their children, or grandchildren, attending segregated schools in the South and in the North. Or they see them attending desegregated but not as yet integrated schools, and they assess the costs of this effort.

Some black Americans now often equate desegregation with a plethora of disasters: school closings in the minority community so that white pupils need not attend classes in "the ghetto"; establishment of all-white private schools; busing that places a heavier responsibility on black pupils than on whites; dismissal or demotion of black teachers and administrators in the South and fruitless searches for reportedly nonexistent "qualified" minority staff in the North; failure to bring about integration in the school and the classroom; curricula inadequate to the needs of a multiracial society that nevertheless remain unchanged following desegregation.

The list is extensive and the complaints are specific. It is no wonder that there is cynicism, that some black Americans consequently feel it is legitimate to question whether, in the short run at least, the price paid for desegregation is too exorbitant.

Yet, progress has been made and much greater progress is possible. These conditions need not exist. Dr. Clark's argument is still cogent and convincing, and an additional argument should be identified: the

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192. Ibid.

longer the delay in implementing the constitutional principles announced in Brown, the more substantial will be the cost to the entire Nation in economic, social, and human terms.

School integration is critical not only to blacks and other minorities but also to white Americans. Separation is a denial of equal opportunity to white pupils who otherwise would "benefit from unfiltered contact with their peers."[193] The benefits of school integration accrue to all and they need to be evaluated in ways extending beyond the measurements of achievement tests.

School integration remains the touchstone of all racial equality in a pluralistic society--a society in which it is possible for the individual members of many racial and ethnic groups to maintain their distinctive identity or assimilate the majority culture, based on individual preferences; a society in which differences are valued and contribute to the national life of all citizens. Separate remains unequal. Integration must move forward for moral and legal reasons, irrespective of the difficulties along the way. Integration has not failed where there has been a genuine effort to achieve it. It still represents the Nation's only road to domestic tranquility. As Martin Luther King summed up his message to America:

> Men often hate each other because they fear each other; they fear each other because they do not know each other; they do not know each other because they cannot communicate; they cannot communicate because they are separated.[194]

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193. 429 F. 2d 820, 824 (4th Cir. 1970).

194. Quoted by Malcolm Boyd, "Martin Luther King: Man, Mystery," Washington Post, Jan. 20, 1974, p. C-3.

FINDINGS

Finding No. 1

School desegregation has progressed substantially in the South. The proportion of black pupils attending predominantly white schools had increased from less than 19 percent in 1968 to more than 46 percent in 1972. A significant number of black pupils, nevertheless, continue to attend predominantly minority schools 20 years after Brown.

Finding No. 2

School desegregation progress in the North has been minimal. The proportion of black pupils attending predominantly white schools had increased less than 1 percent between 1968 and 1972. In 1972 more than 71 percent of black pupils continued to attend predominantly minority schools.

Finding No. 3

Without positive action, segregation in urban areas, both North and South, appears likely to increase, and urban-suburban racial divisions will be intensified. Half of all black pupils are enrolled in the Nation's largest and most segregated school districts, where there has been a continuing decline in white enrollment and increase in black enrollment. The same pattern is apparent where there is a large population of Spanish speaking background.

Finding No. 4

Most fears about school desegregation have proved groundless, and desegregation generally is working where it has been genuinely attempted. Given adequate preparation, planning, and leadership, desegregation can and has been a force contributing to substantial improvement in the quality of education, including among other factors the opening of new opportunities to know and understand persons of differing backgrounds.

Finding No. 5

"Freedom of choice" has proved a totally ineffective method of school desegregation. It has received support in North and South as a political compromise between the constitutional imperative to eliminate segregation and the resistance of many white Americans to the changes in the educational system this requires. It is a compromise that leads to only one result: denial of equal educational opportunity.

Finding No. 6

The Federal Government's commitment to desegregation must include termination of Federal financial assistance to school systems maintaining segregated schools. In Adams v. Richardson, the Federal district court held that where negotiation and conciliation do not

secure thorough and effective constitutional compliance, the Department of Health, Education, and Welfare is required to implement its statutory responsibilities and halt Federal aid. Any other course adds to the burden of the courts and forces them to deal with situations which can be handled by administrative orders.

Finding No. 7

The desegregation of dual school systems in the South has often resulted in the displacement or demotion of black school staff. Further, the number of black staff employed to fill new positions appears to be declining. Few Southern school systems have black administrators, and the number of minority educators also is markedly small in many Northern schools.

Finding No. 8

There is evidence that disciplinary action against minority pupils in some desegregated schools has resulted in high numbers of expulsions and suspensions. For this reason, and because of hostility directed against them, these students often terminate their education and become "pushouts."

Finding No. 9

The establishment of white segregated private schools denies the pupils in those schools the opportunity to have a desegregated education and weakens the Nation's commitment to implement an effective system of desegregated education in accordance with the Constitution.

Finding No. 10

Although some white segregationalists have been joined by some black separatists in a thrust for "separate but equal" schools, the Supreme Court's finding that separate can never be equal nevertheless remains sound and to hold otherwise is to deceive those young persons whose constitutional rights are at stake. This thrust has contributed to divisiveness in the civil rights movement.

Finding No. 11

There will continue to be situations when transportation of pupils will be required if the constitutional right to desegregated education is to be implemented. The extensive and increased use of pupil transportation historically has been accepted as an educational necessity, yet present opposition arises primarily when transportation is used to achieve the educational objective of bringing the advantages of desegregation to both minority and majority group pupils. Contrary to public misunderstanding about the use of transportation to achieve desegregation, transportation for this purpose accounts for less than 4 percent of all transportation for educational purposes.

Finding No. 12

The 1974 Milliken v. Bradley decision by the Supreme Court places an added burden of proof on the proponents of metropolitan desegregation but leaves open the door to such a remedy. Evidence regarding the interdistrict effects of segregation, which the Court now requires, appears to be available.

Finding No. 13

School desegregation has not, in many instances, led to integration. Desegregation describes the physical proximity of pupils from different racial and ethnic groups.. Integration describes a quality of educational and interpersonal interaction based on the positive acceptance of individual and group differences as well as similarities. The absence or displacement of minority staff, within-school segregation caused by ability grouping, and denial of minority cultural values are among the problems impeding a movement from desegregation, where it exists, to integration.

Finding No. 14

Although desegregation sometimes may result in higher achievement test scores, the tendency to evaluate its effectiveness on this basis ignores its essential purpose: to provide the equal educational opportunity that segregation inherently denies and to permit all pupils to develop the understanding and appreciation of each other that inevitably will result in a more equitable society for all Americans.

RECOMMENDATIONS

The U.S. Commission on Civil Rights believes that the Nation must continue to dedicate time, energy, and resources to bringing about the desegregation--followed by the integration--of our public schools, in spite of the complexities we confront and the difficulties we are experiencing. Any other course of action transmits to young people, and to racial and ethnic minorities, the message that, when it becomes difficult for the Nation to enforce constitutional rights, we turn our backs on them.

Recommendation No. 1

The President should issue an Executive Order which will:

a. Set as a Presidential goal the pooling of all Federal responsibilities and authorities and resources in order to effect the strongest possible Federal enforcement of the constitutional mandate to desegregate our public schools;

b. Require the prompt application of all available sanctions in support of determinations by the Executive Branch of the Federal Government or the courts calling for the desegregation of schools;

c. Assign responsibility to an appropriate Federal official to develop and execute, in the name of the President, an action program designed to achieve the Presidential goal.

Recommendation No. 2

Immediate steps should be taken to develop a uniform national standard for the elimination of all forms of school segregation. The standard should provide the basis for determining in each situation the extent to which the constitutional mandate for school desegregation has been carried out. The Commission will take the initiative in this area and will make specific recommendations to the President and the Congress in a future report.

Recommendation No. 3

The President should propose and Congress should enact legislation to finance the construction of new school facilities in school districts or groups of cooperating districts only where they have complied with the proposed uniform standard.

Recommendation No. 4

The President should propose and Congress should enact legislation to help finance additional pupil transportation in those school districts or groups of cooperating districts that demonstrate that such transportation is necessary to maintain compliance with the proposed uniform standard in a fair and equitable way.

Recommendation No. 5

If, within 90 days, efforts by the Department of Health, Education, and Welfare fail to obtain voluntary desegregation, proceedings leading to the termination of all Federal financial assistance should be completed within 90 additional days, and funds then should be withheld. This is consistent with the Federal district court decision in Adams v. Richardson that school desegregation guidelines should be expeditiously and effectively enforced.

Recommendation No. 6

The Internal Revenue Service, in compliance with the law, should take action to insure that tax-exempt status and the deduction of charitable contributions are not permitted for segregated private schools.

Recommendation No. 7

The Department of Health, Education, and Welfare and other appropriate Federal agencies should insure that no public funds are made available, directly or indirectly, to segregated private schools.

Recommendation No. 8

The Department of Health, Education, and Welfare should review and, if necessary, revise its guidelines to provide for the termination of Federal financial assistance to school districts that fail to meet the special needs of pupils whose primary language is not English. Districts receiving Federal funds should be required to provide instruction in the primary language in every school where 20 or more pupils from the same background exhibit lack of facility in English. Programs for these pupils should not substitute for desegregation, nor should desegregation substitute for these programs; both should be required.

Recommendation No. 9

The Department of Health, Education, and Welfare should insure, in desegregated districts receiving Federal funds, that no new administrators, teachers, or other personnel be hired until staff from previously segregated systems who have appropriate certification are assigned to comparable positions in terms of responsibility, salary, and status. Remedial programs should be provided for those staff lacking in credentials or educational effectiveness. The Department of Health, Education, and Welfare also should insure that all districts receiving Federal funds develop and implement an effective affirmative action plan for staff hiring, promotion, and transfer.

Recommendation No. 10

The Department of Health, Education, and Welfare should insure that school districts receiving Federal financial assistance do not discriminate in the application of pupil disciplinary procedures. Enforcement should be extended to include all regions of the Nation and all compliance reviews. Guidelines should be developed to insure clear understanding and effective implementation.

Recommendation No. 11

Federal funding should be increased to assist desegregated school districts. The President should propose and Congress should enact legislation extending and substantially expanding the funding under Title IV of the Civil Rights Act of 1964, Title VII of the Elementary and Secondary Education Act, the Education Professions Development Act, and the Emergency School Aid Act to assist school districts or groups of cooperating districts that have met the proposed uniform standard. The Department of Health, Education, and Welfare also should insure that all school districts presently receiving funds for desegregation assistance in fact are implementing a comprehensive desegregation plan.

Recommendation No. 12

The President should direct the Department of Health, Education, and Welfare and the Department of the Treasury to cooperate in the development of a study to determine the extent to which a program of substantial financial incentives, in addition to those set forth in Recommendation No. 10, might influence the implementation of school desegregation.

Recommendation No. 13

The Department of Health, Education, and Welfare should require that States receiving Federal funds for programs in the public schools mandate, as a condition of issuing or maintaining credentials for teachers, administrators, counselors, and related personnel, effective preservice and inservice training programs designed to develop competency, sensitivity, and understanding related to professional performance in multiracial, multicultural, and multilingual schools.

Recommendation No. 14

The Department of Health, Education, and Welfare should require that State governments, as a prerequisite for Federal financial assistance in the field of education, annually submit statewide action desegregation plans for approval by HEW. These plans should include identification of the desegregation results achieved under plans approved by HEW, the steps the States intend to take to accelerate desegregation, and plans for moving from desegregation to integration. The responsibility for public education is vested in the States, and the authority to insure nondiscrimination in the use of Federal funds is provided by Title VI of the Civil Rights Act of 1964.

The U.S. Commission incorporates by reference all recommendations in its publication "To Ensure Equal Educational Opportunity," Volume III of The Federal Civil Rights Enforcement Effort -- 1974, January 1975.