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An argument for the unconstitutionality of de facto racial segregation in public education

Craig Stover Cooley

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AN ARGUMENT FOR THE UNCONSTITUTIONALITY
OF DE FACTO RACIAL SEGREGATION
IN PUBLIC EDUCATION

BY

CRAIG STOVER COOLEY

A THESIS
SUBMITTED TO THE GRADUATE FACULTY
OF THE UNIVERSITY OF RICHMOND
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APPROVAL SHEET

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PREFACE

To enable every man to judge for himself what will secure or endanger his freedom.

These words were penned by Thomas Jefferson and adorn the stone entrance to the Richmond public high school named in his honor. The thought that education beyond all else is the avenue by which to reach each man and all mankind is a concept to which I have dedicated the past five years of my life. It is my earnest belief that social harmony in America can only be accomplished through enlightenment of the mind. Education is not limited to the mere enunciation of academic truths in the classrooms of our nation, but is the human interaction to which each of us is exposed. For the vast majority of America's youth, public schools provide the opportunity for this interaction with their fellows.

Racially imbalanced education, as I have experienced it, has deeply affected my life and my attitudes. Although a true conservative, I have moved toward what must appear a liberal, if not radical, theme for this paper. Mr. Jefferson, I trust, will permit me this one breach of strict constructionism as I have tolerated his. The opportunity to purchase the Louisiana territories offered
such benefits to the nation that it induced him to momentarily abandon his political philosophy. I find the subject of equal opportunity and nonsegregated public education an equally strong inducement to leave my own conservative bias. If the great promises of the American political institution are to be fulfilled and perpetuated, the segregated school must be eliminated. It denies to those who attend it that interethnic social interaction which is such a necessary part of human development.

I am dedicated to the achievement of a human dignity for all persons and believe this paper to speak to that determination. I am indebted to the faculty and administration of Thomas Jefferson High School for their helpfulness and their unending dedication to the task of developing young people. I am appreciative of the efforts and patience of the members of the graduate faculty of the University of Richmond Department of Political Science. I hereby acknowledge their influence on me and this paper and express my sincere gratitude to them. I am especially grateful to Dr. Thomas R. Morris, Dr. Arthur B. Gunlicks and Dr. Ellis M. West for their advice and guidance in the preparation of this thesis.

I wish to also express my deepest appreciation to my colleague, advisor, and friend, Mr. C. Russell Norment, whose life portrays all those qualities of humanism for which I strive. His influence has in no small way educated me to the concepts of human dignity which I now embrace.
Words can not express my gratitude to my parents for endowing me with a concern for others. Neither can I adequately communicate to my wife Sarah, my appreciation for her patience and understanding. Her perseverance and tender encouragement have motivated this paper throughout.
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INTRODUCTION

A creature born of an illicit relationship between the personified social institution of Jim Crow and a pretended legality, racial segregation persists and expands to the chagrin of those urban communities once considered the melting pots of America. It is manifested in many aspects of the American society, but in none more detrimental than the racial imbalances in public educational institutions.

The role of publicly supported educational facilities has never been precisely defined or measured. Thomas Jefferson, writing in 1817, saw a purpose beyond the simple presentation of academics.

The object is to bring into action that mass of talents which lies buried in poverty in every country for want of means of development, and thus give activity to a mass of mind, which in proportion to our population, shall be the double or treble of what it is in most countries.1

Like Jefferson, many persons consider public schools to have multiple functions. Education plays an important role

in the political life of the nation. An educated electorate will guard its democratic freedoms more deliberately. Public schools help to build a socially cohesive community.

Americans have typically thought of education as a healer of great social divisions. When the need arose to make one nation out of many communities of foreign origin, the people turned to the public schools, and their faith was justified.²

Few nations in history have created such an elaborate framework through which persons are acculturated to their society.

Education long has been recognized as one of the important ways in which the promise of America -- equality of opportunity -- can be fulfilled. The public schools traditionally have provided a means by which those newly arrived in the cities -- the immigrant, and the impoverished -- have been able to join the American mainstream. The hope for public education always has been that it would be a means of assuring equal opportunity and of strengthening and unifying American society.³

The certainty that these roles have been successfully performed is now in question. Racial isolation in public schools throughout the nation has retarded social cohesion rather than facilitate it. The impoverished of the urban centers remain in a rarely broken state of frustration and despair which passes from generation to

²Educational Policies Commission of the National Education Association and the American Association of School Administrators, as cited in Racial Isolation, p. 3.

generation in a cyclic pattern. Their "mass of talents" still lies buried in the poverty spoken of by Jefferson.\textsuperscript{4} Segregation in public schools perpetuates and extends this cycle of inequality.

Racial segregation or racial imbalance exists in nearly every metropolitan community of the United States. It is not confined to any particular region or section of the nation, but is apparent throughout. The national judiciary and the Congress have recognized two distinct categories of racial segregation.

"De jure" segregation is that separation of persons on a basis of race or skin color which has been prescribed by law. When a State or any agent of the State or local government has undertaken the task of enforcing a separation of the races, the State has entered into the de jure category. States are charged with guaranteeing to their citizens the equal protection of the laws.\textsuperscript{5} When a State acts to deny such equal protection, it is in violation of the national Constitution. Under the "State action" concept, Congress and the courts may act to eliminate the existence and effects of State imposed ("de jure") racial segregation.

\textsuperscript{4}Jefferson, pp. 94-95

\textsuperscript{5}U. S. Const., amend. XIV, sec. 1.
"De facto" or "adventitious" racial segregation is defined as a separation of the races which is not the result of purposeful State action toward that goal. Housing patterns which grew up because of the affinity of members of an ethnic group for others of the same group and whose alternatives were never limited by State statute are categorized as "de facto". Such segregation, since it is not the result of any affirmative "State action" to deny equal protection, is not proscribed by the Constitution.

At the time of this writing the federal courts and the Congress have moved to eliminate State imposed or "de jure" segregation. Massive movements of students and huge outlays of federal and State funds have been ordered to alleviate such racial imbalances that have been found to be violative of the Fourteenth Amendment. The Supreme Court has yet to test the validity of "de facto" segregation and the legislative branch has specifically exempted adventitious school segregation from its corrective measures.

The intent of this paper is to show an affirmative duty on the part of all governments (national and State) to eliminate racial imbalances, whether they be "de jure" or "de facto", from the public schools. The thesis of this paper is that racial segregation is violative of the Constitution of the United States. No distinction need be made between State imposed or State tolerated racial imbalance. Failure to take affirmative action to eliminate
segregation and its detrimental effects on black public school students is a transgression of the rights guaranteed by the Fourteenth Amendment and the interstices of the Constitution.

A study of demographic and population shifts is included in Chapter I to help interpret the "urbanization" of segregation. Chapter II discusses the extent or degree of housing segregation and attempts to illustrate the weaknesses of public school systems based on such residential patterns. The third chapter points to the great disparities in American public education and the effects of racial imbalance on the Negro students confined to racially identifiable schools. It also contains a brief overview of the leading studies on the sociological evidence available. Chapter IV suggests that many so called "de facto" situations are improperly labelled and should rightfully be under the "de jure" category. It continues to demonstrate that adventitious segregation is violative of the Constitution and that ample constitutional authorization exists for Congress and the federal courts to require States to take corrective measures. The final chapter examines a district court decision ordering the desegregation of a metropolitan area by a consolidation of the preponderantly white school systems of the suburbs with the predominantly black school system of the inner city. This method must be used to alleviate racial imbalances in many major urban communities.
It is the view of the American judiciary (as voiced by the Supreme Court) that without a truly equal opportunity to receive an education, young Negro residents of the inner city are denied those tools by which they may improve their lot in the American society. The American position of freedom and world leadership has been built on a political philosophy of safeguarding and expanding the liberties and rights of all the nation's citizens, not by denying them. Equality of opportunity in education is unlikely to be achieved in racially imbalanced schools. Segregation plays a dysfunctional role in the American society, and it should be eliminated.

The conclusions of each chapter of this thesis will be analyzed in its Epilogue. Although each chapter has attempted to separate a particular subject for closer observation, it must be remembered that the subject is merely a component of the larger situation, i.e., segregation. It is the cumulative effect that is, of course, most significant.
CHAPTER I

AMERICAN POPULATION TRENDS

Americans have long been noted as a migratory breed, anxious to seek out the wide open spaces, and constantly ready to uproot for the promise of a pot of gold at a rainbow's end. "Go west, young man, go west" is a concept solidly entrenched in American history and the drive for intranational migration is as firmly affixed to the American sociology. American residential movement is the subject of this chapter. Twentieth Century migration has been limited in some respects as to those "wide open spaces," but no doubt there has been little abatement in the search for the proverbial "pot of gold."

Residential migration in this century can be classified into three basic patterns. Americans have witnessed a profound and solely ethnic exodus of southern blacks to the non-southern (primarily northern) areas. Equally as noticeable has been the rural to urban movement of all citizens, including black Americans. The third pattern was later to develop, but is fully as evident now
as the previous two. A city to suburban migration is and has been accelerating as the financially affluent flow out of the core cities to their neighboring dormitory suburbs.

Southern Emigration

As Reconstruction gradually faded into the less beloved memories of white southerners, black-white relations experienced a "return to normalcy." Jim Crow laws persisted in the South long after they had died in the northern states of their origin.\(^1\) Sharecropping and the destitution of cultivating Georgia clay again became the Negroes' way of life in the South. Subsistence level farming appealed to few, and when the promise of a better life in other regions came, the exodus which might have been anticipated, began. As late as 1900 no less than eighty-seven percent of all black Americans still lived in the southern states of the old Confederacy. Seventy years later, despite a higher birth rate among blacks, only slightly above fifty percent of all American Negroes lived in the South.\(^2\) There appears to be little likelihood of this emigration ending in the foreseeable future. Although, in effect, as will be discussed later, the emigrants are moving from progressively less


segregated educational systems to areas of progressively greater educational segregation, southern blacks tend yet to perceive greener pastures beyond the Mason-Dixon. The following table illustrates the lowering of the American black population in the southern United States over the past century.

TABLE 1-1.-Distribution of the Black Population in the United States by Region, 1860-1965

<table>
<thead>
<tr>
<th>Region</th>
<th>1965</th>
<th>1950</th>
<th>1940</th>
<th>1900</th>
<th>1860</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northeast</td>
<td>17.9</td>
<td>13.4</td>
<td>10.6</td>
<td>4.4</td>
<td>3.5</td>
</tr>
<tr>
<td>North-Central</td>
<td>20.2</td>
<td>14.8</td>
<td>11.0</td>
<td>5.6</td>
<td>4.1</td>
</tr>
<tr>
<td>South</td>
<td>53.6</td>
<td>68.0</td>
<td>77.0</td>
<td>89.7</td>
<td>92.2</td>
</tr>
<tr>
<td>West</td>
<td>8.2</td>
<td>3.8</td>
<td>1.3</td>
<td>0.3</td>
<td>0.1</td>
</tr>
</tbody>
</table>


There were 9.8 million Negroes in America in 1910 and 91% of them lived in the South. By 1966 the Negro population had grown to 21.5 million and the number outside of the South rose eleven-fold from 885,000 to 9.7 million. Negro migration from the South, which has been continuous since the end of the War Between the States, increased with

---

the arrival of floods and boll weevils during the war years of 1917-20, and spurted again with the introduction of more and more mechanized agricultural implements. ⁴

TABLE 1-2.—Negro Emigration

<table>
<thead>
<tr>
<th>Period</th>
<th>Net Negro Out-Migration From the South</th>
<th>Annual Average Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910 - 1920</td>
<td>454,000</td>
<td>45,400</td>
</tr>
<tr>
<td>1920 - 1930</td>
<td>749,000</td>
<td>74,900</td>
</tr>
<tr>
<td>1930 - 1940</td>
<td>348,000</td>
<td>34,800</td>
</tr>
<tr>
<td>1940 - 1950</td>
<td>1,597,000</td>
<td>159,700</td>
</tr>
<tr>
<td>1950 - 1960</td>
<td>1,457,000</td>
<td>145,700</td>
</tr>
<tr>
<td>1960 - 1966</td>
<td>613,000</td>
<td>102,500</td>
</tr>
</tbody>
</table>


TABLE 1-3.—Negroes as a Percentage of the Total Population in the United States and Each Region 1950, 1960, and 1966

<table>
<thead>
<tr>
<th>Area</th>
<th>1950</th>
<th>1960</th>
<th>1966</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>10</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>South</td>
<td>22</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td>North</td>
<td>5</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>West</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>


⁴ Ibid.
TABLE 1-4.—Percent Distribution of the Population By Region — 1950, 1960, and 1966

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>South</td>
<td>68</td>
<td>60</td>
<td>55</td>
<td>27</td>
<td>27</td>
<td>28</td>
</tr>
<tr>
<td>North</td>
<td>28</td>
<td>34</td>
<td>37</td>
<td>59</td>
<td>56</td>
<td>55</td>
</tr>
<tr>
<td>Northeast</td>
<td>13</td>
<td>16</td>
<td>17</td>
<td>28</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>North-central</td>
<td>15</td>
<td>18</td>
<td>20</td>
<td>31</td>
<td>30</td>
<td>29</td>
</tr>
<tr>
<td>West</td>
<td>4</td>
<td>6</td>
<td>8</td>
<td>14</td>
<td>16</td>
<td>17</td>
</tr>
</tbody>
</table>


Rural to Urban Influx

Of even more dramatic proportions than the southern emigration is the "urbanization" of all Americans, blacks in particular. The United States has become an urban nation, rather than a nation of individuals all having roots in the rural farm lands. In 1960 approximately two-thirds of all Americans, white and black, lived in metropolitan areas. In the twenty-year interval of 1940 to 1960 the total population of all American metropolitan areas rose by forty million persons. From 1950 to 1966 the U. S. Negro


6 Ibid.
population increased by 6.5 million. Over ninety-eight percent of that growth took place in metropolitan areas. According to data released by the United States Census Bureau, sixty-four percent of all white Americans lived in metropolitan areas in 1966, while almost seventy percent of all Negroes made their residences there.\textsuperscript{7}

\textbf{TABLE 1-5.-Population Change by Location, Inside and Outside Metropolitan Areas, 1950-1966 (numbers in millions)}

<table>
<thead>
<tr>
<th>Areas</th>
<th>Negro Population</th>
<th>White Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>15.0</td>
<td>18.8</td>
</tr>
<tr>
<td>Metropolitan Areas</td>
<td>8.4</td>
<td>12.2</td>
</tr>
<tr>
<td>Central Cities</td>
<td>6.5</td>
<td>9.7</td>
</tr>
<tr>
<td>Urban Fringe</td>
<td>1.9</td>
<td>2.5</td>
</tr>
<tr>
<td>Small Cities, Towns, and Rural</td>
<td>6.7</td>
<td>6.7</td>
</tr>
</tbody>
</table>


Nearly all of the Negro population shift is into metropolitan areas. Blacks leaving the South are finding new habitations in northern and western urban centers, but the trend is no less obvious among blacks remaining in the

\textsuperscript{7}On Civil Disorders, p. 243.
South. Southern cities have also experienced a strong and constant influx of black citizens from their formerly rural areas of residence. According to the Kerner research, "Almost all Negro population growth (ninety-eight percent from 1950 to 1966) is occurring within metropolitan areas, primarily with central cities." Presently over two-thirds of the Negro population outside of the South, and one-third of the black population total of the United States is enclosed within the twelve largest central cities. Blacks make up 11.4% of the total United States population, but an obviously disproportionate share of city populations.

Thomas R. Dye explains the heavy concentration of blacks in American central cities as a product of three principal factors. Rural blacks enter metropolitan areas with a minimum of financial capital and are limited therefore to the less exclusive and lower priced housing wherever it is available. Since the lowest priced rental units are in the older, most degenerated sections of the central cities, blacks tend to locate in these areas. Furthermore, additional low rent central city housing is becoming available due to the outflow of white residents.

---

8 Ibid., p. 12.  
9 Ibid., p. 13  
who are departing for a more prestigious suburban life. Thirdly, Dye observes, black Americans are the pawns of discriminatory practices of both public and private real estate owners and developers. Therefore, black potential home purchasers are systematically excluded from knowledge of and thus ability to buy homes in all white suburbs. While whites may be encouraged to continue their trend of seeking the greener grass of the suburbs, black citizens discover that their prospects are effectively limited to the central city. This reality combined with the rapid growth rate of dormitory suburbs in America may lead to totally black central cities. Several major central cities are already inhabited by a majority of black citizens. (See chart of Table 1-6.)

White Flight

Although white population of the metropolitan areas has been growing and continues to grow at a brisk rate, it is a growth not registered in the central or core cities. White population in these areas is actually declining. Nearly all white residential movement has been toward the suburban areas surrounding and servicing the "old cities."

\textsuperscript{11}Ibid.
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>New York</td>
<td>6</td>
<td>9</td>
<td>14</td>
<td>19</td>
<td>-6.7</td>
<td>47.2</td>
</tr>
<tr>
<td>Chicago</td>
<td>8</td>
<td>14</td>
<td>23</td>
<td>32</td>
<td>-12.8</td>
<td>64.4</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>4</td>
<td>9</td>
<td>14</td>
<td>23</td>
<td>17.2</td>
<td>97.2</td>
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<tr>
<td>Philadelphia</td>
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<td>14</td>
<td>26</td>
<td>32</td>
<td>-13.3</td>
<td>41.2</td>
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<td>Detroit</td>
<td>9</td>
<td>16</td>
<td>29</td>
<td>47</td>
<td>-23.5</td>
<td>60.4</td>
</tr>
<tr>
<td>Houston</td>
<td>22</td>
<td>21</td>
<td>23</td>
<td>27</td>
<td>8.1</td>
<td>42.1</td>
</tr>
<tr>
<td>Baltimore</td>
<td>19</td>
<td>24</td>
<td>35</td>
<td>47</td>
<td>-15.6</td>
<td>45.3</td>
</tr>
<tr>
<td>Cleveland</td>
<td>10</td>
<td>16</td>
<td>29</td>
<td>38</td>
<td>-18.6</td>
<td>69.3</td>
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<tr>
<td>Washington, D.C.</td>
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<td>38</td>
<td>54</td>
<td>68</td>
<td>-33.3</td>
<td>47.3</td>
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<td>Milwaukee</td>
<td>2</td>
<td>3</td>
<td>9</td>
<td>18</td>
<td>-10.1</td>
<td>185.5</td>
</tr>
<tr>
<td>Dallas</td>
<td>17</td>
<td>13</td>
<td>19</td>
<td>25</td>
<td>4.9</td>
<td>59.2</td>
</tr>
<tr>
<td>San Francisco</td>
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<td>6</td>
<td>10</td>
<td>17</td>
<td>-12.9</td>
<td>66.8</td>
</tr>
<tr>
<td>St. Louis</td>
<td>13</td>
<td>18</td>
<td>29</td>
<td>46</td>
<td>-24.0</td>
<td>39.9</td>
</tr>
<tr>
<td>Boston</td>
<td>3</td>
<td>5</td>
<td>9</td>
<td>13</td>
<td>-17.1</td>
<td>59.9</td>
</tr>
<tr>
<td>New Orleans</td>
<td>30</td>
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<td>37</td>
<td>45</td>
<td>1.2</td>
<td>28.6</td>
</tr>
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<td>San Antonio</td>
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<td>6</td>
<td>10</td>
<td>-4.9</td>
<td>135.1</td>
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<td>Pittsburgh</td>
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<td>17</td>
<td>21</td>
<td>-15.3</td>
<td>22.3</td>
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<td>5</td>
<td>9</td>
<td>-3.5</td>
<td>69.5</td>
</tr>
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<td>37</td>
<td>39</td>
<td>-1.2</td>
<td>24.1</td>
</tr>
<tr>
<td>Buffalo</td>
<td>3</td>
<td>6</td>
<td>13</td>
<td>22</td>
<td>-15.3</td>
<td>94.7</td>
</tr>
<tr>
<td>Phoenix</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>10</td>
<td>-2.3</td>
<td>34.6</td>
</tr>
<tr>
<td>Atlanta</td>
<td>38</td>
<td>37</td>
<td>38</td>
<td>39</td>
<td>-19.6</td>
<td>21.2</td>
</tr>
<tr>
<td>Denver</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td>10</td>
<td>5.8</td>
<td>91.8</td>
</tr>
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<td>Columbus, Ohio</td>
<td>12</td>
<td>13</td>
<td>16</td>
<td>32</td>
<td>-2.4</td>
<td>58.8</td>
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<td>Indianapolis</td>
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<td>15</td>
<td>21</td>
<td>29</td>
<td>-9.1</td>
<td>53.9</td>
</tr>
<tr>
<td>Kansas City</td>
<td>11</td>
<td>12</td>
<td>17</td>
<td>24</td>
<td>-12.7</td>
<td>49.9</td>
</tr>
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<td>Cincinnati</td>
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<td>15</td>
<td>22</td>
<td>31</td>
<td>-9.4</td>
<td>39.4</td>
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The result is central cities that are strange conglomerates of low level housing, characterized as ghettos, various rings of semi-residential and transitional zones, and the central business districts. Affluent central city residents (predominantly, but not exclusively, white) are abandoning their townhouses and seeking out the desired pleasantries of suburban living. According to the Kerner Report, "The vast majority of white population growth (78 percent from 1960-1966) is occurring in suburban portions of metropolitan areas. Since 1960, white central city population has declined by 1.3 million." This process continues, although at a slower pace. Renewed interest in saving the city homes of urban areas has not yet produced a significant change in these statistics.

Table 1-6 illustrates the extent of this trend. It supports clearly the observable movement of whites out of

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12 For the purpose of this paper the definition of the term "ghetto" is that used by the Kerner Report, The Report of the National Advisory Commission on Civil Disorders, which states, "The term ghetto as used in this report refers to an area within a city characterized by poverty and acute social disorganization, and inhabited by members of a racial or ethnic group under conditions of involuntary segregation."

13 On Civil Disorders, p. 12.
the core cities and their subsequent replacement by non-whites, predominantly Negroes.

In 1900 slightly more than half of all metropolitan blacks lived in the central city. In 1960, eight out of every ten Negroes in metropolitan areas were residents of the central city.\textsuperscript{14} White population immigrations have not been similar, but rather, the reverse of black in-migrations. "In 1900, more than six of every ten metropolitan whites lived in the central cities, but by 1960 more than half the metropolitan white population resided in the suburbs."\textsuperscript{15}

Undoubtedly the "white flight" trend has accelerated in the past three decades. As black Americans gained political clout behind the protection of new federal legislation and court rulings, restrictive covenants in housing codes no longer held Negroes to their own areas, or the portions of the central city designated as "colored sections." With the advent of the now illegal real estate flim flam called "block busting", white central city residents began to move en masse to the safety, security, and homogeneity of the suburbs. Metropolitan population increased by forty million residents between 1940 and 1960, but this statistic may be demographically deceiving. Eighty-four percent of the increase in black population of metropolitan areas occurred

\textsuperscript{14}Racial Isolation, p. 11.

\textsuperscript{15}Ibid.
in the central cities, while the suburbs absorbed eighty percent of the white increase.\textsuperscript{16} "Between 1950 and 1960 the suburbanization of whites accelerated; nearly ninety percent of their metropolitan increase occurred in the suburbs."\textsuperscript{17}

School enrollments in the metropolitan areas also point up this trend. Nearly two-thirds of the nation's urban school age population is contained in the twenty-four largest metropolitan areas. In these cities the school age population between 1950 and 1960 grew by over five million.\textsuperscript{18} Nearly eighty percent of the increase in white student enrollments has been in the suburbs, while almost ninety percent of the non-white increase has been in central city schools.\textsuperscript{19} "By 1960, four out of five non-white metropolitan children of school age lived in central cities, while nearly three-fifths of the white children lived in the suburbs."\textsuperscript{20}

\textsuperscript{16}\textit{Ibid.} \hspace{2cm} \textsuperscript{17}\textit{Ibid.}

\textsuperscript{18}Note: School age children are defined as all those children between the ages of five years and nineteen years.

\textsuperscript{19}\textit{Racial Isolation}, p. 12.

\textsuperscript{20}\textit{Ibid.}
CHAPTER II

HOUSING SEGREGATION: ITS CAUSE AND EFFECT

Many of America's central cities are experiencing a transition from multi-racial melting pots to black cauldrons of poverty and despair. Population trends, as discussed in Chapter I, are only part of this development. Housing discrimination and enforced segregation have contributed heavily to the evolution of racially identifiable areas, sections, boroughs, neighborhoods, etc. within our central cities. All the major cities of the United States are encumbered by an exceptionally high level of residential segregation. To discuss the causes and persistence of this residential segregation is the purpose of this chapter. A recent study found that in the United States,

there is a very high degree of segregation of the residences of whites and Negroes. This is true for cities in all regions of the country and for all types of cities -- large and small, industrial and commercial, metropolitan and suburban. It is true whether there are hundreds of thousands of Negro residents or only a few thousand. Residential segregation prevails regardless of the relative economic status of the white and Negro
residents. It occurs regardless of the character of local law and policies, and regardless of the extent of other forms of segregation or discrimination.¹

Housing in America is actually becoming not less, but more segregated.²

The Measure of Segregation

Just how segregated is the American urban society? This question presents a methodological challenge in choosing an answer. One measure of residential segregation is the proportion of black Americans who would have to relocate from predominantly Negro residential blocks to predominantly Caucasian blocks in order to achieve a uniform distribution of the population.³

One such study has been attempted on a massive scale by Karl and Alma Taeuber. Their index is derived from the information released by the 1960 census and its figures on two hundred and seven cities within the coterminous United States. This number includes virtually every city


of over fifty thousand population and a large non-random selection of smaller ones.  

The Taeuber study assumes that if a person's race made no difference in his choice of residence, and that his race was not related to any other factors, including income level, affecting his choice of residence, then each race would be evenly represented in each neighborhood and on each block in approximately the same proportion as the urban area as a whole. Assuming then that a city is seventy percent white and thirty percent black, three of every ten homes on each city block would be occupied by black residents. If a city is evenly divided among its black and white citizenry, then half of all the homes on each block throughout the city would have to be occupied by blacks in order to have an even distribution. When this situation occurs, it is assigned an index value of zero by the Taeubers which indicates that there is no racial residential segregation.

The other end of the scale is the city which has absolutely no racial intermixture of residents on any block. It is a totally uneven distribution of population by race with complete segregation. White blocks would be exclusively white and black blocks would have no white residences. On the Taeuber's segregation index this city would assume a value of 100, representing maximum residential segregation.

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4 Taeuber and Taeuber, Negroes In Cities, p. 31.

5 Ibid., p. 29.
The index of residential segregation can assume values between 0 and 100. The higher the value, the higher the degree of residential segregation, and the lower the value, the greater the degree of residential intermixture. The value of the index may be interpreted as showing the minimum percentage of non-whites who would have to change the block on which they live in order to produce an unsegregated distribution — one in which the percentage of non-whites living on each block is the same throughout the city (0 on the index). 6

The results of the Taeuber research is shown in Table 2-1. The overall picture for these two hundred seven urban communities finds a segregation index value of 86.2

The Causes

The southern States of the old Confederacy have long been the whipping boy of high-minded and well-intentioned American liberals. A measure of this criticism was justified. It was generally aimed at the legislative restrictions on racially integrated housing and a variety of other socially restrictive institutions. The great injustice of this criticism was and is (as it is still often observable) that it singles out the southern region of the United States as largely responsible for the racial prejudice and discrimination that exists in the United States. The politically less-astute are left with the impression that the remaining regions of the country have

6 Ibid., p. 30.
TABLE 2-1.—Indexes of Residential Segregation For 207 Cities, 1960

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<td>City</td>
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<td>Winston-Salem, N.C.</td>
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<td>78.1</td>
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<td>West Palm Beach, Fla.</td>
<td>77.7</td>
<td>Youngstown, Ohio</td>
<td>78.5</td>
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</table>

eradicated even the last vestiges of racial animosity and are now able to cast their righteous eyes on the unrepentant South. Since everyone can point to the horrible injustices and inequities of the South, it is easy to overlook the more subtle discriminations in his own community. In reality discrimination, residential segregation, and their underlying causes have generally similar patterns throughout the urban areas of all the nation. Whether backed by legislative action, judicial decision, private and personal prejudice, or social bias, racial segregation is an urban fact of life in America. Its underlying causes are many, but three are of particular note: private discrimination, governmental policy, and Negro poverty.

Private Discrimination. - Segregation has been encouraged and perpetuated by the private housing industry throughout the United States. Through a variety of understandings and practices, the builders, mortgage lenders, landlords, and real estate brokers have striven for and achieved residential clusters of racial homogeneity. 7

Builders and developers have tended to create subdivisions consisting of homes within a narrow price bracket. This practice has produced neighborhoods of social class homogeneity which can often be equated to racial singularity.

7 Dye, Politics of Equality, pp. 64-65.
Direct discrimination in the rental and sale of housing units has contributed heavily to the high level of residential segregation discovered by the Taeubers. 8

Prior to 1948 racially restrictive covenants were legally enforceable and were nearly universally included in the property deeds of white home owners. An example of a typical restrictive covenant appears below.

No part of the land hereby conveyed shall ever be used or occupied by or sold, demised, transferred, conveyed unto, or in trust for, leased, or rented or given to Negroes, or any other person or persons of Negro blood or extraction, or to any person of the Semitic race, blood, or origin which racial description shall be deemed to include Armenians, Jews, Hebrews, Persians, and Syrians. 9

Following the 1948 Supreme Court decision of Shelley, the restrictive covenant was no longer judicially enforceable. 10 It continues to be included, however, in many deeds, regardless of its legal impotence, twenty-five years after the monumental decision. Its legal ineffectiveness may have been overcome, and its previously legal power surpassed by the prejudicial personal attitudes of the white home owners who ascribe to its purpose and intent. Indeed this individual attitudinal determination to maintain racially homogeneous neighborhoods may prove to be far

8Ibid., p. 65. 9Ibid., p. 66.

more difficult to overcome than its now defunct written predecessor.

**Government.**—Strange as it may now seem, the government of the United States may very well be the true culprit in the segregation story. Its policies in the past have fluctuated from legislative non-decision to active encouragement of restrictive covenants.

It was not until 1966 that President Johnson made a formal request for legislation on fair and unrestricted housing. Three years later Congress finally responded with the Civil Rights Act of 1968 which provided for a degree of open housing. Northern members of Congress found it a tough row to hoe when their own (predominantly white) constituencies were affected by a ban on discrimination in the sale or rental of housing. For years they had enjoyed political prosperity, gaining the vote of their black constituents by pointing up their liberality as displayed by their stands on southern oriented civil rights legislation without affecting their white constituents. The resulting legislation was written with an eye for the loophole and has been in many cases ineffective.

Legislative inadequacy combined with federal housing programs to insure a home for blacks in the core city while providing the funds to make white flight possible. The

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primary investment of federal monies into the sector of private housing has come through the Veterans Administration and the Federal Housing Administration. These two administrations have insured over one hundred fifty billion dollars in mortgage loans to over fifteen million middle income home owners. No such formidable investment has been provided for low income housing. "Since Negroes make up a disproportionate share of low income housing clientele, they have not had nearly the same opportunity as whites to acquire homes under government-insured programs."\(^{12}\) Furthermore the Federal Housing Administration and the Veterans Administration have actually encouraged the use of restrictive covenants in the deeds of homes whose mortgage they back under the "homogeneous neighborhood" policies once in effect. This combination has produced the white flight to lily white suburbs surrounding major urban centers and has left behind the low income, often black, central city population.\(^{13}\)

For the past thirty years low rent public housing has been an important source of housing for the nation's black population. Yet its location has been tightly controlled and invariably restricted to the core city limits. "Of

\(^{12}\)Ibid., p. 66. \(^{13}\)Ibid.
the nation's twenty-four largest cities, only one, Cincinnati, has ever permitted its public housing authority to build new units outside of the central city."14 Furthermore, the low rent public housing has been located in the areas of high Negro concentration within the central cities. This choice of construction sites in effect guaranteed the uniracial "project" neighborhood. Suburban counties have been consistently successful in blocking any attempts to locate low rent housing projects inside of their geographic boundaries. At times federal funds were even divided to allow a split housing project with half being constructed in a predominantly low income white neighborhood and the other half in a predominantly black neighborhood of low income status.

In 1962, shortly after the Executive Order of Equal Opportunity in Housing was issued, the General Counsel of what was then the Public Housing Administration ruled that "the mere fact that a project is divided into two or more separate sites in 'white' and 'nonwhite' neighborhoods would not of itself constitute a violation [of the Order], so long as all eligible applicants were given an equal opportunity to choose which

14 Ibid.
site they preferred.... 15

Low rent housing projects may actually be dysfunctional toward their purpose of providing better housing for the poor. A major problem results from the fact that more low rent housing units are destroyed to build public projects than are replaced by them. Projects could more readily be constructed in the more spacious suburban areas without any significant loss of existing low rent housing. 16

The total effect then of governmental action in the field of housing has been the perpetuation and extension of residential segregation. Insuring homes for the affluent white middle class in the outlying dormitory suburbs and providing low rent inner city housing as the only feasible selection for blacks has contributed largely to the high level of segregation within our metropolitan areas. Open housing legislation was and is both belated and to a large extent, ineffective.


Poverty. - Underlying all other factors involved in residential segregation is the poverty of the great black masses of America. Thomas Dye describes it as a "product of inadequate training and education, job discrimination, low levels of aspiration, and often lack of motivation."¹⁷ These problems often can be traced to matriarchal families and a breakdown of the family life style. This often produces a high rate of juvenile delinquency and crime. These combinations add to the distaste of middle income whites for low rent housing to be located in their vicinity.¹⁸

Poverty may well be the major obstacle to true effectiveness of equal opportunity housing. Only small percentages of black Americans are at present economically able to purchase middle class suburban housing. Until large segments of the black masses experience a significant increase in income levels, fair housing legislation will be no more than a symbolic commitment.¹⁹

Poor Attempts at Correction

The fundamental legislative response to the need for a national fair housing policy remains the Civil Rights Act of 1968. The act prohibits discrimination in any of the

¹⁷Dye, Politics of Equality, p. 61. ¹⁸Ibid. ¹⁹Ibid., p. 69.
forms which follow:

1) Refusing to sell or rent a housing unit to any individual because of his race, color, religion, or national origin.

2) Discriminating against any individual in the terms, conditions or privileges of the sale or rental of a dwelling.

3) Indicating through advertising the sale or rental of a dwelling a preference or discrimination on the basis of race, color, religion, or national origin.

4) Inducing residents to sell or to rent a unit by reference to the entry into their neighborhood of persons of a particular race, religion, color, or national origin. 20 (This is often referred to as "blockbusting").

The intent of the act is an extraordinarily progressive step toward equal opportunity. In practice, however, its enforcement is a time consuming myriad of red tape. First, the act exempts homes which are sold by their owners without using the services of a real estate agent. This removes a number of real estate transactions from the jurisdiction of federal guidelines. If a person is convinced that he has been discriminated against, he must file a complaint with the Secretary of the Department of Housing and Urban Development. The department will then investigate the situation and make an effort to conciliate the matter. If this process is not successful, then the individual may sue in a federal

20 Ibid., p. 68.
court for injunctive relief. This is a costly undertaking. Furthermore, federal district judges insist that if State and local remedies are available, these avenues must be exhausted before a suit may be filed in a United States court.\textsuperscript{21}

\textsuperscript{21}Ibid., p. 69.
Conclusions

The ledger is markedly weighted toward the debit side of the case of residential segregation. History, sociology, private attitudes, former government policies, and black economic destitution are all working against an effective fair housing system. Legislation to deal with the matter is ineffective and weak. Residential segregation is a universal urban problem with no region of the United States free of its development. Furthermore, America's urban centers are becoming not less, but more segregated. Housing patterns play an important role in the development of racially identifiable public schools. It is this fact which makes this glance at residential segregation fundamental to this paper.

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22 See Racial Isolation, p. 70.
CHAPTER III

THE SEGREGATED PUBLIC SCHOOLS

Perhaps the most unfortunate result of the interaction of American population shifts and segregated housing patterns is the racially segregated public school system. The purpose of this chapter is to demonstrate the extent of racial segregation in the public schools and its effects on those who experience it.

Governmentally enforced public school segregation has been illegal since the 1954 decision of Brown v. Board of Education of Topeka, Kansas.\(^1\) The Supreme Court chose, as will be discussed in Chapter IV, to base its decision on psychological data and reasoning. Its rationale in the Brown decision opened up a broad new spectrum of discretionary judgment to the American legal process. As social science is not an exact science, and as the particular sociological studies chosen by the 1954 Court are now being subjected to debate and scholarly criticism, some would now find the ruling suspect. However, even if the Brown decision was based on invalid sociological evidence, the

present Court may have ample non-sociological evidence on which to base a similar decision. As it is worthy of note, a brief resume or history of the sociological debate is included in this chapter. However, it must be noted that so long as the Brown decision stands, it is that precedent (its now-questioned rationale notwithstanding) which must act as rule of law in cases involving questions of "de jure" racial segregation.

The great majority of America's children attend public schools where their classmates are of the same race and cultural origin. Whether desegregation will bring about or achieve economic equality of results in adult life, or whether it can increase the cognitive skills of lower socio-economic class blacks, are open questions hanging amidst the debate of sociologists. They are, since Brown, however, closed questions to the lower federal courts, insofar as public schools are concerned.

The Extent of Racial Isolation

General Trends.--The most comprehensive research to date on the extent of racial segregation in public schools

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2 See Chapter IV.

was done by the U. S. Office of Education. Its findings were published in 1966 in a massive report compiled by a committee which was chaired by Professor James S. Coleman. The Coleman Report, as it has come to be known, verified the worst fears of many educators concerning the true statistics of racial isolation.

The great majority of American children attend schools that are largely segregated—that is, where almost all of their fellow students are of the same racial background as they are. Among minority groups, Negroes are by far the most segregated. Taking all groups, however, white children are most segregated. Almost 80 percent of all white pupils in first grade and twelfth grade attend schools that are from 90 to 100 percent white. And 97 percent at grade 1, and 99 percent at grade 12 attend schools that are 50 percent or more white.

For Negro pupils, segregation is more nearly complete in the South (as it is for whites, also), but it is extensive also in all the other regions where the Negro population is concentrated: The urban North, Midwest, and West.4

The United States Commission On Civil Rights found that a high degree of segregation prevails 1) regardless of whether the school system is located in the South, North, or border states; 2) regardless of the size of the system; and 3) regardless of the proportion of Negroes enrolled in the school system.5 Coleman discovered that


regional averages could be deceiving. A better realization of the extent of racial isolation could be achieved by studying the metropolitan areas of the nation. The discussion of the demographic and population shifts found in Chapter I should serve as background to the urban plight.

Table 3-1 offers statistics on seventy-five cities in 1966. In these urban areas seventy-five percent of all black students were then enrolled in elementary schools that were nearly all-Negro (ninety percent or better). In these same cities over eighty-two percent of the white students were in nearly all-white schools. Approximately ninety percent of the Negro elementary students attended schools whose enrollments were comprised of a majority of Negroes.

TABLE 3-1.--Extent of Elementary School Segregation in 75 School Systems

<table>
<thead>
<tr>
<th>City</th>
<th>Percentage of Negroes in 90-100% Negro schools</th>
<th>Percentage of Negroes in majority Negro schools</th>
<th>Percentage of whites in 90-100% white schools</th>
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<td>Mobile, Ala.</td>
<td>99.9</td>
<td>99.9</td>
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<td>99.6</td>
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<td>95.6</td>
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<td>98.2</td>
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<td>87.5</td>
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</tr>
<tr>
<td>City</td>
<td>Percentage of Negroes in 90 to 100 percent Negro schools</td>
<td>Percentage of Negroes in majority Negro schools</td>
<td>Percentage of whites in 90 to 100 percent white schools</td>
</tr>
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<td>-------------------</td>
<td>----------------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-----------------------------------------------------</td>
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<td>89.0</td>
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<td>99.1</td>
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<td>79.3</td>
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<td>City</td>
<td>Percentage of Negroes in 90 to 100 percent Negro schools</td>
<td>Percentage of Negroes in majority Negro schools</td>
<td>Percentage of whites in 90 to 100 percent white schools</td>
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TABLE 3-1.--Continued.

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<th>City</th>
<th>Percentage of Negroes in 90 to 100 percent Negro schools</th>
<th>Percentage of Negroes in majority Negro schools</th>
<th>Percentage of Whites in 90 to 100 percent white schools</th>
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<td>Amarillo, Tex.</td>
<td>896.</td>
<td>89.6</td>
<td>98.3</td>
</tr>
<tr>
<td>Austin, Tex.</td>
<td>86.1</td>
<td>86.1</td>
<td>93.1</td>
</tr>
<tr>
<td>Dallas, Tex.</td>
<td>82.6</td>
<td>90.3</td>
<td>90.1</td>
</tr>
<tr>
<td>Houston, Tex.</td>
<td>93.0</td>
<td>97.6</td>
<td>97.3</td>
</tr>
<tr>
<td>San Antonio, Tex.</td>
<td>65.9</td>
<td>77.2</td>
<td>89.4</td>
</tr>
<tr>
<td>Richmond, Va.</td>
<td>98.5</td>
<td>98.5</td>
<td>95.3</td>
</tr>
<tr>
<td>Seattle, Wash.</td>
<td>9.9</td>
<td>60.4</td>
<td>89.8</td>
</tr>
<tr>
<td>Milwaukee, Wis.</td>
<td>72.4</td>
<td>86.8</td>
<td>86.3</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>90.4</td>
<td>99.3</td>
<td>34.3</td>
</tr>
</tbody>
</table>

\(^a\) Percentages shown in this table are for the 1965-66 school year.


\(^c\) Generally the southern school systems have reduced these percentages, while the non-southern school systems have experienced increased segregation.
There has been a marked change in the student composition of our schools in the last several decades. The massive urban influx has created population densities much greater than before. Urban school attendance zones have been vastly reduced in geographical size, while school enrollments have risen drastically. This trend replaces an earlier period when school attendance areas often encompassed both urban and outlying (pre-suburban) territory. The social base of the student population was, as a result, greatly diversified. As one educator testified to the United States Commission on Civil Rights:

Most men and women over forty recall a childhood schooling in which the sons and daughters of millowners, shop proprietors, professional men, and day laborers attended side by side. School boundaries, reaching out into fields and hills to embrace the pupil population, transcended such socio-economic clusterings as existed.6

Recently schools have moved toward an intensified homogeneity of socio-economic student backgrounds. The creation of smaller geographic attendance zones, along with the significant loss of white student enrollment from the central city has made the racially intermixed public school very uncommon.7 The role of residential segregation in determining the extent of racial isolation in the public schools is significant.8 Furthermore, the very concept of

7Ibid.
8See Chapter II.
"neighborhood" schools has changed. Due to present patterns in urban living, traditional neighborhood patterns have been superseded. "Traditional neighborhoods--self-contained, cohesive communities--do not, in fact, appear to be the basis for neighborhood attendance policy."¹⁹ The new basis for attendance patterns is "inconvenience." States allow local school authorities to draw their attendance zones on a basis of convenience to students. "Attendance areas commonly are defined, not by the boundaries of communities, but by reference to population density, the size of the schools and geographic barriers such as highways and railroads."¹⁰

Thus, major decisions of school construction and student distribution are left to local officials. They exercise broad discretionary powers on matters of attendance zones and therefore can control to a significant degree the relative racial homogeneity of each individual school. Such decisions have often continued and intensified racial segregation in urban public schools. Only in a few cities have these broad powers been used to reduce racial isolation.¹¹ The majority of school administrators appear either purposefully or unwittingly to have followed policies which have perpetuated racial segregation.

¹⁰ Ibid., p. 41  
¹¹ Ibid.
The loss of white students to suburban schools is also preventing meaningful racial integration within inner city school systems. In fifteen large metropolitan areas surveyed in 1960, seventy-nine percent of the non-white public school enrollment was in the central city schools, while sixty-eight percent of the white enrollment was suburban.\footnote{12} The Civil Rights Commission in 1967 found that "in the Nation's metropolitan areas--where two-thirds of both the Nation's Negro and white populations now live--school segregation is more severe than the national figures suggest. And it is growing."\footnote{13}

Regional Variations In The Extent of Segregation. According to the Coleman Report, "the extent of racial isolation in Northern school systems does not differ markedly from that in the South."\footnote{14} Although unquestionably the levels of racial isolation are discernibly higher in the southern United States than in the northern areas, no neat categorization is possible. Table 3-2 compares twenty cities (ten of each region) and the extent of segregation of black elementary students in 1965.

\footnote{12}{Ibid., p. 3.}
\footnote{13}{Ibid.}
\footnote{14}{Ibid.}
### TABLE 3-2.—Extent of Elementary School Segregation in 20 Selected Northern and Southern Cities.

<table>
<thead>
<tr>
<th>Southern Cities</th>
<th>Percent in 90-100% Negro Schools</th>
<th>Percent in Majority Negro Schools</th>
<th>Northern Cities</th>
<th>Percent in 90-100% Negro Schools</th>
<th>Percent in Majority Negro Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richmond, Va.</td>
<td>99</td>
<td>99</td>
<td>Gary, Ind.</td>
<td>90</td>
<td>95</td>
</tr>
<tr>
<td>Atlanta, Ga.</td>
<td>97</td>
<td>99</td>
<td>Chicago, Ill.</td>
<td>89</td>
<td>97</td>
</tr>
<tr>
<td>Little Rock</td>
<td>96</td>
<td>96</td>
<td>Cleveland</td>
<td>82</td>
<td>95</td>
</tr>
<tr>
<td>Memphis</td>
<td>95</td>
<td>99</td>
<td>Chester, Pa.</td>
<td>78</td>
<td>89</td>
</tr>
<tr>
<td>Marietta, Ga.</td>
<td>94</td>
<td>94</td>
<td>Buffalo, N.Y.</td>
<td>77</td>
<td>89</td>
</tr>
<tr>
<td>Houston</td>
<td>93</td>
<td>98</td>
<td>Detroit</td>
<td>72</td>
<td>92</td>
</tr>
<tr>
<td>Miami</td>
<td>91</td>
<td>94</td>
<td>Milwaukee</td>
<td>72</td>
<td>87</td>
</tr>
<tr>
<td>Winston-Salem</td>
<td>89</td>
<td>95</td>
<td>Indianapolis</td>
<td>71</td>
<td>84</td>
</tr>
<tr>
<td>Dallas</td>
<td>83</td>
<td>90</td>
<td>Flint, Mich.</td>
<td>68</td>
<td>86</td>
</tr>
<tr>
<td>Nashville</td>
<td>82</td>
<td>86</td>
<td>Newark, N.J.</td>
<td>51</td>
<td>90</td>
</tr>
</tbody>
</table>

Source:


Although "de jure" segregation had become synonymous with the southern school systems, it was equally predominant in many northern and western school zones. Separate but equal segregation legislation remained on the State law codes of Indiana until 1949, New Mexico until 1954, and Wyoming until 1954, and New York until 1938. Many other States outside of the South had such laws from 1865.
until well into the Twentieth Century.  

From 1954 to 1965 the enrollment of Negro elementary children in city school systems rose. An increase was likewise registered in the number of black elementary students enrolled in majority black and nearly all-black schools.  

In northern urban school systems (fifteen selected cities) eighty-four percent of the total Negro enrollment increase was absorbed in schools that are now nearly one hundred percent Negro, and ninety-seven percent in schools more than fifty percent Negro. Table 3-3 illustrates the fact that both Negro enrollment and segregation percentages are increasing in northern urban schools.

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15 Ibid., p. 42.
16 Ibid., p. 8.
TABLE 3-3. Changes in Pupil Segregation in Selected Cities

<table>
<thead>
<tr>
<th>City</th>
<th>Year</th>
<th>Number of Negro Students in Schools 90-100% Negro</th>
<th>Percentage of Total Negro Students in Schools 90-100% Negro</th>
<th>Year</th>
<th>Number of Negro Students in Schools 90-100% Negro</th>
<th>Percentage of Total Negro Students in Schools 90-100% Negro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cincinnati</td>
<td>1950</td>
<td>3,981</td>
<td>43.7</td>
<td>1965</td>
<td>11,155</td>
<td>49.4</td>
</tr>
<tr>
<td>Milwaukee</td>
<td>1950</td>
<td>1,316</td>
<td>51.2</td>
<td>1965</td>
<td>14,344</td>
<td>72.4</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>1950</td>
<td>29,555</td>
<td>63.2</td>
<td>1965</td>
<td>66,052</td>
<td>72.0</td>
</tr>
<tr>
<td>Pittsburgh</td>
<td>1950</td>
<td>3,226</td>
<td>30.4</td>
<td>1965</td>
<td>9,226</td>
<td>49.5</td>
</tr>
<tr>
<td>Indianapolis</td>
<td>1951</td>
<td>7,637</td>
<td>83.2</td>
<td>1965</td>
<td>15,426</td>
<td>70.5</td>
</tr>
<tr>
<td>Cleveland</td>
<td>1952</td>
<td>12,369</td>
<td>57.4</td>
<td>1965</td>
<td>41,034</td>
<td>82.3</td>
</tr>
<tr>
<td>Oakland</td>
<td>1959</td>
<td>1,110</td>
<td>7.7</td>
<td>1965</td>
<td>9,043</td>
<td>48.7</td>
</tr>
<tr>
<td>Detroit</td>
<td>1960</td>
<td>62,391</td>
<td>66.9</td>
<td>1965</td>
<td>77,654</td>
<td>72.3</td>
</tr>
<tr>
<td>Buffalo</td>
<td>1961</td>
<td>9,199</td>
<td>80.5</td>
<td>1965</td>
<td>13,106</td>
<td>77.0</td>
</tr>
<tr>
<td>San Francisco</td>
<td>1962</td>
<td>1,579</td>
<td>11.6</td>
<td>1965</td>
<td>3,031</td>
<td>21.1</td>
</tr>
<tr>
<td>Harrisburg</td>
<td>1963</td>
<td>2,103</td>
<td>58.1</td>
<td>1965</td>
<td>2,075</td>
<td>54.0</td>
</tr>
<tr>
<td>Springfield</td>
<td>1963</td>
<td>0</td>
<td>0.0</td>
<td>1965</td>
<td>567</td>
<td>15.4</td>
</tr>
<tr>
<td>New Haven</td>
<td>1963</td>
<td>1,196</td>
<td>22.5</td>
<td>1965</td>
<td>2,171</td>
<td>36.8</td>
</tr>
</tbody>
</table>

The United States Commission on Civil Rights found that southern school systems and the border State school systems had also experienced significant increases in black student populations. There had been, however, a proportional drop in Negroes attending one hundred percent black schools. Yet, a significant increase in the number of Negroes attending all-Negro or nearly all-Negro schools was apparent. Figures 3-A through 3-H demonstrate the degree of racial segregation in the nation, the south and southwest, and the north and west as measured in 1967.

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FIGURE 3-A.—Percent of White Students In Schools of Differing Racial Composition—White Pupils—All Regions—Grade 1.

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FIGURE 3-B.—Percent of Negro Students In Schools of Differing Racial Composition—Negro Pupils—All Regions—Grade 1

FIGURE 3-C.—Percent of White Students In Schools of Differing Racial Composition—White Pupils—A Regions—Grade 12

[Graph showing percent of white students in schools of differing racial composition.]

FIGURE 3-D.—Percent of Negro Students In Schools of Differing Racial Compositions—Negro Pupils—All Regions—Grade 12.

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FIGURE 3-E.—Percent of Negro Students in Schools of Differing Racial Composition—Negro Pupils in Metropolitan Areas—North and West Region—Grade 12.

Racial Composition of School (Percent Negro)

FIGURE 3-F.—Percent of Negro Students In Schools of Differing Racial Composition—Negro Pupils In Metropolitan Areas—South And Southwest Region—Grade 12.

FIGURE 3-G.—Percent of White Students In Schools of Differing Racial Composition—White Pupils In Metropolitan Areas—North And West Region—Grade 12.

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FIGURE 3-H.—Percent of White Students In Schools of Differing Racial Composition—White Pupils In Metropolitan Areas—South And Southwest Region—Grade 12.

Sociological Studies on Equality

The Supreme Court's decision of 1954 relied on testimony of a sociological and psychological nature to formulate a broad new policy of freedom from racial discrimination in the public schools. Twelve years later its reasoning was supported by the release of a massive report on equality of educational opportunity prepared by the U.S. Office of Education. This accumulation of data is often referred to as the "Coleman Report," alluding to the study's chairman, Professor James S. Coleman. 19 It was joined in 1968 by the report of the National Advisory Commission on Civil Disorders and its chairman, Otto Kerner. 20 These two reports have been extensively cited in this chapter.

The Coleman Report brought into question the effectiveness of large government expenditures for compensatory education. It concluded that the single

19 Coleman, Educational Opportunity.
most important influence on a child's educational development was the attitude, social class, and race of his classmates. This meant that desegregation of racially identifiable schools and economically homogenous schools was a necessary prerequisite to improving the skills, attitudes, and adult attainments of minority students. The Coleman Research stood nearly unquestioned for the remainder of the decade of the 1960s. It is apparent now that the Coleman-Kerner philosophies were merely the first wave of sociological information to be presented.

By the early years of this decade, reanalyses of the Coleman data and other studies began to question some of the conclusions of Coleman's analysis. Two leading dissenters were Christopher S. Jencks and David J. Armor. In their separate re-analyses of the Coleman research they came to opinions that differed from some of the original conclusions of the report. Most importantly, both questioned the necessity of racially integrating public schools. Their reanalyses found the home and community backgrounds to be the over-riding factors in educational achievement. Until family incomes and life styles are more nearly equalized, argues Jencks, offering equal educational opportunities in integrated schools will accomplish little. 21

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Armor discovered that positive attitudes toward achievement held by many blacks in segregated schools were actually damaged by placing these students in integrated situations.  

However, new sociological data is becoming available which questions both Jencks and Armor, as well as Coleman. The following is a brief summary of the basic assumptions and findings of the major schools of thought on the effects of schooling.

**Coleman and Kerner.** Although the term "education" is a nebulous one whose meaning is rarely agreed upon, it can be said that among the more important duties of a school is to teach certain intellectual skills such as reading, writing, problem solving, and calculating. One method of gauging the effect of racial isolation is to measure the relative success of racially identifiable schools in teaching these basic skills. Six hundred thousand children at grades one, three, six, nine, and twelve in four thousand schools in all fifty states and the District of Columbia and sixty thousand teachers were surveyed by the Coleman committee for the U.S. Office of

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23 Coleman, Educational Opportunity, p. 20.
Education in 1965 to determine such effects. Standard achievement tests were used to assess the educational opportunity offered by the schools.

These tests do not measure intelligence, nor attitudes, nor qualities of character. Furthermore, they are not, nor are they intended to be, "culture free." Quite the reverse: they are culture bound. What they measure are the skills which are among the most important in our society for getting a good job and moving up to a better one, and for full participation in an increasingly technical world. Consequently, a pupil's test results at the end of public school provide a good measure of the range of opportunities open to him as he finishes school—a wide range of choice of jobs or colleges if these skills are very high; a very narrow range that includes only the most menial jobs if these skills are very low.

Table 3-4 shows the results of the Coleman survey as it pertained to Negroes and whites. The black pupils' scores are as great as one standard deviation below the white students' scores at the first grade level. At the twelfth grade level, the test results demonstrate that, in these same skills, the Negro children's scores are even farther below the white children's than they were in the first grade.

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25 Ibid.
TABLE 3-4.--Nationwide Median Test Scores For 1st and 12th Grade Pupils

<table>
<thead>
<tr>
<th>Test</th>
<th>Negro</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Grade:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonverbal</td>
<td>43.4</td>
<td>54.1</td>
</tr>
<tr>
<td>Verbal</td>
<td>45.4</td>
<td>53.2</td>
</tr>
<tr>
<td>12th Grade</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonverbal</td>
<td>40.9</td>
<td>52.0</td>
</tr>
<tr>
<td>Verbal</td>
<td>40.9</td>
<td>52.1</td>
</tr>
<tr>
<td>Reading</td>
<td>42.2</td>
<td>51.9</td>
</tr>
<tr>
<td>Mathematics</td>
<td>41.8</td>
<td>51.8</td>
</tr>
<tr>
<td>General Information</td>
<td>40.6</td>
<td>52.2</td>
</tr>
<tr>
<td>Average of the 5 Tests</td>
<td>41.1</td>
<td>52.0</td>
</tr>
</tbody>
</table>


Furthermore, a constant difference in standard deviations over the various grades represents an increasing difference in grade level gap. Thus, by this measure, the deficiency in achievement is progressively greater for the minority pupils at progressively higher grade levels.

For most minority groups, then, and most particularly the Negro, schools provide little opportunity for them to overcome this initial deficiency; in fact they fall farther behind the white majority in the development of several skills which are critical to making a living and participating fully in modern society. Whatever may be the combination of non-school factors—poverty, community attitudes, low educational level of parents—which put minority children at a disadvantage in verbal and nonverbal skills when they enter the first grade, the fact is the schools have not overcome it.26

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26 Coleman, Educational Opportunity, p. 21.
Additionally, the test results at the twelfth grade do not include those students who have dropped out prior to that grade. Twenty percent of all sixteen and seventeen year old Negroes in the metropolitan North are in this category. This represents a much greater percentage than is apparent in either the metropolitan or the non-metropolitan South. It is suspected that many of these are students who achieved very poorly and left school in frustration. If this is a true assumption, then the Negro achievement as tested in the North (and thus, the overall national level) may be unjustifiably higher than it is in reality.27

The Kerner Report finds additional evidences of a high Negro drop out rate.

The failure of the public schools to equip these students with basic verbal skills is reflected in their performance on the Selective Service Mental Test. During the period June, 1964-December, 1965, 67 percent of Negro candidates failed the examination. The failure rate for whites was 19 percent.

The result is that many more Negro than white students drop out of school. In the metropolitan North and West, Negro students are more than three times as likely as white students to drop out of school by age 16-17. As reflected by the high unemployment rate for graduates of ghetto schools and the even higher proportion of employed workers who are in low-skilled, low-paid jobs, many of those who do graduate are not equipped to enter the normal job market, and have great difficulty securing employment.28

27 Ibid.
28 Kerner, On Civil Disorders, p. 425.
The Commission added:

Many of those whose recent acts threaten the
domestic safety and tear at the roots of the American
democracy are the products of yesterday's inadequate
and neglected inner-city schools. The greatest unused
and underdeveloped human resources in America are
to be found in the deteriorating cores of America's
urban centers. 29

James S. Coleman, writing in an educational publication,
stated that the "effectiveness of schools in creating
equality of educational opportunity lies in making the
conditional probabilities of success less conditional on
racial or ethnic backgrounds." 30 The schools of America's
inner cities and suburbs have failed in this criterion.
"At the end of school, the conditional probabilities of
high achievement are even more conditional upon racial or
ethnic background than they are at the beginning of
school...." 31

The vast Coleman study involves four major points.

Briefly, they are:

1) Most black and white Americans attend different
   schools.

2) Despite popular impressions to the contrary, the
   physical facilities, the formal curriculums, and
   most of the measurable characteristics of teachers
   in black and white schools were quite similar.

29 Ibid.
31 Ibid.
3) Despite popular impressions to the contrary, measured differences in schools' physical facilities, formula curriculums, and teacher characteristics had very little effect on either black or white students' performance on standardized tests.

4) The one school characteristic that showed a consistent relationship to test performance was the one school characteristic to which most poor black children had been denied access: classmates from affluent homes.32

Since only the smallest portion of black Americans can be correctly classified as "affluent", racially segregated public schools did not provide the majority of black children with peers of affluent backgrounds.

Post Coleman Studies. Re-analysis of the Coleman data and new research has brought some of the Report's conclusions into serious question among some of the nation's foremost sociologists. Christopher Jencks, on re-examination of the Coleman survey, re-asserted many of the original conclusions, but carried some much further. Said Jencks, "differences between schools have rather trivial long-term effects, and eliminating differences between schools would do almost nothing to make adults more equal."33


Jencks is most harsh on the concept of compensatory funding. It is his interpretation of the data that differences in high schools contribute virtually nothing to the overall level of cognitive inequality. He did acknowledge that at the present time public monies are being expended to subsidize a service (public education) which is used by the white middle class more than any other group. Jencks and his co-workers determined from the evidence they had examined that even doubling the expenditures in most schools would not raise students' performance on standardized tests. Adequate school funding can not be justified by the promise of equality in the future lives of affected students. It can be justified, however, on the grounds that it makes their situation better right now.

The Jencks survey reached four overall conclusions about the potential effects of desegregation on cognitive inequality. Of these, two are relevant to this paper. The survey determined:

\(^{34}\) Ibid., p. 93.
\(^{35}\) Ibid., p. 19
\(^{36}\) Ibid., p. 93.
\(^{37}\) Ibid., p. 29.
1. About 80 percent of all blacks were in predominantly black schools in 1965. They averaged 15 points below the white mean on standardized tests. Our best guess is that desegregation raises scores by 2-3 points. Eliminating all predominantly black schools might therefore reduce the overall black-white gap from 15 to 12 or 13 points. Such a gain would not be completely trivial, but it would certainly not have much effect on the overall pattern of racial inequality in America....

4. Finally, the case for or against desegregation should not be argued in terms of academic achievement. If we want a segregated society, we should have segregated schools. If we want a desegregated society, we should have desegregated schools. We suspect that most blacks, like most whites, want a mixture of the two, based on some degree of voluntarism at least among blacks. If this is so, we need a system of pupil assignment that reflects the preferences of individual black parents to some extent. The effects of segregation on test scores are certainly not large enough to justify overriding the preferences of parents and students.38

Jencks dwells on the point that desegregation is associated with higher test scores only when it involves both socio-economic and racial desegregation. There is, he contends, little evidence that desegregation produces higher black test scores in schools where the white students are as poor as the blacks.39

The Jencks Report summarized its conclusions on desegregation in the following manner:

38 Ibid., p. 106.
39 Ibid., p. 100.
high school segregation has no effect on students' test scores and elementary school segregation probably has a very small effect. Now we have seen that high school segregation probably has no effect on students' chances of earning educational credentials. These findings may convince some readers that segregation is not so bad after all, and that reformers should devote themselves to other causes.

We must therefore emphasize once again that the outcomes of schooling discussed in this book are not all-embracing. Test scores and credentials may be the two products of schooling most likely to influence economic success, but even this is not certain.... School desegregation can be seen as part of an effort to make blacks and whites rethink their historic relationship to one another. If blacks and whites attend the same schools, then perhaps they will feel more of a stake in each others' well-being than they have in the past. If that does not happen—if blacks and whites emerge from desegregated schools as alien from one another as before—the struggle will have been in vain. This will be so even if the racial disparity in test scores and educational credentials is slightly reduced in the process—which is far from certain. The question, then, is how desegregation affects the attitudes of children and adults. It is easy to construct theories showing either that desegregation will make things better or that it will make them worse. Past experience can also be cited to support either view. Our own prejudice is that in most contexts desegregation will probably increase tension in the short run and reduce it in the long run. But we have no real evidence for this. All we have is a conviction that the debate over desegregation ought to focus on this issue, not on test scores and college entrance rates.40

Jencks strikes at the heart of the equality issue by stating that income inequality in the United States can not possibly be eliminated, nor even substantially reduced, by the means of equal opportunity in education. The only method by which the great income disparities can be reduced is by establishing upper and lower limits on

40 Ibid., pp. 155-56.
incomes beyond which none may rise or fall. While Coleman had insisted that equality of educational "opportunity" was necessary to eliminate income inequality in later life, Jencks states that equalizing everyone's educational "attainment" would have virtually no effect on income inequality.

Writing in an article prior to his research released in Inequality, Christopher Jencks had predicted the eventual results of such research:

If and when we develop a comprehensive picture of inequality in American life, we will find that educational inequality is of marginal importance for either good or ill. Such things as control over capital, occupational specialization, and the traditions of American politics will turn out to be far more important than the schools.

David J. Armor was an early critic of the Coleman conclusions and made his views known to the U.S. Commission on Civil Rights in their 1967 report on racial isolation. His research and analysis (which took issue with the Commission's conclusions) are included in the appendix

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41 Ibid., p. 220.
42 Ibid., p. 224.
to the report. Armor found that the strongest positive effect of integration occurred for upper ability black males in the ninth grade. In all regions of the country he found college aspirations were either higher for males in segregated schools than those in lightly integrated schools, or were equal to them. In general, aspirations were lowest for Negro females in integrated schools, and higher for such females in segregated schools. Armor concluded that the qualified, bright student from a lower class background and in a deprived school would be the most aided by integration. For the able middle class Negro in a better school, there was not as much effect due to integration.

Writing on the Coleman Report's findings, Dr. Armor noted that his analysis of the available data demonstrated governmental action might be better aimed at the home than at the school. He found significant correlations between measures of family socio-economic levels and the

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46 Ibid., p. 146.
47 Ibid.
differences in black and white achievement. These correlations were in both direction and magnitude. "These results are strongly suggestive of the conclusion that the determinants of student achievement variation are more likely to be found in the home than in the school. 48

Conceding that school factors may be important for a certain level of achievement, Armor is still dubious of the result of improving those factors. If an attempt is to be made to reduce the differential in black and white achievement levels, Armor asserts that family background factors are the more promising areas for improvement. He notes one clear implication. Government programs designed to improve the academic performance of blacks should give equal or more attention to the environment--both family and neighborhood--in which the minority child lives. 49

Reaching a conclusion similar to that of Christopher Jencks, Dr. Armor states


49 Ibid., p. 225.
even those black students in integrated and higher socio-economic environments still achieve at a lower level than whites. The most likely explanation for this is that their "individual family background" is still more disadvantaged than that of white students in the same environment. Thus, while integration may be an important factor for black achievement, blacks might still never attain full achievement equality until their individual family style catches up to that of whites. The policy implication here is that programs which stress financial aid to disadvantaged black families may be just as important, if not more so than programs aimed at integrating blacks into white neighborhoods and schools.50

Obviously this thesis accepts the first wave of sociological data (Coleman-Kerner) and tends to reject the second wave (Jencks-Armor). The epilogue of this paper will seek to justify this selection of the earlier research and its resultant conclusions.

50 Ibid., p. 226.
CHAPTER IV

AN END TO SCHOOL SEGREGATION

DE JURE AND DE FACTO

This chapter will attempt to demonstrate that the constitutional guarantee of equal protection of the laws requires equal educational opportunities for all citizens attending public school systems. The state assumes the primary responsibility for the conduct of education within its borders and may not avoid that responsibility by delegating its authority to local school officials. Localities and school districts generally are creatures of the state. Districts may and should be altered to eliminate racial disparities between proximate school systems.

Indeed the Supreme Court echoed this egalitarian philosophy when it ruled unconstitutional the Plessy doctrine of "separate, but equal."

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of

\[1\] Plessy v. Ferguson, 163 U.S. 537 (1896).
good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him to adjust normally to his environment. In these days, it is doubtful that any child can reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state had undertaken to provide it, is a right which must be made available to all on equal terms.2

Under The Fourteenth Amendment

The Important Sections.—The great advancements of civil rights in the recent decades have come largely through refinements and enlargements of previous decisions based on the Fourteenth Amendment. Several key phrases such as "due process," "equal protection of the laws," "privileges and immunities," and "state action" have been the center of debate in literally tens of thousands of court actions. Due to their powerful impact on the desegregation effort and their relative brevity, the first and fifth sections of the Fourteenth Amendment are here presented in their entirety.

Section 11. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.3

3 U.S. Const. amend. XIV, sec1 1, sec. 5.
State Action: What Constitutes It?—For much of the history of the Fourteenth Amendment, the concept of "State action" has controlled the situations to which it can be applied. State action was said to be involved and the situation classified as "de jure" segregation if a State was guilty of passing legislation making segregated housing or segregated education mandatory. Even if the State had eliminated the legislation or other State action, it could still be so classified if the originally coerced segregation persisted. The decision of Green v. New Kent County found an affirmative duty on the part of school districts and their States to eradicate any vestiges of "de jure" school segregation. Corrective measures taken by the federal government have been thought to be possible only when "State action" can be proved to have been a factor in the creation and/or perpetuation of segregated public schools. The existence of dual school systems throughout the South suggested discrimination still persisted and required or necessitated the use of forced busing of students to achieve a racial balance and unitary school systems.

Alternatively, it can be argued that there is in reality very little "de facto" segregation. The role

of state and local school authorities in selection of school sites, sizes, and attendance zones has effectively created or perpetuated such segregation. Such a situation actually is de jure segregation, not de facto. Since the state supervises and authorizes the construction of schools, it must accept the responsibility for correcting such segregated situations. Furthermore, today's housing patterns are as much a result of school attendance zones as vice versa. Therefore, it may be argued that neighborhood schools are impossible to maintain while correcting these "de jure" situations previously labelled "de facto." There should be no difficulty in judicially enforcing corrective measures for "de jure" segregation.

State Authorization Equals De Jure Segregation.--Site selection and the size of newly constructed schools may be a key to finding state action in many metropolitan situations which were previously considered "de facto" segregation. These two factors can have long-term effects on attendance patterns. Under the cloak of "neighborhood" schools, school authorities have consistently selected construction sites in the geographic centers of racially homogeneous residential clusters. A school built in the middle of a black residential area invariably receives a majority, if not a totality, of black students. The same situation is true of schools constructed in white
residential neighborhoods which, significantly, receive few non-white students. If attendance lines or zones are drawn for each of these schools in such a way as to preclude any possibility of meaningful integration and insure that they are racially identifiable, then certainly \textit{de jure} segregation is present.\footnote{For further discussion on this point, see Harrell R. Rodgers, Jr., "The Supreme Court and School Desegregation: Twenty Years Later," \textit{Political Science Quarterly}, Vol. 89, No. 4, p. 751 (Winter, 1974-75).}

If construction sites were selected which could reasonably draw from both communities, then racial balance could be achieved with little effort. Placement of a new school in a border or boundary area separating black and white residential neighborhoods would enable students of both races to attend with a minimum of transportation difficulties. Failure on the part of school officials to make such site selections may be one method by which adventitious segregation can be shown actually to be purposeful. The choice to construct several smaller schools to serve neighborhoods (often racially homogeneous enclaves) rather than one larger consolidated (racially intermixed) school perpetuates a segregated school system.

Thus, a school's size, as well as its location may significantly affect the complexion of its student body. Some cities have large coterminous Negro communities or
residential areas. Other cities have several separate black housing neighborhoods. By choosing to construct smaller schools and constructing them in the geographic centers of the black population, school officials of the latter type cities may effectively deny integrated education to the pupils of such schools. When these two factors, i.e. site selection and size of school enrollment, are so used, the situation resulting is no longer justly described as adventitious racial imbalance. It must honestly be viewed as purposeful segregation. Furthermore, where a State policy has a discriminatory effect, a discriminatory purpose need not be shown. 6 School construction is unquestionably under State policy, as site selection, size of enrollment, local and State expenditures, facilities, etc. must all be approved by either a State Superintendent of Education or a State Board of Education. If their approval has been given to a policy of construction which is shown to be discriminatory in effect, the federal courts should have authority to order corrective measures to eliminate the racial imbalance.

The Impact of Brown v. Board of Education of Topeka, Kansas, 347 U.S. 484 (1954).—The Supreme Court determined in Brown that public school segregation which is required or imposed by state law is a violation of the equal protection clause of the Fourteenth Amendment. Brown was decided in large part on the basis of sociological and psychological arguments. The rationale has been often criticized, but it is sufficient for the purposes of this paper simply to state that as a legal precedent, it stands. Following are excerpts of the Court's opinion:

We must look...to the effect of segregation itself on public education....Does segregation of children in public schools solely on a basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In Sweatt v. Painter, supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those Qualities which are incapable of objective measurement but which make for greatness in a law school". In McLaurin v. Oklahoma State Regents, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students again resorted to intangible considerations: "...his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." 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. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:
"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.7

Not to apply these same criteria, this same rationale, to adventitious school segregation would seem to invalidate the logic of the Court's ruling in Brown. If segregation deprives students of the equal protection of the laws by inflicting the psychological damage of an assumed inferiority, then it is surely not the degree of State action or inaction which is important. There is psychological damage even if the segregation is not the result of the "sanction of law." A federal district court has noted that elementary school children

are not so mature and sophisticated as to distinguish between the total segregation of all Negroes pursuant to a mandatory or permissive State statute based on race and the almost identical situation prevailing in their school district (without such a statute). The ...situation generates the same feeling of inferiority as to their status in the community as was found by the Supreme Court in Brown to flow from substantially similar segregation by operation of State law.8

State Action to Eliminate Racial Isolation in Public Schools.--Only a tiny minority of our States have voluntarily taken action of a positive nature, i.e., to require an end to racial imbalance in their schools. Southern States are generally moving toward effective school desegregation and racial balance, but this is largely a federally-enforced, court-ordered corrective action. Of the States not under federal compulsion only four, New York, New Jersey, Massachusetts, and California, have taken affirmative action to end adventitious school segregation.9

The State of Massachusetts has provided the strongest sanctions. If a school committee fails to show progress within a reasonable time in eliminating racial imbalance in its school system, the Commissioner of Education must refuse to certify all State school aid for that system.10

Still, the large majority of States have failed to take any positive stand to eliminate the racial imbalance existing in their school systems.

Adventitious School Segregation

The question of the constitutionality of adventitious public school segregation is a difficult one. Two philosophies exist as to the constitutional requirements dealing with corrective action. The first is characterized by the famous dictum of Judge Parker in Briggs v. Elliot:

"the Constitution...does not require integration. It merely forbids discrimination."

The second is heard less often but is the decision of a Circuit, rather than District court.

"the Supreme Court has unqualifiedly declared integration to be their (Negro students) constitutional right."

No Affirmative Duty.--The majority of lower court decisions have held that there is no requirement that States alleviate adventitious racial segregation or imbalance in their schools. The leading case and the often controlling precedent is Bell v. School City of

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12 It should be noted that an opposing view has been taken by three other Circuits. See Racial Isolation, Vol. I., p. 223.

Gary.  It has been utilized by many other lower courts to avoid the thorny legal issue of reaching the "de facto" segregated school system. The case originated in Gary, Indiana, where a neighborhood school policy was in effect in a community of racially segregated housing. The subsequent school system was obviously racially imbalanced. In 1961-62 Gary operated forty schools. Of these forty, fourteen were one hundred percent white, twelve were ninety-nine percent or greater black, and five were seventy-seven to ninety-five percent black.

According to the district court, the Constitution does not require:

that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention...to segregate the races, must be abandoned because the resulting effect is to have a racial imbalance in certain schools where the district is populated almost entirely by Negroes or whites...The plaintiffs have argued that there is an affirmative duty to balance the races, but our own evidence...[is]...that such a task could not be accomplished in the Gary schools.

The Seventh Circuit affirmed the Bell decision stating that a school board has no constitutional responsibility "to change innocently arrived at school atten-

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16 Bell, as cited in Racial Isolation, Vol. I., p. 223.
dance districts by the mere fact that shifts in population either increase or decrease the percentage of either Negro or white pupils." The Supreme Court denied certiorari to the Bell plaintiffs in 1964.

The alleviation of de facto segregation would require the use of racial classifications of students in order to perform the placements necessary to achieve racial imbalance. "Although this would be a supposedly benign form of racial classification, nevertheless it would represent a return to both government-sponsored racial classification and the differential application of laws to the separate races." Many suits have been brought by white parents contending that such racial classification and placement violates those eloquent words of Justice Harlan in his now somewhat vindicated dissenting opinion in Plessy, "our Constitution is color-blind, and neither knows nor tolerates classes among citizens." It should be noted that these words were included in a dissenting opinion which has never been fully accepted by the Court.

20 Plessy v. Ferguson, 163 U.S. 537, 559 (1896).
Integration--A Secured Right.--It is a difficult task to determine motives for the drawing of school district boundaries, school construction sites, etc. in a large urban school system. Administrative requirements and necessities may be entangled with or even hide purposeful racial segregation. "The real issue may be the extent to which the school board is willing to permit other considerations to override a claim for desegregation. Thus, it has been argued that adventitious school segregation...is in violation of the Constitution." 21

The right to equality of opportunity is not specifically written into or stated by the Constitution. C. Herman Pritchett would have us draw a distinction between two categories of law. 22 Some rights are protected by states against infringement and some rights are secured and guaranteed by the U.S. Constitution and national laws. "Secured rights" are those rights which are specifically mentioned in the Constitution. These may be safeguarded by the national government against deprivation by government or individuals. "Protected rights" are derived from the equal

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protection and due process clauses of the Fourteenth Amendment. Under this concept, the national government has authority only to punish state officers who violate "protected rights" because only "state action" is prohibited by the Fourteenth Amendment.  

This paper takes issue with the Pritchett interpretation. The right to equality of opportunity (educational or otherwise) is not specifically stated in the fundamental law, but is an underlying precept. It pervades the whole body of American constitutional law. Furthermore, it can be read into the Constitution using the Court's philosophy in *Logan v. United States.*  
The decision of that case stated that although there was no specific grant of power to punish persons who attacked prisoners in the custody of the national government, there was a responsibility, even a duty of the United States, to protect its prisoners. "The power need not be explicitly stated. In the area of equal treatment in public accommodations, the right need not be specified. It can be found in the 'interstices' of the Constitution."  

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23 Ibid., p. 619  
25 Ibid.
Under the rationale of Brown, psychological damage is inflicted on black students in racially imbalanced situations. In an earlier case (also cited in Brown) the Court found that segregated schools did not give equal protection of the laws due to "intangible qualities" which may be impossible to gauge. Such intangible qualities certainly exist in all segregated schools, adventitious and de jure. The "relative standing in the community" of predominantly black schools as compared to predominantly white schools is one of inferiority. This is not an inferiority "read in" to the situation by black students and parents or black militants. The inferiority is perceived by the white community as well as the black community. Furthermore, it is not a false perception. The inferiority is real. The stigma placed on attendance at or graduation from a predominantly black institution is unmistakable. Measurement of the "relative standing" of black schools with adventitious segregation is impossible, but their position of inferiority is agreed upon by community consensus.


27 Although the Sweatt case dealt with law schools, the concept is equally applicable to public elementary and secondary education.

28 See Chapter III.
Attendance at such schools must injure the impressionable black youngster as surely as does State-enforced segregation. In the words of the document assembled by the United States Commission on Civil Rights,

The facts in this report confirm that racial isolation, whether or not sanctioned by law, damages Negro students by adversely affecting both their attitudes and achievement. Negro pupils attending predominantly Negro schools tend to have lower educational aspirations, feel more frequently that they are unable to control their own destinies, have a poorer self-image and have teachers with lower expectations than similarly situated Negro students attending predominantly white schools.

These differences in part are associated with differences in the comparative social class levels of the average predominantly Negro and the average predominantly white school—differences which, given the relatively small Negro middle class, cannot be erased without school integration.

Beyond this, however, a major factor in these differences is racial isolation itself, even when social-class factors are held constant. Just as segregation imposed by law was held in Brown to create feelings of inferiority among students affecting their motivation and ability to learn, so there is evidence that adventitious segregation is accompanied by a stigma which has comparable effects. The superior "standing in the community" of the white law school in Sweatt v. Painter, 339 U.S. at 634 -- a superiority which the Court held to conflict with the equal protection clause -- is echoed in the superior reputation of predominantly white elementary and secondary schools as compared to similar institutions which are predominantly Negro and stigmatized in the eyes of the community as well as in the eyes of the teachers and students.29

Court Decisions Which Support the Hypothesis That Adventitious School Segregation Is Violative of the Constitution

**Circuit Court Decisions.**--Two decisions of the Fifth Circuit stand out in opposition to the *Bell* case. Both point to an affirmative responsibility to end adventitious school segregation.

**Singleton v. Jackson Municipal Separate School District,** 348 F. 2d 729 (5th Cir. 1965).--In this case the court took issue with the philosophy of *Briggs* that the Constitution did not require integration, but merely proscribed state enforced discrimination. The Court said:

> In retrospect, the second Brown opinion clearly imposes on public school authorities the duty to provide an integrated school system. Judge Parker's well-known dictum in *Briggs v. Elliot...* should be laid to rest. It is inconsistent with Brown and later development of decisional and statutory law in the area of civil rights.30

The case of *United States v. Board of Education of Jefferson County,* 372 F. 2d 836 (CA5 1966).--Noting that the *Briggs* decision had been a part of the now-abandoned viewpoint of the Fourth Circuit Court of Appeals, the Fifth Circuit refused to accept it as precedent.

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The Fourth Circuit had originally contended that Fourteenth Amendment rights are solely individual rights which must be asserted individually after all State legal remedies have been exhausted by each plaintiff. Under such a ruling, class suits may not be initiated. Said the Fifth Circuit Court, "What is wrong about Briggs is that it drains out of Brown that decision's significance as a class action to secure equal educational opportunities for Negroes by compelling the States to reorganize their public school systems." 31

Then addressing itself to the Brown rationale of segregation being detrimental to the psychological well-being of Negro students, the Fifth Circuit noted, "psychological harm and lack of educational opportunities to Negroes may exist whether caused by de facto or de jure segregation,...(although) a State policy of apartheid aggravates the harm." 32 At a later point in the Jefferson decision the court observed that even though the 1954 case constituted a situation of State imposed segregation, "Brown points toward the existence of a duty to integrate de facto segregated schools." 33

32 Ibid., p. 868.
33 Ibid., p. 32.
District Court Decisions.--Three decisions at the lowest federal court level have determined that an affirmative duty exists to alleviate adventitious school segregation so long as it may be "implemented within the limits of feasibility and sound educational practice." Each of these has taken a positive step toward bringing an end to unequal educational opportunities as presented by adventitious segregation. Two decisions are the work of the United States District Court of the Eastern District of New York, and the third is an opinion of the Massachusetts District. It should be noted that all three decisions were implemented in States that have previously or since taken voluntary action to relieve segregation. The fact that public opinion may have been more supportive in these States of such decisions may well have influenced the jurists.

Branche v. Board of Education (Hempstead), 204 F. Supp. 150 (E.D.N.Y. 1962).--Plaintiffs in this case asked for relief of segregation in two schools of the Hempstead school system. Attendance zones had remained unaltered for a twelve year period, 1949-1961. When the lines had been first drawn, the two schools were 16.5 percent and 14.3 percent Negro. By 1961 the black student enrollment had grown to include 67 percent and

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78 percent of their respective school populations. 35

School authorities argued that the attendance lines had been drawn in good faith and that no intentional segregation existed. Population shifts had caused the increased racial imbalance of the two schools in question. They further argued that they were under no constitutional requirement to change boundary lines in order to eliminate racial imbalance. The situation was de facto segregation and their willingness to ignore the imbalance did not constitute state action. Said the court in answer to these arguments, "...these facts do not demonstrate that there has not been segregation because of race. Segregated education is inadequate and when that inadequacy is attributable to State action it is a deprivation of a constitutional right." 36

Agreeing that the attendance lines were drawn honestly and without purposefully segregating the races in 1949, the court did not dismiss the action there. Rather, it found that the attendance zones were now unreasonable and placed limitations on meaningful desegregation. "The educational system that is...compulsory and publicly afforded must deal with the inadequacy arising from adventitious segregation; it cannot


accept and indurate segregation on the ground that it is not coerced or planned but accepted." 37 In the eyes of this district court an affirmative constitutional duty to eliminate adventitious segregation does exist. 38

Blocker v. Board of Education (Manhasset), 226 F. Supp. 208 (E.D.N.Y. 1964).--The Blocker decision was decreed by the same court that decided the Branche case but by a different judge. The words of the decision are unmistakable in their intent. Blocker finds a "right" to integration and a positive responsibility for each State to eliminate segregation. Two entirely white schools housed 99.2 percent of all white children in Manhasset's public school system. Negro children, 100 percent of them, were educated in separate schools. Attendance zone boundary lines were drawn in 1929. 39

The judge found that "the facts in this case present a situation that goes beyond mere racial imbalance" and "for practical purposes, the elementary school system

37 Ibid.

38 Note: The case of Webb v. Board of Education (Chicago), 223 F. Supp. 466 (N.D. Ill. 1963) said that Branche involved a "passive refusal to redistrict unreasonable boundaries" and that "mere residential segregation was not enough." as cited in Racial Isolation, Vol. I., p. 226.

of the defendant district...is as racially segregated as those in Brown." 40

Then, dramatically, the decision went to the heart of the issue.

Viewed in this context then, can it be said that one type of segregation, having its basis in State law or evasive schemes to defeat desegregation, is to be proscribed, while another, having the same effect but a different cause is to be condoned? Surely the Constitution is made of sturdier stuff. 41

Further defining its position, the district court added,

in a publicly supported, mandatory State educational system, the plaintiffs have the civil right not to be segregated, not to be compelled to attend a school in which all of the Negro children are educated separate and apart from over 99 percent of their white contemporaries. 42

The court stressed:

It does not hold that racial imbalance and segregation are synonymous or that racial imbalance not tantamount to segregation is violative of the Constitution. It does hold that by maintaining a segregated school system the defendant board has transgressed the prohibitions of the equal protection clause of the Fourteenth Amendment. 43

Nowhere in the decision is there a finding that the Manhasset school board or authorities were discriminatory in motive. The court seemed influenced by the significantly high degree of racial separation. The

40 Ibid. 41 Ibid., p. 223.
42 Ibid., p. 227. 43 Ibid., p. 230.
jurist determined that this extent of racial imbalance is tantamount to segregation and is therefore violative of the Constitution. He finds that segregation, regardless of motive, is proscribed by the equal protection clause. 

_Barksdale v. Springfield School Committee, 237 F. Supp. 543 (D. Mass. 1965)._--In the public school system of Springfield in 1963-64 there was a total elementary level enrollment of 19,417 students. White students comprised 80.3 percent of this total or 15,588 youngsters. Only 3,386 of the total were Negroes, representing 17.4 percent. Puerto Rican children numbered merely 443 and represented 2.3 percent of the total enrollment. Yet of the thirty-eight elementary schools operated in Springfield, seven had black and Puerto Rican (nonwhite) students in the majority. One of the eight junior high schools had a similar situation. All but 595 of the Negroes were enrolled in eight elementary schools. 

The court took issue with the obvious imbalance in the system. "In the light of the ratio of white to nonwhite in the total population...a non-white 

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attendance of appreciably more than 50 percent in any one school is tantamount to segregation." 46 The court was distressed by the low achievement ratings earned by black students on the Iowa Test of Basic Skills, and by the fact that black students who transferred to predominantly caucasion schools had difficulty in competing with the students of those schools. Furthermore, programs for the gifted child and advanced classes contained few or no black children. 47

The ability of Negro children in racially identifiable (black) schools to obtain equal educational opportunities is limited. Such schools are detrimental to the learning process. Retention, performance, and the development of creativity are impaired. Black schools "communicate to Negro children that they are different and are expected to be different from white children." The court determined that the question was not, as Bell presumed, whether a constitutional affirmative duty to alleviate imbalance exists, but "whether there is a constitutional duty to provide equal educational opportunities for all


children within the system." In response to that query the jurist concluded:

While Brown answered that question affirmatively in the context of coerced segregation, the constitutional fact—the inadequacy of segregated education—is the same in this case, and I so find. It is neither just nor sensible to proscribe segregation having its basis in affirmative State action while at the same time failing to provide a remedy for segregation which grows out of discrimination in housing, or other economic or social factors. Education is tax supported and compulsory, and public school educators, therefore, must deal with inadequacies within the educational system as they arise, and it matters not that the inadequacies are not of their making. This is not to imply that the neighborhood school policy, per se, is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact.49

A State Court Decision.—The most progressive opinion from a State Court to date has come from California. Since California case law has often been the forerunner of new trends in many other jurisdictions, the decision may be of special significance. The California judges spoke in the case of Jackson v. Pasadena City School District, 31 Cal. Rptr. 606, 382 p. 2d 878 (1963).

49Ibid.
Even in the absence of gerrymandering or other affirmative discriminatory conduct by a school board, a student under some circumstances would be entitled to relief where, by reason of residential segregation, substantial racial imbalance exists in his school. ... Where such segregation exists it is not enough for a school board to refrain from affirmative discriminatory conduct. The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographic basis without corrective measures. The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause.

METROPOLITAN DESEGREGATION CASES IN THE SUPREME COURT

At this writing the Supreme Court of the United States has heard arguments in three principal cases concerning the desegregation of metropolitan school districts. The first of these, the Bradley case of Richmond, Virginia, is discussed in detail in Chapter V. 51 No decision was rendered when Justice Powell (citing conflict of interest) did not participate and the Court divided evenly, 4-4. 52 The other two cases involved the metropolitan areas of two non-southern cities, Denver, Colorado and Detroit, Michigan.


52 Justice Powell had previously served on the Richmond School Board.
Keyes v. School District No. 1, Denver, Colorado 445 F 2d 990 (1971). In this case the district court found the majority of the segregation that existed throughout the Denver metropolitan area to be de facto. In one area, called "Park Hill," however, the school board was found to have maintained de jure segregated schools. Relief was granted to the petitioners concerning the desegregation of the Park Hill attendance areas. However, the petitioners had also asked that the entire metropolitan system be considered de jure segregation as a consequence of the purposeful segregation in the Park Hill area. On this point the district court balked. It divided the school system into a number of attendance areas, and required the petitioners to prove de jure segregation existed separately in each.  

The court then relied on a rather unique citation to order integration of the entire metropolitan system. Citing the Plessy decision of 1896, the judge found the segregated core city schools to be inferior to the "Anglo" schools and noted that if school facilities are to be separate, they must at least provide equal educational opportunity. The court announced that, although all-out desegregation could not be decreed, "the only


54 Plessy v. Ferguson, 163 U.S. 537 (1896).
feasible and constitutionally acceptable program—the only program which furnishes anything approaching substantial equality—is a system of desegregation and integration which provides compensatory education in an integrated environment." 55

The Tenth Circuit Court of Appeals reversed the latter portion of the lower court's decision. It determined that de jure segregation policies applied to one segment of the school system did not alleviate the petitioners need to prove such policies had been used throughout to form a dual system. 56

The Supreme Court differed from the Circuit Court's view. Justice Brennandelivered the decision of the Supreme Court in Keyes. In his words,

This is not a case where a statutory dual system has ever existed. Nevertheless, 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 and in a certain location, "with conscious knowledge that it would be a segregated

56 Keyes, 445 F. 2d 990 (1971).
school," 303 F. Supp., at 285, 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 thus, 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....

In short, common sense dictates the conclusion that racially inspired school board actions have an impact beyond the particular schools that are the subjects of those actions. This is not to say, of course, that there can never be a case in which the geographical structure of or the natural boundaries within a school district may have the effect of dividing the district into separate, identifiable and unrelated units. Such a determination is essentially a question of fact to be resolved by the trial court in the first instance, but such cases must be rare. In the absence of such a determination, proof of state-imposed segregation in a substantial portion of the district will suffice to support a finding by the trial court of the existence of a dual system. Of course, where that finding is made, as in cases involving statutory dual systems, the school authorities have an affirmative duty "to effectuate a transition to a racially nondiscriminatory school system." Brown II, supra at 301....

The case was remanded to the trial court with the order that the burden of proving adventitious school segregation must belong to the school authorities. In proving de jure segregation in a portion of the metropolitan system, the petitioners had shifted the burden

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of proof to the school board. If the board could not prove the segregated schools of areas other than Park Hill were products of adventitious residential segregation, a system of metropolitan desegregation was to be instigated.

Milliken v. Bradley, 94 S. Ct. 3112 (1974). Undoubtedly this case will hamper any future attempts to eliminate racially identifiable school systems with de facto segregated metropolitan areas. By its decree in a 5-4 decision the court refused to allow the inclusion of fifty-three outlying suburban school districts in a desegregation plan for the public schools of Detroit, Michigan.

In reversing the District Court and the Court of Appeals the Supreme Court stated:

A federal court may not impose a multi-district, areawide remedy for single-district de jure school segregation violations, where there is no finding that the other included school districts have failed to operate unitary school systems or have committed acts that effected segregation within the other districts, and there is no claim or finding that the school district boundary lines were established with the purpose of fostering racial segregation and where there is no meaningful opportunity for the included neighboring school districts to present evidence or be heard on the propriety of a multi-district remedy or on the question of constitutional violations by those districts.


After affirming the "deeply rooted tradition" of substantial local control of public education\(^6^2\) the majority noted the great problems involved with financing, administration, and operation of a metropolitan school system.\(^6^3\) Then the court addressed the criteria by which it might require such a system, stating:

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 has been a constitutional violation within one district that produces a significant segregative effect in another district; i.e., 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.

With no showing of significant violation by the 53 out-lying school districts and no evidence of any inter-district violation or effect, the District Court transcended the original theory of the case as framed by the pleadings, and mandated a metropolitan area remedy, the approval of which would impose on the outlying districts, not shown to have committed any constitutional violation, a standard not previously hinted at in any holding of this Court.

Assuming, arguendo, that the State was derivatively responsible for Detroit's segregated school conditions, it does not follow that an inter-district remedy is constitutionally justified or required, since there has been virtually no showing that either the State or any of the 85 outlying districts engaged in any activity that had a cross-district effect.\(^6^4\)

\(^6^3\) Ibid.
\(^6^4\) Ibid.
The phrasing and tone of these findings gives the reader the impression that the Court considers such a metropolitan desegregation plan as a punitive measure, rather than a remedial one. It speaks in terms throughout the decision which imply that no single school district could be included in a remedy of segregated Detroit schools unless it could be demonstrated that that district also had violated the principle of unitary schools. This would seem to be an unjustifiable philosophy, since the mere existence of a nearly all white school district coterminous with a majority black Detroit district undoubtedly facilitated and encouraged white flight from the city schools. To then deny that such a district may be utilized in a desegregation remedy would be to ignore the obvious.

The Supreme Court found that the complainants in *Milliken* sought a remedy aimed at the condition alleged to violate the Constitution, i.e., the segregation in the Detroit school district. It restated its position in *Swann* that "the task is to correct, by a balancing of the individual and collective interests, 'the condition that offends the Constitution.' A federal remedial power may be exercised 'only on the basis of a constitutional violation' and, 'as with any equity case, the nature of the violation determines the scope of the
The majority believed that the lower courts had shifted the primary focus of the case from a Detroit remedy to a metropolitan remedy because of their belief that a Detroit-only desegregation plan would not achieve the racial balance which they perceived as desirable. The Court noted that the clear import of Swann was that desegregation does not require any particular racial balance in each school. 66

The majority was unwilling to accept the proposition that the State of Michigan participated in the segregation of Detroit schools and therefore should be required to redraw school district lines to remedy the situation. The justices found that "the Michigan educational structure involved in this case, in common with most States, provides for a large measure of local control and a review of the scope and character of these local powers indicates the extent to which the inter-district remedy approved by the structure of public education in Michigan." 67

The majority expressed additional concern for the status of presently popularly elected school boards. 68

68 Ibid.
The Court contended that the only federal remedy acceptable is one that is designed to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. Disparate treatment...occurred within the Detroit school system, and not elsewhere, and on this record the remedy must be limited to that system."\(^{69}\)

The majority found that even if the State was derivatively responsible for the Detroit Board's violations (since Detroit is a political subdivision of the State), an inter-district remedy was not constitutionally justified or required.\(^{70}\) It decided that State responsibility did not override the fact that no evidence had been produced proving the outlying districts in violation of any constitutional requirements.\(^{71}\) To order an inter-district remedy would be to exceed the constitutional right of the complainants. The Court ruled:

The constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in that district. Unless petitioners drew the district lines in a discriminatory fashion, or arranged for White students residing in the Detroit district to attend schools in Oakland and Macomb Counties, they were under no constitutional duty to make provisions for Negro students to do so. The view of the dissenters, that the existence of a dual


\(^{71}\) Ibid.
System in Detroit can be made the basis for a decree requiring cross-district transportation of pupils cannot be supported on the grounds that it represents merely the devising of a suitably flexible remedy for the violation of rights already established by our prior decisions. It can be supported only by drastic expansion of the constitutional right itself, an expansion without any support in either constitutional principle or precedent.\footnote{Milliken v. Bradley, 94 S.Ct. 3112, 3128 (1974).}

Concurring with the majority in a separate opinion, Justice Stewart said, "The courts were in error for the simple reason that the remedy they thought necessary was not commensurate with the constitutional violation found."\footnote{Milliken v. Bradley, 94 S.Ct. 3112, 3132 (1974).} He found no inter-district violation, merely officially supported segregation in the Detroit public schools.\footnote{"Milliken v. Bradley, 94 S.Ct. 3112, 3133 (1974).}

The Milliken dissenters were prolific in their criticisms of the majority's reasoning. Said Justice Douglas, "No new principles of law are presented here. Metropolitan treatment of metropolitan problems is commonplace."\footnote{Milliken v. Bradley, 94 S.Ct. 3112, 3134 (1974).} He argued that the State is inextricably involved in the segregation of Detroit public schools and the surrounding heavily white suburban schools. He pointed to restrictive covenants in housing, supported by State action or inaction, and public housing agencies'
dispensing of funds to build racial ghettos. He concluded: "Since Michigan by one device or another has over the years created black school districts and white school districts, the task of equity is to provide a unitary system for the affected area where, as here, the State washes its hands of its own creation."

Justice White was most critical of the majority for their undue concern for the administrative inconvenience to the State. He made it plain that he finds this a weak basis on which to stymie a reasonable remedy to deliberate acts of segregation. He emphasized that:

the courts must keep in mind that they are dealing with the process of educating the young, including the very young. The task is not to devise a system of pains and penalties to punish constitutional violations brought to light. Rather, it is to desegregate an educational system in which the races have been kept apart, without, at the same time, losing sight of the central educational function of the schools.

Desegregation of Detroit (without the suburban districts) would produce a system 63.6% Negro and 34.8% white, and would require 900 buses. White supported the district court's remedy which was "physically easier, and more practicable and feasible." The metropolitan remedy

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78 Ibid.
79 Ibid.
would necessitate only 350 buses and would produce a system which was 81% white. 81

Justice White was also critical of the Court's willingness to ignore the "legal reality that the constitutional violations, even if occurring locally, were committed by governmental entities for which the State is responsible and that it is the State that must respond to the command of the Fourteenth Amendment." 82 He concluded by saying the "Court's remedy, in the end, is essentially arbitrary and will leave serious violations of the Constitution substantially unremedied." 83

Justice Marshall described the decision as "a giant step backwards." 84 He referred to the majority's reasoning as superficial and stated:

Ironically purporting to base its result on the principle that the scope of the remedy in a desegregation case should be determined by the nature and the extent of the constitutional violation, the Court's answer is to provide no remedy at all for the violation proved in this case, thereby guaranteeing that Negro children in Detroit will receive the same separate and inherently unequal education in the future as they have been unconstitutionally afforded in the past. 85

81 Ibid.
84 Ibid.
85 Ibid.
Marshall defended the metropolitan remedy as a necessary part of "any meaningful effort by the State of Michigan to remedy the state-caused segregation within the city of Detroit." 86 Noting the effects of purposeful acts of segregation on residential patterns do not automatically subside at school district borders, he submitted that the effects spread throughout the entire metropolitan area. Metropolitan remedy, then, is a necessity. 87

As to the majority's aversion to requiring "innocent" outlying school districts to participate in a desegregation program, Marshall noted that Reynolds v. Simms, 377 U.S. 533, 584 (1964) required "innocent" voting districts to be merged with malapportioned voting districts by the State to correct violations of the Fourteenth Amendment. 88

Marshall concluded his dissent by stating:

Desegregation is not and was never expected to be an easy task. Racial attitudes ingrained in our Nation's childhood and adolescence are not quickly thrown aside in its middle years. But just as the inconvenience of some cannot be allowed to stand in the way of the rights of others, so public opposition, no matter how strident, cannot be permitted to divert this Court from the enforcement of the constitutional principles at issue in this case. Today's holding, I fear, is more a reflection of a perceived public mood that we have gone far enough in enforcing the Constitution's guarantee of equal justice than it is the product of neutral principles of law. In the short run, it may seem to be the easier course to

88 Ibid.
allow our great metropolitan areas to be divided up each into two cities—one white, the other black—but it is a course, I predict, our people will ultimately regret.89

Unless the Milliken case is reversed, the likelihood of remedying "de facto" segregated metropolitan areas is greatly diminished. Barring an overwhelming amount of evidence of inter-district violations, it is apparent the majority will feel obligated to deny metropolitan remedies. Justice Marshall's criticism of the Court's apparent response to public sentiment is justified. Their opinion is based on arbitrary and poorly reasoned principles. The dissenters adequately point out the weaknesses in the majority's view, but the precedent stands.

It does not, however, preclude metropolitan remedies where all the school districts concerned can be demonstrated to have been in violation of Fourteenth Amendment requirements. De jure segregation within proximate school districts and/or crossing over district lines may be corrected by metropolitan consolidation. The majority recognized this when it stated, "Of course, no state law is above the Constitution. 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."\(^\text{90}\) Justice Stewart indicated that he might be willing to join the four dissenting judges if greater state involvement could be shown. He said:

Were it to be shown, for example, that state officials had contributed to the separation of the races by drawing or redrawing school district lines or for restructuring of district lines by purposeful, racially discriminatory use of state housing or zoning laws, then a decree calling for transfer of pupils across district lines or for restructuring of district lines might well be appropriate.\(^\text{91}\)

In the light of all that has been determined in preparation of this thesis I find the Milliken decision inconsistent with the general trend and logical sequence of recent case law on desegregation. Clearly, the State of Michigan was an active participant in and partner to the violations of the Detroit school authorities in maintaining a segregated school system. The Fourteenth Amendment speaks directly to the states and it is the duty of the State of Michigan to correct the disparities in the Detroit area. Since the school district lines are creations of the State, an inter-


district remedy is not beyond the corrective power of the federal courts. If one accepts the contention of this thesis that every State has an affirmative duty to eliminate segregation, regardless of its origin, then the Milliken majority's disregard of the role of Michigan becomes even more difficult to justify.

The Court's preoccupation with the administrative hardships to be imposed by an inter-district desegregation plan is nearly an absurdity. To subordinate the remedy of civil injustices to a matter of convenience is a tragedy. The Court has never before in similar cases felt compelled to weigh such considerations so heavily. Indeed, in terms of practicality and efficiency the metropolitan plan is far superior to a Detroit-only program. It is difficult to reconcile the Court's concern for popularly elected school boards with its lack of concern in holding up councilmanic elections in Richmond, Virginia until a de-annexation suit is litigated.

The effect of Milliken is likely to be widespread "white flight" from the city of Detroit to avoid the extensive desegregation plan. Justice Marshall alludes to the Court's unwillingness to take this into account.92

The ultimate effect of **Millikin** will be the creation of a totally black city school system. The security of nearly all-white schools just across district lines will undoubtedly lure much of the remaining white minority of Detroit. Ample basis for **Millikin's** rejection is available, yet it is precedent and must be reckoned with until its demise.
CHAPTER V

METROPOLITAN DESEGREGATION

To the extent that a community may rock on its political buttresses, so reeled the Richmond metropolitan area under the impact of a school consolidation order handed down by U.S. District Judge, Robert R. Merhige, Jr. on January 5, 1972. In the case of Carolyn Bradley, et al v. The School Board of the City of Richmond, Virginia, et al, the court moved to eradicate the three racially identifiable school systems operating within one contiguous area, separated only by political boundaries and school division lines. The reasoning of Judge Merhige, along with citations and documentation, is embodied in the mammoth decision which encompasses three hundred and twenty-five written pages with an additional sixteen pages of charted data.

1 Carolyn Bradley, et al v. the School Board of the City of Richmond, Virginia, et al, Civil Action No. 3353, (ED.Va.), January 5, 1972. (This chapter is drawn entirely from the original decision issued by the district court. All footnotes to follow are in reference to the original release.) See also: Carolyn Bradley v. School Board of Richmond, Virginia, 338 F. Supp. 67 (1972).
To acknowledge, illuminate, and evaluate the court's reasoning is the intent of this chapter. It is much of the reasoning adopted by this court which must be used to achieve the elimination of racial imbalance in metropolitan areas of adventitious school segregation.

From the outset the court chose to distinguish certain "truisms" or "givens" (facts which it considered subject to little or no controversy and that would be generally accepted by all parties involved) from which basis it would seek to untangle the constitutional threadball designated Bradley. It must be noted that the counsel for the Counties of Henrico and Chesterfield took issue with every facet of the court's conclusions, even the above-mentioned Merhige-pronounced "truisms".

Educational disparities, according to the court, are the result of inferior opportunities in inner city schools. Achievement in all aspects of life is thereby limited, earning power depressed, and alternatives in employment positions restricted. Thus result low income levels which limit the range of housing selection. Low cost housing, nearby public transportation, and low-skill job opportunities are available only in the central city. Being economically relegated to such location, the child eventually becomes parent, his progeny receive an inferior education, and the cycle
is perpetuated.² There is "genuine damage upon children in schools that educators see as racially identifiable."³ "Generally schools attended...by disproportionate numbers of black students are perceived as inferior" by the community.⁴ In a statement debated by the counsel for the defendants the judge noted that there were great disparities in the 1971 racial compositions of the three school divisions involved. Entire systems, as well as individual facilities, he stated, were racially identifiable.⁵

Upon considering the legal requirements placed upon the school officials and the district court, the jurist observed that on discovering a Fourteenth Amendment violation, a district court has the duty to "eliminate from the public schools all vestiges of state-imposed segregation."⁶ Citing another Virginia case, Judge Merhige noted that, "The law...dictates that school systems are not effectively desegregated either by piecemeal approaches or compartmentalization, or by separate consideration of particular geographic areas." Such approaches "preserve the racial identi-
The decision then moved to answer questions pertaining to the role of the State of Virginia in the conduct of the school systems involved. Merhige accepted as fact that the educational system of Virginia is operated both by officials of the State government and by officials of local governments with "geographically narrower authority." Citing a case again involving another Virginia locality, the court clarified its position on federalism.

The United States Constitution recognizes no governing units except the federal government and the states. At least in the area of the constitutional rights, specifically with respect to education, a state can no more delegate to its subdivisions the power to discriminate than it can itself directly establish inequalities.

Furthermore, the Green decision issued a positive mandate charging the State (Virginia) with an "affirmative duty to take whatever steps might be necessary

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7 Green v. County School Board of New Kent County, 391 U.S. 430 (1968), as cited in Bradley, p. 23.
8 Green v. County School Board of New Kent County, 391 U.S. 430 (1968), as cited in Bradley, p. 66.
9 Bradley, p. 44.
to convert to a unitary system in which racial discrim-
ination would be eliminated root and branch."¹¹

The final basis on which the decision was to rest
stated the judge's awareness of swelling community
criticism of the court and the proposed consolidation,
and his determination to adjudicate the case solely
on its merits. "Community resistance to change affords
no legal basis for the perpetuation of racial segre-
gation....The consideration by officials of community
reaction to desegregation is improper in formulating
school zone lines."¹²

The court addressed discussion to the heart of
the case, i.e., the elimination of segregated school
systems within the State of Virginia. Its findings
may be broken into two categories: those which address
themselves to the development of housing patterns,
and those which deal with state policies involving
education. In both fields the court found the localities
and state guilty of perpetuating racial segregation,
or, at best, resistant to efforts to disestablish the
existent dual systems.

¹¹Green, as cited in Bradley, p. 62.
¹²Northcross v. Board of Education of the City of
"The public housing in the area has, by action and inaction of the governmental bodies involved, contributed to school segregation. County policy has excluded low income housing entirely." Thus, noted Merhige, the momentum of discrimination continues. Richmond is persistently losing its white citizenry to the surrounding dormitory suburbs of the counties. And with the relocation of families in the predominantly white suburbs, significant disparities have arisen with the result that meaningful integration within the city is beyond reach. Richmond had lost thirty-nine percent of its white students in the years of 1970 and 1971.

Post 1954 school segregation has fostered and continued existing housing segregation, the direction of urban growth, income levels, etc. Resistance to the Brown mandate in the area was apparent to the court.

School authorities may not constitutionally arrange an attendance zone system which serves only to reproduce in school facilities the prevalent pattern of housing segregation, be it publicly, or privately enforced. To do so is only to endorse with official approval the product of racism.

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13 Bradley, p. 43.  
14 Ibid., p. 65.  
15 Bradley, p. 65.  
16 Ibid., p. 30.
In the Richmond metropolitan area the school division lines approximate the segregated housing patterns which have grown up in part because of the school patterns. Pointing out that school officials refused to use school policies to affect or influence housing segregation, except to perpetuate it, the judge found them in violation of the aforementioned affirmative responsibility required by Green. "School officials not only built upon the pattern of housing segregation extant in the city and counties, but also encouraged and fostered its extension in a substantial manner."17 School construction policy contributed to the segregated conditions apparent in the area. One Richmond high school was actually constructed in Henrico County. Yet no attempt was made to attract nearby and neighboring white students to the preponderantly black school.18

State policy was tied to segregated housing and educational patterns to the extent that newly constructed schools were located in racially identifiable residential areas.

17 Ibid., p. 39.
18 Ibid., p. 37.
Shifting demographic patterns were easily recognized as certain city schools became identifiably black and county schools became identifiably white. Each new facility was approved by the State Superintendent, and each played a role in molding the development of housing patterns in the metropolitan area.19

State action or inaction to further the goals of segregation was demonstrated in numerous methods chosen by the court to be brought out in the Bradley decision. "Political subdivision lines have been ignored when necessary to serve public educational policies, including segregation. State law has permitted, encouraged, and even compelled such practices."20

The State Board of Education administered tuition grants and pupil scholarship programs which allowed whites to go to county schools while living in the city. This has resulted in the mass movement of pupils across these divisional boundaries.

A purposeful, centrally compelled policy of segregation persisted in Virginia for many years; its effects endure today and effect the racial characteristics of the schools. Its abandonment has been gradual, piecemeal, and intentionally reluctant and is less than total today.22

The legal effect of these actions by the body charged with the duty of supervising the State's schools, a body the directives of which would be complied with fully by local officials, was to buttress the existing dual system and prevent its dismantling.23

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19 Ibid., p. 42.  
20 Ibid., p. 84.  
21 Ibid., p. 25.  
22 Ibid., p. 85.  
23 Ibid., p. 52.
It was the finding of the court that the State Board used many means to promote and extend segregation, including the busing of black students across political and divisional boundaries. The judge found it curious that the same Board now balked at approving those same measures to facilitate desegregation.

Stating that "desegregation of the schools of the city and the counties as well cannot now be achieved within the current school divisional bounds," the district court ordered the three localities to form a consolidated school system. The enrollment of each school was to approximate the racial composition of the system as a whole.

Citing the 1955 Brown decision, Judge Merhige noted that the Justices recognized that the process of desegregation might well entail the modification of "school districts and attendance areas." Quoting a case originating in Texas, the court agreed that separate neighboring or overlapping school districts, one black and the other white, are unconstitutional when created and maintained to perpetuate a dual school system. [Equally unlawful are those segregated districts which resulted when] by the isolation of racially homogeneous residential areas into formal political enclaves, district lines drawn prior to 1954 have entrenched segregation.

Ibid., p. 40.  
Ibid., p. 24.  
The State of Virginia was demonstrated to be continuing resistance to its affirmative responsibility to use all reasonable means to desegregate. The legislature, in a feeble attempt to instill a question of federalism into the pending Bradley decision, had enacted statutes which purported to remove the State from the jurisdiction of the federal court. It also chose to alter existing law pertaining to the matter of school divisions. Under Virginia statute prior to 1971 (Virginia Code §22-100.2), the State Board of Education could create a combined school division comprised of more than one political subdivision without obtaining the consent of local authorities. Under the newly created law (Virginia Code §22-30), the Board was prohibited from creating school divisions incorporating more than a single political entity without the prior consent of all school boards and governing bodies of the localities involved. Such alteration of existing law constituted, in the opinion of the court, the drawing of lines in 1971 which directly violate the mandates of Brown and Green.

27 Bradley, pp. 57-58. (Note: The Richmond School Board had chosen to pursue the matter of consolidation in direct violation of City Council decisions.)

28 Bradley, p. 59.
The boundaries of Richmond are less than eternal monuments to a city planner's vision. They have changed several times over the years with annexation. Indeed, historically, all of the city has been created from the two counties.29

Recognizing that the effect of his decision was to strike the supports from the concept of an "American right" to neighborhood schools, Judge Merhige acknowledged that economy of time and transportation costs, greater participation in extra-curricular activities, and the somewhat questionable benefits of a walk-in school may be valid education goals. But, he pronounced, "the end of desegregation may not be subordinated to them."30 The court concluded that "meaningful integration in a bi-racial community...is essential to equality of education, and the failure to provide it is violative of the Constitution of the United States."31 "At present the disparities are so great that the only remedy promising of immediate success—not to speak of stable solutions—-involves crossing of these [political subdivision boundary] lines."32

29Ibid., pp. 60-61. 30Ibid., p. 25.
31McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950), and the Fourteenth Amendment, as cited in Bradley, p. 21.
32Bradley, p. 60.
Such was the reasoning, decision, and justification of the United States Court for the Eastern District of Virginia. The judicial orders subsequently issued by the court have received widespread and intense criticism. Yet the great furor appears aimed primarily at the institution of busing, not at the abolition of school divisional boundaries. The issue of the constitutionality of busing was affirmed unanimously by the United States Supreme Court in the Swann decision.\(^{33}\) With such a precedent, and with the record of previous judicial decisions under which Judge Merhige was required to operate, the Bradley decision can be seen as simply another step in a logical sequence. The court chose the only feasible alternative in a political situation sadly devoid of solutions which could rectify the injustices done to the plaintiffs and meet with community consensus approval. The decision was well-documented and more than ample citation illustrated the legal basis for each facet of the order.

Racial balance within each of the three localities in Bradley may possibly have been achieved, but the bi-racial metropolitan area was found to harbor segregated

schools. Virginia and her subordinate local governments had been guilty of earlier purposeful segregation, and the Bradley decision was a ruling in a "de jure" circumstance. The case takes importance, however, in that it marked the first attempt on the part of a federal court to balance racially the schools of a metropolitan area. The crossing of governmental subdivisional boundary lines will be necessary to correct massive adventitious racial imbalances found in our larger urban communities. The district court's decision in Bradley, had it not been reversed, would have effectively integrated both the inner city and the suburban schools of the Richmond area.

In my opinion the benefits of interracial relationships during the formulative years (which correlate highly with the ages of school children involved) are beyond question. Without a consolidated school system, the three localities will continue to operate racially identifiable facilities. Equal protection of the laws is not a goal to be earnestly pursued only to have it slip mockingly behind the pretended security of a political subdivision boundary line. Should those lines involve State boundaries, rather than city and counties, the difficult question of federalism might remove the desired result, i.e., meaningful racial integration, from the jurisdictional
realm of the court. But, the problem was not present in Bradley.

The decision was to be overturned by the Fourth Circuit Court in 1972. The Supreme Court failed to determine the issue in 1973 when it split 4-4. However, the reasoning of Judge Merhige has both merit and foresight. It presents arguments which challenge the sanctity of even adventitious school segregation. Since even Milliken seems to allow metropolitan remedies where the involved localities have participated in cross-district de jure segregation, the decision of Judge Merhige may yet be implemented.

34 Carolyn Bradley v. School Board of Richmond, Virginia 472 F. 2d 318 (1972).


36 Milliken v. Bradley, 94 S.Ct. 3112 (1974). See also Chapter IV.
EPILOGUE

It will be most difficult to achieve the goal of desegregation at this time of formidable public resistance. Yet few great social reforms have ever succeeded without overcoming the stiffest of challenges. The vast majority of urban Americans live in racially segregated neighborhoods and their children attend racially segregated schools. Any attempt to alter this pattern is met with fierce public resentment and often violence. One must wonder, however, if the short run goal of quieting the turmoil outweighs the long run goal of a more permanent racial harmony through acculturation.

Present residential patterns are directly related to the three large population shifts seen over the past century. Black Americans left the South in large percentages to relocate in the North and Northeast. Their movements were most often directed toward the labor markets of the larger cities. This combined with the rural-to-urban influx which was bringing lower income citizens to cities throughout the nation. The demise of the small farm and discontent with the sharecropper system helped to make the United States an urban nation. As great numbers of lower socio-economic
class migrants began to arrive at and settle in the inner cities, a third population shift began. Affluent city residents, predominantly white, began to leave the inner city to find more spacious living conditions in the rural areas immediately surrounding the city. As the population densities of the outlying areas increased, they became known as sub-urban developments, now commonly referred to as "the suburbs." The overall effect of these population shifts is that America is now a heavily urbanized society. However, due to the rapid suburbanization of affluent whites, our inner cities are often composed of heavy concentrations of poor (often black) citizens. "White flight" out of the central city is both the result of and the cause of increasing black enrollments of the central city schools. As whites departed, the increased availability of housing allowed blacks to enter neighborhoods previously forbidden to them (legally or socially). As individual city blocks and entire neighborhoods experienced racial transitions, white citizens fled at an accelerated pace.

In 1965, a study of 207 cities found a segregation index of 86.2.\(^1\) Residential segregation can be traced

to three principal underlying causes: private discrimination, governmental policy, and Negro poverty. Private discrimination by the private housing industry has been apparent throughout the nation. Restrictive covenants were included in deeds and judicially enforceable until 1948. Patterns and attitudes were well settled by then.

For years the United States government, through its loan agencies, followed a policy of "homogeneous neighborhoods." The principal thrust of the over $150 billion in mortgage loans from the Veterans Administration and the Federal Housing Administration was toward middle income homes. No such sizeable investment for low income homes has been available. Furthermore, nearly all low rent public housing has been restricted to inner city locations. Since blacks make up a disproportionate share of the low income housing purchasers, their selection has been effectively limited to the confines of the central city. At the same time the federal government has supplied the monetary means for middle income whites to flee to the suburbs. The Civil Rights Act of 1968 (fair and unrestricted housing) was a step in the right direction. But, in comparison with the massive contributions of the government to

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segregated housing patterns, it may have negligible immediate effect and only slight long term effect. The complicated procedure to remedy a violation of the Act is almost prohibitive. 4

The cumulative effect of population trends and discriminatory housing policies has been the creation of segregated housing patterns. Metropolitan areas are divided into areas visibly black and areas visibly white. Few mixed neighborhoods are stable. Often the predominantly black inner city areas are surrounded by nearly all-white suburban areas. School attendance zones have generally been drawn to include homogeneous neighborhoods. As a result, most American children attend racially identifiable schools.

Racial segregation in public schools is a national phenomenon. Its effects have been more noticeable in the South, where segregation was imposed by affirmative state action. Nevertheless, it is now equally apparent in all metropolitan areas of high black concentration. It is, then, no longer a regional problem to be dealt with by a program applied to only one region. It is a national problem, and its remedy should be a universal one, applied uniformly wherever it is required.

4 Ibid., p. 69
Sociological evidence may be marshalled to support vast programs of enforced integration. Contrary evidence may also be aligned to show that racial integration is not capable of correcting disparities between the relative socio-economic positions of the races. In regard to the sociological evidence two opposing general theories seem to have emerged. The first data introduced to justify enforced integration came in a wave during the late 1960's. The research groups led by Professor James S. Coleman and Otto Kerner proposed that the single most important influence on a child's educational development was the attitude, social class, and race of his classmates. Elimination of racially identifiable and economically homogeneous schools, then, was a necessary prerequisite to improving the skills, attitudes, and adult attainments of minority students.

As other sociologists began to re-analyze the findings of the Coleman-Kerner studies, and began new studies, a second wave of arguments emerged. These sociologists took opposing views to many of the conclusions of the original analysis. They began to argue that educational

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inequality was of only marginal importance in determining inequality in later life (such as income inequality). Control of capital and the means of production are far more important, they argued, in determining the relative economic positions of ethnic groups. A leader of the second wave, Christopher S. Jencks, suggested that student achievement is much more dependent on the various factors of home life (relative affluence, parental concern, books available, etc.) than on the racial composition of the classroom.

Rather than to ignore totally the inconclusive sociological controversy, this paper sought to present the opposing viewpoints. In order to justify many positions set forth in this thesis, it is necessary to accept the first wave of data (Coleman-Kerner) and to reject the second wave (Jencks-Armor). However, the basic premises of the thesis can be supported on a purely legalistic basis, regardless of sociological data. Brown remains the controlling decision in the area of school desegregation. 7 By its ruling separate educational facilities are inherently unequal, and therefore, judicially correctible.

To echo the words of Justice Marshall in the Milliken dissent, "unless our children begin to learn

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together, there is little hope that our people will ever learn to live together.\textsuperscript{8} Personal exposure is one important method by which to break down false prejudices and misconceptions. Without meaningful integration, students of all races are denied these inter-ethnic experiences which are so essential to individual and societal development. It ill behooves our philosophy of democracy to create and perpetuate two cities within each metropolitan area and two nations with the union, one white and one black. The great civil disorders of the 1960's were directly traced to the continued cycle of inferior educational opportunities afforded to Negroes.\textsuperscript{9} The second wave of sociological arguments (as expressed by Jencks and Armor) did not dispute this determination. In fact, the brunt of their criticism was not aimed at the first wave's favoring integration, but rather at its justification of the process. Said Jencks,

\begin{quote}
The question...is how desegregation affects the attitudes of children and adults...Our own prejudice is that in most contexts desegregation will probably increase tension in the short run and reduce it in the long run. But we have no real evidence for this. All we have is a conviction that the debate over desegregation ought to focus on this issue, not on test scores and college
\end{quote}

\textsuperscript{8}Milliken v. Bradley, 94 S.Ct. 3112, 3146 (1974).

\textsuperscript{9}On Civil Disorders, p. 425.
entrance rates.10

Jencks also notes that our school systems should reflect the society we desire. "If we want a segregated society, we should have segregated schools. If we want a desegregated society, we should have desegregated schools."11

Americans must soon make a value judgment on whether black Americans are to be given equal educational opportunities. The Kerner Commission warned of the dangers of a racially divided America. It is morally irreconcilable with our ideals to allow an arbitrary separation of children who would mutually benefit from co-education. In the long run the United States would come to regret any course less than meaningful racial integration in the public schools.

As an observer of inter-ethnic relationships and attitudes in a situation of forced busing, I have been converted to the Coleman-Kerner philosophy. I have been forced to change from a position of opposition to one of support for integration because of the immeasurable benefits to both races that I have observed.

11 Ibid., p. 106.
It is difficult to believe that the results of integration in similarly situated high schools would be greatly different. I have observed minority students increasingly motivated by the new academic competition with white classmates. Perhaps it is the intangibles, the things about an integrated classroom and school which are impossible to quantify, which justify the Coleman-Kerner arguments. No statistical analysis is capable of relating the emotions, the attitudes, or the developing understanding among students of diverse ethnic backgrounds.\(^\text{12}\)

The second wave of sociological arguments claimed that integration would achieve no more than a two to three point increase in Negro scores on standardized tests. This would still leave a twelve to thirteen point disparity between the scores of blacks and whites.\(^\text{13}\) It must be asked whether each succeeding generation will achieve a similar gain. If so, a continued program of meaningful integration will achieve reasonable equality in educational achievement. Though slower than the catch-up rate predicted by Coleman, the eventual result

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\(^{\text{13}}\) Jencks, *Inequality*, p. 106.
would be the same. Regardless of the actual rate, equal educational opportunity should be available to all public school students now. Poor minority students are denied such equal opportunity when they are denied access to classrooms with more affluent majority students.

Leaders of the second wave of sociological data have even tempered their criticisms of the first wave. Professor Jencks, writing in an educational article noted:

Some people are now using our conclusions to justify limiting educational expenditures and abandoning efforts at desegregation. The reasons for this are easy to see.

Real incomes have grown very little in recent years, so taxpayers are understandably reluctant to pay more school taxes. The courts have begun to define desegregation as requiring not only the admission of black children to traditionally white schools but also the assignment of white children to schools in black neighborhoods, and many parents are upset. Politicians and school boards are reluctant to fight this popular mood so they have seized on our research to justify what they want to do anyway.

In fact, however, the research we reported does not justify cutting school expenditures, abandoning desegregation, or giving up efforts at school reform. It has always been a mistake to assert that equality of educational opportunity could eliminate problems like poverty and injustice in America. Our research suggests we should stop making such claims. But the fact remains that American schools badly need improvement and this effort ought to continue.

Schools have two major functions. First, they teach children a variety of cognitive skills and transmit a lot of information. Beyond a very basic level, these skills are of marginal economic
value. It is important to be able to read, for example, but reading 300 words per minute rather than 100 is only important in a handful of jobs. Learning about the social life of bees will not keep you out of poverty. But it does not follow that schools should stop teaching these things. Learning can enrich your life, even when it does not enhance your income.14

The national judiciary has led all other branches of government in securing those rights of minorities which include equal educational opportunity. Yet with the decision of the Detroit metropolitan desegregation case, the Supreme Court itself seems to have been swayed more by public opinion than by good law.15 It precludes the crossing of school district lines to achieve metropolitan desegregation unless each affected district can be shown to have created de jure segregation. Until the Court is reconstituted by resignation and replacement, there is little likelihood that any metropolitan plan of integration will fare well before it. Unquestionably the Court has erred in its recent decision. Cross-district desegregation is the next logical step in the gradually broadening concept of due process as applied to equal educational opportunity.

An affirmative decision in either the Richmond


case\textsuperscript{16} or the Detroit case\textsuperscript{17} would have given new hope to the minority school systems of America's core cities. The central cities have, of course, many problems besides and beyond the segregated public schools. But equal educational opportunity may very well be the eventual solution to many of them. Without an affirmative decision by the Court, these localities have been left with the certainty that (for at least several years) they must continue to provide their school children with an "education" within the negative environment of economically and racially homogeneous classrooms.

This is unfortunate for those within the city schools and for those beyond in the white suburban sanctuary school systems. All are denied meaningful inter-racial experiences. The opportunities of majority school children are as restricted by segregated metropolitan systems as are those of minority children in this respect.

Congress has the power to eliminate adventitious segregation. It could determine that unequal treatment in public education is a badge of servitude or an

\begin{footnotesize}
\begin{enumerate}
\item Bradley v. School Board of Richmond, Va., 412 U.S. 92 (1973).
\end{enumerate}
\end{footnotesize}
incident of slavery. The inequality could then be eliminated by use of the Thirteenth Amendment. The power also exists under the Fourteenth Amendment. The fifth section of the Fourteenth Amendment grants authorization to Congress to determine what legislation, if any, is needed to implement the amendment. It may act either to remedy violations of the equal protection clause of the amendment's first section, or to eliminate any conditions which might facilitate such violations.

However, Congress will remain an unlikely source of relief in the future so long as each member must answer to an electorate of predominantly white and predominantly resistant constituents. Indeed, it was the Congress which wrote giant loopholes into national desegregation legislation by legalizing de facto segregation. The de jure/de facto designations are terribly arbitrary. It is doubtful that a truly de facto situation exists, and even if it did, it should be subject to possible corrections. This paper assumes the position argued by Justice Lewis F. Powell in his opinion dissenting in part from the majority in the Denver metropolitan desegregation case:

The situation in Denver is generally comparable to that in other large cities across the country in which there is a substantial minority population and where desegregation has not been ordered by the federal courts. There is segregation in the schools of many of these cities fully as pervasive as that in southern cities prior to the desegregation decrees of the past decade and a half. The focus of the school desegregation problem has now shifted from the South to the country as a whole. Unwilling and footdragging as the process was in most places, substantial progress toward achieving integration has been made in southern States. No comparable progress has been made in many non-southern cities of large minority populations primarily because of the de facto/de jure distinction nurtured by the courts and accepted complacently by many of the same voices which denounced the evils of segregated schools in the South. But if our national concern is for those who attend such schools rather than for perpetuating a legalism rooted in history rather than present reality, we must recognize that the evil of operating separate schools is no less in Denver than in Atlanta.21

It may well be time to end the debate over de facto and de jure segregation and to recognize that equal educational opportunity can only be realized in racially and economically integrated situations, where this is reasonably possible. School district lines should provide no barrier to achieving metropolitan socio-economic and racial balance among schools.

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DOCUMENTS


PERIODICALS


VITA

Craig Stover Cooley was born in Richmond, Virginia on May 15, 1947. He was raised in Harrisonburg, Virginia by his parents, Mr. and Mrs. Charles E. Cooley. The Valley heritage helped to shape his political and personal philosophies.

Attending undergraduate classes as a Williams Scholar at Richmond College of the University of Richmond, Mr. Cooley received his bachelor of arts degree in political science in 1969. While at the University, he played freshman and varsity tennis and twice captained the team.

A teacher and coach at Thomas Jefferson High School from 1969 until 1974, Mr. Cooley experienced the institution of forced "busing" first hand after the final year in 1969-70 of "freedom of choice" in the public schools of the City of Richmond. He began graduate school in the summer of 1971 and completed his course work for a master of arts in political science (minor in history) in the spring of 1973.
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