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# PUBLIC SCHOOL DESEGREGATION IN VIRGINIA DURING THE POST-*BROWN* DECADE

CARL TOBIAS\*

## I. INTRODUCTION

Professor Davison Douglas recently painted a perceptive portrait of how several southern states, most notably North Carolina, were able to minimize integration of their public primary and secondary schools during the decade after the Supreme Court issued *Brown v. Board of Education*.<sup>1</sup> Professor Douglas found that these jurisdictions, by practicing token integration and casting their rhetoric in comparatively conciliatory tones, managed to appear moderate on the issue of school desegregation.<sup>2</sup> This approach enabled the states to limit judicial scrutiny of their public educational systems and to experience somewhat less integration than their southern neighbors, such as Georgia, South Carolina, and Virginia, which opposed integration more adamantly.<sup>3</sup> The jurisdictions that seemed restrained also realized greater economic growth by creating perceptions of a climate conducive to business and of a society that enjoyed relatively harmonious racial relations.<sup>4</sup>

Professor Douglas ascertained that, ten years after *Brown*, North Carolina's public schools were less integrated than those of more defiant southern states,<sup>5</sup> while North Carolina had

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1. 347 U.S. 483 (1954); see Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After Brown*, 89 NW. U. L. REV. 92 (1994).

2. See Douglas, *supra* note 1, at 94-97.

3. See *id.* at 93-97.

4. See *id.* at 96-97.

5. See *id.* at 139; Michael J. Klarman, *Brown, Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7, 9-10 (1994); accord DAVISON M. DOUGLAS, READ-

maintained a reputation for moderation on racial issues and was reaping the image's advantages in terms of enhanced economic development.<sup>6</sup> Professor Douglas concluded that this "result could not have been surprising" in a region "historically beset with profound ironies when it came to matters of race."<sup>7</sup>

Between 1953 and 1964, I attended public schools in Virginia, a state that Professor Douglas accurately characterizes as more recalcitrant than North Carolina.<sup>8</sup> I, therefore, want to afford some personal recollections of this critical decade in national history and to compare important legal, political, and social developments involving integration in the Old Dominion with Professor Douglas's valuable account.

Public education deserves emphasis for several reasons. Both practically and symbolically, schools proved to be the public institutions whose desegregation was most controversial. Moreover, the efforts to integrate public education trenchantly illustrate the inherent limitations of essentially legal approaches to issues as intractable as racial discrimination. I shall also examine briefly additional public facilities, principally swimming areas, and libraries, and certain private facilities, such as restaurants and bus stations, that were open to the public.<sup>9</sup>

I focus on Petersburg, Virginia, because I attended school there and because it is situated in Southside Virginia, an area of the Commonwealth that lies between the James River and North Carolina and between the City of Chesapeake and the

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ING, WRITING & RACE: THE DESEGREGATION OF THE CHARLOTTE SCHOOLS 49 (1995).

6. Douglas, *supra* note 1, at 139.

7. *Id.* See generally VALDIMER O. KEY, *SOUTHERN POLITICS IN STATE AND NATION* (1949) (providing an overview of southern political systems); C. VANN WOODWARD, *THE BURDEN OF SOUTHERN HISTORY* (rev. ed. 1968) (discussing the relationship between southern history and contemporary events in the South).

8. Douglas, *supra* note 1, at 93-94.

9. See DOUGLAS, *supra* note 5, at 58-61 (analyzing public and private facilities); Carl Tobias, *Untenable, Unchristian and Unconstitutional*, 58 MO. L. REV. 855 (1993) (analyzing libraries); see also Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 VA. L. REV. 947, 1136-37 (1995) (affording citations to Supreme Court public facilities opinions); J. Harvie Wilkinson, III, *The Supreme Court and Southern School Desegregation, 1955-1970: A History and Analysis*, 64 VA. L. REV. 485, 505 (1978) (same). See generally Robert B. McKay, *Segregation and Public Recreation*, 40 VA. L. REV. 697 (1954) (examining the integration of public recreational facilities).

Blue Ridge Mountains. Southside constituted the Old Dominion's "black belt"—a contiguous band of counties with the heaviest concentrations of blacks, named for its substantial black population and its "dark, rich soil that once supported the plantation aristocracy and its slaves."<sup>10</sup> Indeed, blacks comprised almost half of Petersburg's approximately 40,000 residents at the time of the events that I recount. Southside resembles the deep South, and the region led Virginia's battle against the integration of public education, preventing the desegregation of every school in the Commonwealth for a half-decade.

Petersburg and Southside Virginia, by virtue of their location and history, were also unreconstructed, particularly in contrast to more metropolitan areas, such as Northern Virginia and Hampton Roads, and even in comparison to Richmond, the capital of the Confederate States of America. It is important to remember that white residents of Petersburg, Southside Virginia, and much of the South never have forgotten that Petersburg was the site where the Confederacy made its final stand in the "War of Northern Oppression" and that nearby Appomattox was the infamous place where the Confederate States surrendered.

Issues of race have always been a fixture of daily existence for all Southerners, both white and black. Nonetheless, I remember, as a child in a middle-class white family that resided in a segregated neighborhood, that racial issues affected my day-to-day activities infrequently, particularly in public school. We lived in the suburb of Walnut Hill, which, like almost every one of Petersburg's neighborhoods, was segregated. The deeds to most

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10. Wilkinson, *supra* note 9, at 496; see JOHN C. JEFFRIES, JR., JUSTICE LEWIS F. POWELL, JR. 133 (1994) (discussing the disproportionately high black population in Southside); ROBERT A. PRATT, *THE COLOR OF THEIR SKIN: EDUCATION AND RACE IN RICHMOND, VIRGINIA 1954-1989*, at 4 (1992) (describing black-belt political districts); PARK ROUSE, JR., *BELOW THE JAMES LIES DIXIE* (1968) (detailing the history of Southside, Virginia); Robert B. McKay, "With All Deliberate Speed": A Study of School Desegregation, 31 N.Y.U. L. REV. 991, 994 (1956) (defining the "South"). I employ the term "black" in referring to African Americans in part because the author of the piece to which I am responding does. Judicial opinions and commentary that were contemporaneous with *Brown* frequently employed the terms "Negro" and even "colored." See, e.g., *Adkins v. School Bd.*, 148 F. Supp. 430, 432 (E.D. Va.), *aff'd*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957); *Harrison v. Day*, 106 S.E.2d 636, 640 (Va. 1959); see also LANI GUINIER, *THE TYRANNY OF THE MAJORITY* 202-03 n.1 (1994) (discussing why she chooses to use the term "black").

of Walnut Hill's lots included restrictive covenants, analogous to those invalidated by the Supreme Court in *Shelley v. Kraemer*,<sup>11</sup> that precluded property transfers to persons of African descent.<sup>12</sup>

Housing patterns were racially stratified in the city and in the surrounding counties of Dinwiddie and Prince George. Practically all of the whites who lived in "integrated" neighborhoods resided there because they could not afford to live elsewhere. My parents, like many middle-income whites, hired a black woman to help manage the household by cooking, cleaning, and caring for the children; however, my daily interactions with her rarely raised what I perceived to be issues of race.

In January 1953, I began attending Walnut Hill Elementary School, a brand new, sprawling brick building that was surrounded by grassy playing fields and to which most students could ride their bicycles. The city had constructed the educational facility so that pupils could learn at a modern structure and suburban parents would not have to transport their children to and from D.M. Brown Elementary School. D.M. Brown, the deteriorating, obsolete edifice that most of the parents had attended, was located in a rather seedy, concrete and steel part of downtown Petersburg.

Students at Walnut Hill Elementary were the consummate Baby Boomers. We were principally the children of war brides and their husbands, who had successfully fought World War II and wanted to recapture time that they had lost in waging the conflict. The primary school served the Walnut Hill district—a large neighborhood that, by legal construct, did not include blacks. All of the teachers and students at the school were white. Moreover, Walnut Hill Elementary remained segregated

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11. 334 U.S. 1 (1948).

12. See PRATT, *supra* note 10, at 14 (discussing restrictive covenants); Louis Henkin, *Shelley v. Kraemer: Notes for a Revised Opinion*, 110 U. PA. L. REV. 473 (1962) (analyzing *Shelley*). See generally LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1688-89, 1711-14 (2d ed. 1988) (discussing *Shelley* and state action theory); MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961*, at 81-98 (1994) (discussing attacks on restrictive covenants); CLEMENT E. VOSE, *CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES* (1959) (same).

from 1953 until I graduated from Petersburg High School in 1964.

In my early years, Walnut Hill Elementary was the locus of an incident implicating race that remains indelibly imprinted on my memory.<sup>13</sup> On the afternoon of May 17, 1954, the day that the Supreme Court issued *Brown*, my mother and I were driving past the school on a shopping trip. I was looking at the *Petersburg Progress-Index*, the afternoon newspaper that served our community. I asked my mother, a Pennsylvania native, what the one-inch high banner headline meant. She explained that the United States Supreme Court had struck down the "separate-but-equal" doctrine, thereby requiring public schools to integrate. I responded that I did not want to attend school with "niggers," and my mother administered the worst tongue lashing that I had experienced during my seven short years. Little did I know then that the Virginia General Assembly, principally by pursuing "Massive Resistance,"<sup>14</sup> and the Petersburg School Board, by devising additional ingenious means of evading integration, would enable me to realize my uninformed, childish wish. How the state and local powers managed to preserve essentially segregated public schools for a decade with a degree of success nearly equal to North Carolina's is the story that I wish to relate.

## II. PUBLIC SCHOOL INTEGRATION

Initial reactions to the Supreme Court's issuance of *Brown* varied significantly across the South.<sup>15</sup> The political leaders of

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13. I rely substantially in this paragraph on Carl Tobias, *Correspondence*, 10 CONST. COMMENTARY 283 (1993).

14. See generally NUMAN V. BARTLEY, *THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950'S* (1969) (describing the use of "massive resistance" in the South).

15. See Douglas, *supra* note 1, at 98-100; see also DOUGLAS, *supra* note 5, at 6-24 (analyzing developments that led to *Brown*); MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* (1987) (same); Garrett Epps, *The Littlest Rebel: James J. Kilpatrick and the Second Civil War*, 10 CONST. COMMENTARY 19 (1993) (describing initial reactions). See generally RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975) (detailing the history surrounding the *Brown* decision); RAYMOND WOLTERS, *THE BURDEN OF BROWN: THIRTY YEARS OF*

several states promptly and stridently denounced the Court.<sup>16</sup> For instance, Senator James Eastland of Mississippi vilified the Justices for perpetrating a "monstrous crime" in the "false name of law and justice."<sup>17</sup> Governor Herman Talmadge of Georgia implacably proclaimed that the Court had reduced the Constitution to a "mere scrap of paper" and promised that the state would never integrate its schools during his tenure.<sup>18</sup> Indeed, Georgia and South Carolina anticipated *Brown* by abrogating constitutional requirements that the jurisdictions provide public education.<sup>19</sup>

### A. Virginia

More measured, immediate responses emanated from much of the South, including states such as Virginia, which would eventually formulate and spearhead the strategy of Massive Resistance. Thomas Stanley, the Governor of the Old Dominion, pledged to devise a program that the Commonwealth's residents would find acceptable and that would honor the Court's edict.<sup>20</sup> J. Lindsay Almond, Jr., the state's attorney general, similarly asserted that the Old Dominion would take a realistic approach to *Brown* and would attempt to make "some rational adjustment"<sup>21</sup>; however, Senator Harry Flood Byrd, Sr., intransigently decried the Court for usurping states' rights and predicted that the opinion would precipitate a "crisis of the first magnitude."<sup>22</sup>

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SCHOOL DESEGREGATION (1984) (detailing desegregation efforts).

16. Douglas, *supra* note 1, at 98.

17. DAVID R. GOLDFIELD, *BLACK, WHITE, AND SOUTHERN: RACE RELATIONS AND SOUTHERN CULTURE, 1940 TO THE PRESENT* 75 (1990); *see also* REED SARRATT, *THE ORDEAL OF DESEGREGATION: THE FIRST DECADE* 1 (1966) (reproducing a similarly defiant statement of Mississippi's governor).

18. *Constitution Ruined, Says Georgia Governor*, *DURHAM MORNING HERALD*, May 18, 1954, at 1. *But cf.* DOUGLAS, *supra* note 5, at 27-29 (documenting North Carolina Governor William Umstead's moderate response to *Brown*).

19. *See* BENJAMIN MUSE, *TEN YEARS OF PRELUDE: THE STORY OF INTEGRATION SINCE THE SUPREME COURT'S 1954 DECISION* 21 (1964). *See generally* McKay, *supra* note 10, at 1041-43 (discussing efforts by southern states to abrogate compulsory public education).

20. *See* MUSE, *supra* note 19, at 21 (describing pledges made); *see also* CHARLES P. ROLAND, *THE IMPROBABLE ERA: THE SOUTH SINCE WORLD WAR II*, at 35 (1975) (detailing reactions to *Brown*).

21. PRATT, *supra* note 10, at 99.

22. *Id.* at 1-2 (quoting Byrd); Douglas, *supra* note 1, at 99 (quoting Almond). *See*

The mild initial reaction to *Brown* in much of the South rapidly gave way to vociferous opposition as political leaders quickly came to appreciate the political popularity among white voters of a strong stance against integration.<sup>23</sup> A mere five weeks after *Brown's* issuance, Governor Stanley defiantly announced that he would employ all legal means at his disposal to maintain segregated public education, while twenty Southside Virginia legislators convened in Petersburg under state Senator Garland Gray's leadership and declared themselves "unalterably opposed" to school integration.<sup>24</sup>

On August 30, 1954, the Governor appointed a commission comprised of thirty-two white members of the General Assembly to analyze *Brown's* effects and to make suggestions.<sup>25</sup> While the Gray Commission was undertaking its study and developing recommendations, the Supreme Court issued a second opinion in *Brown v. Board of Education (Brown II)*,<sup>26</sup> which required school desegregation to begin at once and to proceed "with all deliberate speed."<sup>27</sup>

*Brown II* was controversial in 1955 and has remained so.<sup>28</sup> Some observers have asserted that the second *Brown* decision

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generally J. HARVIE WILKINSON, III, HARRY BYRD AND THE CHANGING FACE OF VIRGINIA POLITICS, 1945-1966 (1968) (describing Byrd's political organization).

23. Douglas, *supra* note 1, at 99.

24. PRATT, *supra* note 10, at 3-4 (discussing the Petersburg meeting); *Virginia*, S. SCH. NEWS, Sept. 3, 1954, at 13 (quoting Stanley).

25. See *Adkins v. School Bd.*, 148 F. Supp. 430, 434 (E.D. Va.), *aff'd*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957); see also DOUGLAS, *supra* note 5, at 20 (discussing a similar North Carolina commission that included blacks); ROBBINS L. GATES, THE MAKING OF MASSIVE RESISTANCE 34-36 (1964) (discussing the first Commission meeting at which Senator Gray was elected Chair).

26. 349 U.S. 294 (1955).

27. *Id.* at 300-01.

28. Several commentators have chronicled this proposition. See, e.g., ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS 68-72, 250-54 (1962); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 39-169 (1991); Charles L. Black, Jr., *The Unfinished Business of the Warren Court*, 46 WASH. L. REV. 3, 22-31 (1970); Robert A. Burt, *Brown's Reflection*, 103 YALE L.J. 1483, 1483-84 (1994); Robert L. Carter, *The Warren Court and Desegregation*, 67 MICH. L. REV. 237, 243-46 (1969); Klarman, *supra* note 5, at 10-11; Robert B. McKay, "With All Deliberate Speed": *Legislative Reaction and Judicial Development 1956-57*, 43 VA. L. REV. 1205, 1205-07 (1957); Mark Tushnet & Katya Lezin, *What Really Happened in Brown v. Board of Education*, 91 COLUM. L. REV. 1867, 1868 (1991).



undercut the power and moral authority of the first.<sup>29</sup> Numerous states in the South seized upon *Brown II* to evade *Brown's* mandate or treated *Brown II* as a signal that the Court would not rigorously enforce *Brown*.<sup>30</sup> Indeed, during the ensuing decade, the Court effectively departed the school integration field and left *Brown's* implementation to southern circuit and district court judges while affording them little guidance.<sup>31</sup> *Cooper v. Aaron*<sup>32</sup> was the only major opinion involving desegregation that the Court issued between 1955 and 1963, and the controversy surrounding the integration of the Little Rock schools probably necessitated the Court's decision in that case.<sup>33</sup>

In November 1955, Virginia's Gray Commission issued a report that expressed the view that separate public schools were in the best interest of both races.<sup>34</sup> The Commission also proposed that the General Assembly pass a pupil placement statute vesting total authority in local school boards to assign pupils in ways that would most effectively promote the welfare of the localities and their schools.<sup>35</sup> The Gray Commission recom-

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29. See, e.g., Black, *supra* note 28, at 22-31; Philip Elman, *The Solicitor General's Office, Justice Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History*, 100 HARV. L. REV. 817, 827-28 (1987); Wilkinson, *supra* note 9, at 503-05.

30. See, e.g., Wilkinson, *supra* note 9, at 490-92.

31. See Black, *supra* note 28, at 22-31; Carter, *supra* note 28, at 243-46; Wilkinson, *supra* note 9, at 505-06, 512-13, 541. See generally JACK W. PELTASON, FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION (1961) (surveying the responses of federal courts after *Brown*).

32. 358 U.S. 1 (1958).

33. See *id.* "The Court spoke mainly when it absolutely had to: at the point of crisis when obstruction was so apparent, delay so prolonged, or violation of constitutional principle so manifest that quiet was no longer feasible." Wilkinson, *supra* note 9, at 506 (citations omitted); see DOUGLAS, *supra* note 5, at 46-48, 126-27; Sanford J. Rosen, *Judge Sobeloff's Public School Race Decisions*, 34 MD. L. REV. 498, 502-03 (1974). See generally DAISY BATES, THE LONG SHADOW OF LITTLE ROCK (1962) (giving a participant's perspective on the Little Rock crisis); TONY FREYER, THE LITTLE ROCK CRISIS: A CONSTITUTIONAL INTERPRETATION (1984) (detailing the crisis).

34. Report of Commission on Public Education, reprinted in 1 RACE REL. L. REP. 241 (1955) [hereinafter Gray Commission Report]; see *Adkins v. School Bd.*, 148 F. Supp. 430, 434 (E.D. Va.), *aff'd*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957). See generally PRATT, *supra* note 10, at 4-5 (providing a history of the Gray Commission and its findings).

35. See *Adkins*, 148 F. Supp. at 434; see also DOUGLAS, *supra* note 5, at 29-32 (asserting that the North Carolina commission recommended a similar plan of local control). See generally Note, *The Federal Courts and Integration of Southern Schools*:

mended as well that no child be required to attend integrated schools and that the state supply tuition grants to parents who objected to integration or who lived in areas without public schools.<sup>36</sup>

During spring 1956, Senator Byrd coined the term "Massive Resistance," and ninety percent of the congressional delegation from the South signed a "Southern Manifesto," castigating *Brown* as a "clear abuse of judicial power" and vowing to reverse it.<sup>37</sup> During the same time period, the Virginia General Assembly and a majority of the states that comprised the old Confederacy adopted "interposition" resolutions.<sup>38</sup> The Virginia resolution announced the Assembly's "firm intention to take all appropriate measures honorably, legally and constitutionally available . . . [in order] to resist [*Brown's*] illegal encroachment upon [Virginia's] sovereign powers" through judicial legislation.<sup>39</sup>

In late August 1956, Governor Stanley addressed a special session of the Assembly that convened to consider issues involving education.<sup>40</sup> After proclaiming that the Old Dominion faced

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*Troubled Status of the Pupil Placement Acts*, 62 COLUM. L. REV. 1448, 1450-51 (1962) (giving a brief history of judicial reaction to the "massive resistance" policies of southern states). *But see* VA. CODE ANN. § 22-232.1 (Michie Supp. 1962) (divesting local school boards of pupil placement power and vesting the power in local "Pupil Placement Boards").

36. *See Adkins*, 148 F. Supp. at 434; *see also* DOUGLAS, *supra* note 5, at 32-34 (asserting that the first North Carolina commission rejected, but second commission endorsed, tuition grant and school-closing proposals but noting that North Carolina never actually closed schools or paid grants). *See generally* GATES, *supra* note 25, at 62-65 (providing historical background of tuition vouchers in Virginia); MUSE, *supra* note 19, at 148 (same).

37. *See* JAMES W. ELY, *THE CRISIS OF CONSERVATIVE VIRGINIA* 43 (1976) (discussing the Southern Manifesto); GATES, *supra* note 25, at 118 (noting that the Southern Manifesto "bore the names of nineteen senators and eighty-two representatives"); MUSE, *supra* note 19, at 147 (discussing Byrd's coining of "Massive Resistance"); PRATT, *supra* note 10, at 6 (same). *See generally* BARTLEY, *supra* note 14, at 116-17 (discussing the origin of the Southern Manifesto and Massive Resistance).

38. Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia adopted resolutions. *See* Douglas, *supra* note 1, at 93; *see also* Epps, *supra* note 15, at 22-25 (giving a general history of interposition).

39. S.J. Res. 3, 1956 Va. Acts 1213. *See generally* JEFFRIES, *supra* note 10, at 36-39 (providing information about the Gray Plan and the doctrine of "interposition"); PRATT, *supra* note 10, at 5-7 (same); McKay, *supra* note 10, at 1017-39 (giving a thorough historical analysis of "interposition" and its origins).

40. *See Adkins*, 148 F. Supp. at 435.

the "gravest problems since 1865" and that *Brown* struck at the "very fundamentals of constitutional government," the governor submitted "recommendations to continue [Virginia's] system of segregated public schools."<sup>41</sup>

During late September, the Extra Session of the Assembly passed a series of laws addressing desegregation that Professor Robert McKay of the New York University School of Law contemporaneously described as the "most intricate school legislation of all."<sup>42</sup> The General Assembly found that the "mixing of white and colored children in any elementary or secondary public school . . . constitute[d] a clear and present danger affecting and endangering the health and welfare of the children and citizens."<sup>43</sup>

The legislature enacted measures that prohibited racially integrated schools from receiving any state appropriations while prescribing tuition vouchers for students whose public schools closed because they integrated.<sup>44</sup> The Assembly then proceeded to pass a pupil placement statute that placed authority in a specially constituted state board, thus rejecting the Gray Commission's recommendation that it vest complete power in local school boards.<sup>45</sup> In doing so, the Assembly enumerated several criteria relating to school administration, educational policy, and student health, welfare, and safety, that the board was required to consider in assigning pupils to schools.<sup>46</sup> Per-

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41. *Id.* See generally GATES, *supra* note 25, at 167-90 (giving a detailed voting history of the Stanley plan).

42. McKay, *supra* note 28, at 1225; see also VA. CODE ANN. §§ 22-5 to 253.2 (Michie Supp. 1956) (providing Virginia legislation); cf. DOUGLAS, *supra* note 5, at 33 (asserting that North Carolina adopted less legislation than did other southern states).

43. *Adkins*, 148 F. Supp. at 437.

44. See *id.* at 436-42; see also Gray Commission Report, *supra* note 34, at 242 (proposing tuition vouchers). For a discussion of tuition vouchers, see JEFFRIES, *supra* note 10, at 135 (noting that a referendum to allow a voucher plan passed by a two-to-one margin); McKay, *supra* note 10, at 1043-49.

45. See *Adkins*, 148 F. Supp. at 436-42; see also PRATT, *supra* note 10, at 19 (suggesting that the Assembly was concerned that "some school boards might not voluntarily accept massive resistance"). See generally JEFFRIES, *supra* note 10, at 36 (stating that control was removed from localities to avoid voluntary integration); McKay, *supra* note 10, at 1049-53 (discussing the North Carolina plan).

46. Pupil Placement Act, 1956 Va. Acts, Extra Sess., ch. 70, § 3(1), (8); see *Adkins*, 148 F. Supp. at 441-42 (listing the various factors). See generally Note, *su-*

haps the most important factors were those respecting "efficient" operation of schools, which, by definition, proscribed the assignment of whites and blacks to the same educational facility.<sup>47</sup>

The Assembly enacted this legislation after black plaintiffs had instituted litigation in the Federal District Court for the Eastern District of Virginia in an effort to enjoin the continuation of segregated public education in Norfolk and Newport News.<sup>48</sup> Both local jurisdictions defended the statutory scheme by requesting that Judge Walter Hoffman, an Eisenhower appointee, dismiss the plaintiffs' claims for failure to exhaust administrative remedies.<sup>49</sup>

In *Adkins v. School Board*,<sup>50</sup> Judge Hoffman extensively reviewed the legislative developments that had transpired in the Old Dominion since *Brown* and considered the placement statute together with the remaining measures.<sup>51</sup> The court found the placement legislation to be unconstitutional on its face.<sup>52</sup> The judge concluded that the enactment precluded the assignment entity from authorizing any desegregation, as this action would automatically terminate state appropriations, and ascertained that the legislation's definition of "efficient" mandated consideration of race in making pupil assignments.<sup>53</sup> Finding the pattern of legislation clearly unconstitutional, the court flatly refused to require that the plaintiffs exhaust administrative remedies because those remedies were cumbersome and fruitless.<sup>54</sup>

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*pra* note 35, at 1449-59 (giving the history of several pupil placement statutes).

47. Pupil Placement Act, § 3(1), (8); *see Adkins*, 148 F. Supp. at 441-42. For discussion of anti-NAACP measures that the Assembly included in the legislative package, see PRATT, *supra* note 10, at 8-9; Walter F. Murphy, *The South Counterattacks: The Anti-NAACP Laws*, 12 W. POL. Q. 371 (1959). *See also* TUSHNET, *supra* note 12, at 272-300 (analyzing cases challenging the anti-NAACP legislation); F.D.G. Ribble, *Constitutional Law*, 44 VA. L. REV. 1350, 1352-57 (1958) (same).

48. *See Adkins*, 148 F. Supp. at 432.

49. *See id.* at 432-33. *See generally* Note, *supra* note 35, at 1459-65 (discussing the doctrine of exhaustion as it related to the pupil placement legislation).

50. 148 F. Supp. 430; *see also* McKay, *supra* note 28, at 1225-26 (affording helpful analysis of *Adkins*); Daniel J. Meador, *The Constitution and the Assignment of Pupils to Public Schools*, 45 VA. L. REV. 517, 539-41 (1959) (same); F.D.G. Ribble, *Constitutional Law*, 45 VA. L. REV. 1402, 1407-08 (1959) (same).

51. *See Adkins*, 148 F. Supp. at 434-42.

52. *See id.* at 436.

53. *See id.* at 438-42.

54. *See id.* at 442-45. *See generally* Note, *supra* note 35, at 1461-63 (explaining

Professor McKay observed contemporaneously that the "most carefully planned of all the state proposals, and the most sophisticated in the nuances of the law, ha[d] proved also in a sense the most naive."<sup>55</sup>

Six months later, the United States Court of Appeals for the Fourth Circuit affirmed the district court in a per curiam opinion.<sup>56</sup> The appellate court rejected the exhaustion argument because it believed that the state placement statute afforded plaintiffs no adequate remedy.<sup>57</sup> The panel observed that the district court's decree required neither that children be assigned to particular schools nor that they be assigned to racially integrated public schools.<sup>58</sup> In discussing this decree, the court added that the two *Brown* decisions "do not compel the mixing of the different races in the public schools."<sup>59</sup> On October 21, 1957, the Supreme Court denied certiorari.<sup>60</sup>

During November 1957, J. Lindsay Almond, Jr., who had been the Old Dominion's attorney general and who had argued *Brown II* for Virginia, was elected Governor. In Governor Almond's January 1958 Inaugural Address, he proclaimed that desegregation of the public schools would not be allowed in Virginia.<sup>61</sup> During 1958, the Alexandria, Charlottesville, Norfolk, and

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the concept of futility as it related to placement acts).

55. McKay, *supra* note 28, at 1226.

56. See *School Bd. v. Atkins*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957). The Federal Reporter changed the spelling of the named plaintiff to Atkins from Adkins. Compare *id. with Adkins*, 148 F. Supp. 430.

57. See *Atkins*, 246 F.2d at 326-27. See generally Note, *supra* note 35, at 1460-61 (discussing common reasons for not applying the exhaustion doctrine).

58. *Atkins*, 246 F.2d at 327.

59. *Id.* (quoting *School Bd. v. Allen*, 240 F.2d 59, 62 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957)). Chief Judge John J. Parker employed similar language in two earlier cases that significantly slowed integration's pace in the Fourth Circuit. See *Carson v. Warlick*, 238 F.2d 724, 728 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957) (holding that plaintiffs had not exhausted administrative remedies); *Briggs v. Elliott*, 132 F. Supp. 776, 777 (E.D.S.C. 1955) (stating that *Brown* "has not decided that the states must mix persons of different races in the schools"); see also *Wilkinson*, *supra* note 9, at 507-08 (explaining Judge Parker's interpretation of *Brown*).

60. *School Bd. v. Atkins*, 355 U.S. 855 (1957).

61. See *James v. Almond*, 170 F. Supp. 331, 334 (E.D. Va.), *appeal dismissed per stipulation*, 359 U.S. 1006 (1959). See generally PRATT, *supra* note 10, at 9 (describing Almond's political platform).

Arlington County school boards promulgated local pupil placement plans.<sup>62</sup> The boards adopted these local measures in part so that they would have formal procedures and criteria, as the state placement act had proved ineffective, and in part as a response to the judicial decision invalidating the state placement legislation.<sup>63</sup>

In May 1958, the plaintiffs pursuing the Norfolk school desegregation litigation, black schoolchildren seeking admission to schools previously attended exclusively by whites, sought additional relief from Judge Hoffman.<sup>64</sup> The court denied their petition because the plaintiffs had not requested transfers from the school board.<sup>65</sup> By July 25th, the board's deadline for receipt of applications, 151 blacks had applied.<sup>66</sup> On August 18, the Board denied every request, articulating four reasons: (1) the assignment of a few blacks among many white students would foster a harmful "sense of isolation," (2) the "peculiar circumstances would involve 'racial conflicts and grave administrative problems,'" (3) numerous applicants were scholastically ineligible to transfer, and (4) some black pupils who were qualified would have to transfer again in 1959, and that would not be "conducive to proper education."<sup>67</sup>

Judge Hoffman invited the school board members to attend court on August 25th.<sup>68</sup> The judge sustained the board's reasoning in rejecting the applications of students in the third and fourth categories, but he explained that potential isolation and racial tensions were legally deficient and asked the board mem-

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62. See Meador, *supra* note 50, at 530. See generally PRATT, *supra* note 10, at 22-25 (discussing the implementation of pupil placement boards).

63. See *Adkins v. School Bd.*, 148 F. Supp. 430, 445-46 (E.D. Va.) (invalidating state placement legislation), *aff'd*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957).

64. See *School Bd. v. Beckett*, 260 F.2d 18 (4th Cir. 1958) (describing events leading to the affirmance of the district court's denial of Virginia's motion to delay integration by one year); *James*, 170 F. Supp. at 334; see also PRATT, *supra* note 10, at 10 (describing litigation that led to school closings in other Virginia localities); Ribble, *supra* note 47, at 1350-52 (analyzing Virginia litigation).

65. *Beckett*, 260 F.2d at 19.

66. *Id.*

67. *James*, 170 F. Supp. at 334; accord *Beckett*, 260 F.2d at 19 (providing date of denial).

68. *Beckett*, 260 F.2d at 19.

bers to reconsider.<sup>69</sup> On August 29th, the school board reported to the court that it would assign seventeen named plaintiffs who were scholastically eligible to six secondary schools that only whites had previously attended.<sup>70</sup> The board also sought to defer the black students' enrollment for a year.<sup>71</sup> Judge Hoffman denied that request on September 2nd with leave to reconsider in light of *Cooper v. Aaron*,<sup>72</sup> an important school desegregation case that was before the Supreme Court.<sup>73</sup>

The Court's issuance of its opinion in *Cooper* on September 12, 1958, led Judge Hoffman to file a memorandum on September 18th rejecting the school board's deferment request.<sup>74</sup> Five days thereafter, the school board sought a stay from the Fourth Circuit, which denied that petition but offered to convene a special session of the court in order to consider the appeal's merits.<sup>75</sup>

On September 27th, the Fourth Circuit heard the appeal and affirmed, signing an order that day and subsequently filing an opinion.<sup>76</sup> Immediately after the court ruled, the board assigned the seventeen black students to the six schools in controversy, which previously were comprised solely of white students.<sup>77</sup> The same day, Governor Almond invoked the authority of the school-closing law and issued a proclamation declaring that the six schools were closed.<sup>78</sup>

In response to Governor Almond's proclamation, several white schoolchildren who would have been enrolled in those educational facilities and their parents promptly filed suit seeking preliminary and permanent injunctions restraining the enforcement, operation, and execution of most of the measures that the General Assembly had passed during its 1956 Extra Session.<sup>79</sup> Par-

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69. *James*, 170 F. Supp. at 334.

70. *Id.*; accord *Beckett*, 260 F.2d at 19-20.

71. *Beckett*, 260 F.2d at 20.

72. 358 U.S. 1 (1958); see *supra* note 33 and accompanying text.

73. See *Beckett*, 260 F.2d at 20.

74. *Id.*

75. *Id.*

76. *Id.* at 18 (issuing opinion on October 2nd).

77. See *James*, 170 F. Supp. at 334.

78. See *id.* at 334-35 & n.3 (quoting the text of the governor's proclamation).

79. See *id.* at 333; see also *supra* notes 42-49 and accompanying text (describing the measures that the Extra Session had passed). See generally Ribble, *supra* note

ents were concerned that the legislative package would deprive their children of public education.<sup>80</sup> Although these parents probably preferred segregated schools to integrated ones, they favored desegregated facilities to none at all. A three-judge court, consisting of Fourth Circuit Judges Clement Haynsworth and Simon Sobeloff and District Judge Hoffman, convened to hear the suit because the plaintiffs sought injunctive relief against several state officials.<sup>81</sup> On January 19, 1959, the court held that the school-closing statute was unconstitutional.<sup>82</sup>

First, the three-judge panel exhaustively reviewed the history of efforts by the state authorities and the local school board in response to *Brown*.<sup>83</sup> The court then examined the condition of public education in the city of Norfolk since Governor Almond had ordered the six schools closed the preceding September. The panel initially observed that the seventeen black students whom the school board had assigned to facilities previously attended by whites were "not in attendance at any school."<sup>84</sup> The court next considered the educational circumstances of the 10,000 white children who would have enrolled at the closed facilities and ascertained that nearly half of those pupils had received some private tutoring but that more than a quarter had been deprived of any education at all.<sup>85</sup> The court found that plaintiffs' counsel had appropriately characterized the plight of the students and their teachers as "tragic."<sup>86</sup>

The three judges held that the closing of public schools violated the Equal Protection and Due Process Clauses of the Four-

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47, at 1352-57 (describing six acts, relating to NAACP cases, passed by the Extra Session).

80. See Ribble, *supra* note 47, at 1351.

81. See *James*, 170 F. Supp. at 333; see also 28 U.S.C. § 2281 (1970) (repealed 1976); *id.* § 2284 (1988 & Supp. V 1993) (describing the requirements, composition, and procedures for a three-judge court).

82. *James*, 170 F. Supp. at 337.

83. See *id.* at 333-35. See generally PRATT, *supra* note 10, at 10 (describing the closing of Virginia schools in 1958 under state massive resistance laws).

84. *James*, 170 F. Supp. at 335.

85. *Id.* at 335-36. See generally PRATT, *supra* note 10, at 10 (describing the closing of Virginia schools under the state massive resistance laws).

86. *James*, 170 F. Supp. at 336. See generally MUSE, *supra* note 19, at 111-13 (describing the tensions that ensued when black students were admitted to schools in five southern cities that had previously been all-white).



teenth Amendment.<sup>87</sup> The panel relied substantially on the recently issued opinion of the Supreme Court in *Cooper v. Aaron*.<sup>88</sup> In *Cooper*, the Court declared that state support of segregated public education contravened the Equal Protection Clause and proclaimed that students' rights "not to be segregated on racial grounds in schools so maintained [were] so fundamental and pervasive" as to encompass due process.<sup>89</sup>

On the same day that the three-judge panel invalidated the state legislation, the Virginia Supreme Court issued an opinion in *Harrison v. Day*,<sup>90</sup> holding that certain of those statutory requirements violated several provisions of the Virginia Constitution that essentially prescribed the creation and maintenance of free public schools in the Commonwealth.<sup>91</sup> The state court evaluated the legislation's validity in the context of the Virginia Comptroller's inquiry about the Old Dominion's reimbursement of local school boards that paid tuition grants.<sup>92</sup> The Virginia Supreme Court also refused to consider whether the statutes contravened the Fourteenth Amendment of the Federal Constitution as interpreted by the Supreme Court in *Brown* and *Cooper*.<sup>93</sup> The state court gratuitously deplored the "lack of judicial restraint evinced by that court in trespassing on the sovereign

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87. *James*, 170 F. Supp. at 336-37. See generally PRATT, *supra* note 10, at 11 (discussing the court's ruling in *James* and the governor's responses to it).

88. 358 U.S. 1 (1958); see also *James*, 170 F. Supp. at 337 (analyzing and applying *Cooper*).

89. *Cooper*, 358 U.S. at 19. See generally FREYER, *supra* note 33 (describing the city of Little Rock before *Cooper*, the Court's ruling, and its aftermath); PRATT, *supra* note 10, at 11 (discussing the Court's ruling in *Cooper* and the governor's response to it); TRIBE, *supra* note 12, at 33-36, 40-41 (discussing the Court's decision in *Cooper* in relation to *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)); Daniel Farber, *The Supreme Court and the Rule of Law: Cooper v. Aaron Revisited*, 1982 U. ILL. L. REV. 387 (discussing the constitutional history leading up to *Cooper* and analyzing *Cooper* under the Supremacy Clause).

90. 106 S.E.2d 636 (Va. 1959).

91. See *id.* at 645-46; see also PRATT, *supra* note 10, at 11 (discussing the court's ruling in *Harrison*); Ribble, *supra* note 50, at 1410-12 (discussing the opinions in *Harrison*). The federal court apparently delayed the issuance of its ruling until the Virginia Supreme Court had spoken on the same January 19th date, which was General Robert E. Lee's birthday and a Virginia state holiday. Epps, *supra* note 15, at 25.

92. *Harrison*, 106 S.E.2d at 639.

93. *Id.* at 647.

rights of [the] Commonwealth” and remarked that the legislation represented an “understandable effort to diminish the evils expected from the decision in the Brown case.”<sup>94</sup>

Notwithstanding the somewhat unusual manner in which *Harrison* arose, the court’s invocation of the Virginia Constitution, and the court’s unwarranted observations, this decision and the Fourth Circuit’s opinion in *James v. Almond* effectively undercut the Old Dominion’s defiance. Professor Alexander Bickel astutely commented that the “hard judicial attitude [evidenced in the two cases] achieved what had quite evidently been its aim. It broke the back of massive resistance.”<sup>95</sup>

When Governor Almond was forced to announce the public schools’ opening, he committed an act that many Virginians, particularly in the Commonwealth’s political establishment, considered to be an unpardonable sin for which they never forgave him. The Virginia Industrialization Group, an entity comprised of ninety state business leaders, apparently influenced the governor by persuading him, in December 1958, that Massive Resistance was impeding economic development substantially:<sup>96</sup> “Almond gave one last never-say-die speech, then made a dramatic about-face. On January 28, 1959, he spoke to the General Assembly and bowed to the inevitable. Five days thereafter, twenty-one black children entered formerly all-white schools in Arlington and Norfolk. Massive resistance was over.”<sup>97</sup>

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94. *Id.*

95. Alexander M. Bickel, *The Decade of School Desegregation: Progress and Prospects*, 64 COLUM. L. REV. 193, 204 (1964); see also Epps, *supra* note 15, at 25 (describing the rise of the “Massive Resistance” era and the court’s formal destruction of it in *James*).

96. JEFFRIES, *supra* note 10, at 151-53; see also GATES, *supra* note 25, at 96-99 (identifying four groups of Virginia leaders in terms of views on desegregation). See generally JAMES C. COBB, *THE SELLING OF THE SOUTH: THE SOUTHERN CRUSADE FOR INDUSTRIAL DEVELOPMENT, 1936-1980* (1982) (surveying the evolution of efforts to encourage industrial expansion in thirteen southern states); *SOUTHERN BUSINESSMEN AND DESEGREGATION* (Elizabeth Jacoway & David R. Colburn eds., 1982) (discussing the role of southern businessmen in the development of the “new” South).

97. JEFFRIES, *supra* note 10, at 153; see also PRATT, *supra* note 10, at 11 (reporting Almond’s final defiant pronouncement). In 1957, Charlotte, Greensboro, and Winston-Salem schools became among the first in the South to integrate by granting 12 black students’ requests to transfer to previously all-white schools. DOUGLAS, *supra* note 5, at 44.

"The Fourth Circuit then assimilated Virginia, which enacted a new pupil placement statute and began to administer it, to North Carolina."<sup>98</sup> During the next several years, the appellate court thus refused to require that district courts entertain class action litigation seeking comparatively broad integration as long as school boards under the pupil placement measures admitted selected blacks to schools previously attended by whites.<sup>99</sup> The Fourth Circuit only permitted a specific black plaintiff to sue on his or her own behalf—after exhausting administrative remedies prescribed in the legislation—and required the plaintiff to prove that the board had denied the individual's application expressly or necessarily for reasons that implicated race.<sup>100</sup> The court's approach resulted in a small number of black students securing transfers, but the Fourth Circuit refused to recognize the effective continuation of segregated education and the federal courts implemented "no comprehensive plan."<sup>101</sup>

By 1962, however, the Fourth Circuit had modified the manner in which it proceeded. The court acknowledged that class actions were appropriate and rejected the requirement that individual plaintiffs must exhaust administrative remedies, refusing to tolerate any longer such practices as "interim measures only."<sup>102</sup> Illustrative of the circuit's change in attitude

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98. Bickel, *supra* note 95, at 204; *see also* VA. CODE ANN. §§ 22-232.1 to .31 (West Supp. 1962) (including Virginia pupil placement laws); PRATT, *supra* note 10, at 24-25 (describing the first major challenge in Richmond to the pupil assignment plan). *See generally* Epps, *supra* note 15, at 25-26 (discussing the demise of Massive Resistance); Note, *supra* note 35, at 1451-55 (discussing the rise of pupil placement legislation).

99. *See, e.g.*, Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir.), *cert. denied*, 361 U.S. 818 (1959); Beckett v. School Bd., 185 F. Supp. 459 (E.D. Va. 1959), *aff'd sub nom.* Farley v. Turner, 281 F.2d 131 (4th Cir. 1960). *See generally* DOUGLAS, *supra* note 5, at 82 (discussing the Charlotte-Mecklenburg School Board's limited geographic attendance plan); Note, *supra* note 35, at 1461-65 (discussing the futility exception to the exhaustion doctrine and the prohibition on bringing class actions); *supra* notes 56-60 and accompanying text (discussing School Bd. v. Atkins, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957)).

100. These reasons had to be "unmixed with other plausible reasons, such as residential zoning, overcrowding in the white school, or the pupil's lack of aptitude as revealed by various tests," while the courts rather indulgently regarded such plausible reasons. Bickel, *supra* note 95, at 206.

101. *Id.* at 205-06.

102. Green v. School Bd., 304 F.2d 118, 124 (4th Cir. 1962); *see* Bickel, *supra* note

were 1962 cases involving desegregation of the Roanoke and Charlottesville public school systems in which the court "pierced the veil of tokenism, looked beneath at continued biracial zoning, and demanded more comprehensive action."<sup>103</sup> In the Roanoke litigation, the Fourth Circuit did not require the plaintiffs to exhaust administrative remedies prescribed in pupil placement legislation, ascertained that the city's methods for assigning students were infected with racial discrimination, and ordered Roanoke to develop a plan for complete compliance.<sup>104</sup>

The appellate court evinced even greater stringency in the Charlottesville case.<sup>105</sup> The court first found it "clear that little change ha[d] been made in the administration of the elementary schools from that which prevailed when the schools were completely segregated" and that "little progress in the integration of the schools" would occur if the school board were "permitted to pursue the policy which, after mature consideration, it ha[d] deliberately adopted."<sup>106</sup> The court then scrutinized and invalidated the board's plan for elementary schools because its purpose and effect were to "retard integration and retain the segregation of the races."<sup>107</sup>

Soon thereafter, the pace of public school integration began to quicken in response to the actions of all three branches of the federal government. Congress passed the Civil Rights Act of 1964,<sup>108</sup> authorizing the Department of Health, Education and

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95, at 206-07 (discussing the Fourth Circuit's ruling in *Green*).

103. Bickel, *supra* note 95, at 206; see *Dillard v. School Bd.*, 308 F.2d 920 (4th Cir.), *cert. denied*, 374 U.S. 827 (1963) (challenging the Charlottesville school system); *Green*, 304 F.2d 118 (challenging the Roanoke school system). See generally Rosen, *supra* note 33, at 508-10 (discussing the unequal administration of pupil placement programs).

104. See *Green*, 304 F.2d at 124; see also *Marsh v. County Sch. Bd.*, 305 F.2d 94 (4th Cir. 1962) (holding unconstitutional Roanoke's administration of pupil placement). See generally Note, *supra* note 35, at 1460-61 (discussing the inadequacies of administrative remedies in the school segregation context).

105. See *Dillard*, 308 F.2d 920; see also Rosen, *supra* note 33, at 507 n.53 (stating the Fourth Circuit's holding in *Dillard*); *The Dillard Case, Desegregation, and the Doctrine of Non-Integration: A Review*, 49 VA. L. REV. 367 (1963) (analyzing *Dillard*).

106. *Dillard*, 308 F.2d at 922.

107. *Id.* at 923; see also *Jackson v. School Bd.*, 321 F.2d 230 (4th Cir. 1963) (affording an additional example of the Fourth Circuit's increasingly rigorous approach); *Bradley v. School Bd.*, 317 F.2d 429 (4th Cir. 1963) (same).

108. Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a

Welfare to terminate the federal funding of school districts that resisted integration, and numerous districts desegregated out of concern that they might lose those resources.<sup>109</sup> The Supreme Court's resolve to enforce *Brown* with greater rigor apparently stiffened during the mid-1960s. This phenomenon was evidenced in opinions that required the Virginia localities of Prince Edward and New Kent counties to undertake much more vigorous desegregation efforts.<sup>110</sup> Judge John Minor Wisdom also wrote several important Fifth Circuit decisions that imposed affirmative requirements on school districts to integrate and authorized increased judicial supervision of public education.<sup>111</sup> For exam-

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to 2000n-b (1988 & Supp. V)).

109. See DOUGLAS, *supra* note 5, at 113, 124-26; ANDREW KULL, *THE COLOR-BLIND CONSTITUTION 177-78* (1992); James Dunn, *Title VI, the Guidelines and School Desegregation in the South*, 53 VA. L. REV. 42 (1967); Wilkinson, *supra* note 9, at 531-37. Numerous writers have suggested that the Court did not enforce *Brown* for a decade and that Congress ultimately became the agent of change. See, e.g., ROSENBERG, *supra* note 28, at 39-172; Klarman, *supra* note 2, at 9-10; McConnell, *supra* note 9, at 1133; see also *supra* note 33 and accompanying text (discussing the necessity of the Court's decision in *Cooper*).

110. For example, in *Griffin v. County School Board*, 377 U.S. 218 (1964), the Supreme Court authorized the district judge to order that Prince Edward County reopen and support a system of public schools that did not discriminate on the basis of race, *id.* at 234; see also Wilkinson, *supra* note 9, at 525-30 (discussing the significance of the Prince Edward case). See generally BOB SMITH, *THEY CLOSED THEIR SCHOOLS: PRINCE EDWARD COUNTY, VIRGINIA, 1951-1964* (1965) (documenting race relations in the South); Jonathan L. Entin, *Defeasible Fees, State Action and the Legacy of Massive Resistance*, 34 WM. & MARY L. REV. 769 (1993) (analyzing the decision of the Supreme Court of Virginia in *Hermitage Methodist Homes of Virginia, Inc. v. Dominion Trust Co.*, 387 S.E.2d 740 (Va.), *cert. denied*, 488 U.S. 907 (1990), which upheld a whites-only provision in an educational trust). In *Green v. County School Board*, 391 U.S. 430 (1968), the Court read *Brown II* as charging the New Kent County School Board with the "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch," *id.* at 437-38. See generally Rosen, *supra* note 33, at 525-26 (discussing the Court's rejection in *Green* of the *Briggs v. Elliott*, 132 F. Supp. 776 (E.D.S.C. 1953), philosophy); Wilkinson, *supra* note 9, at 522-30, 537-49 (discussing the Prince Edward case and the freedom of choice concept in *Green*).

111. See *United States v. Jefferson County Bd. of Educ.*, 372 F.2d 836 (5th Cir. 1966), *cert. denied*, 389 U.S. 840 (1967); *Singleton v. Jackson Mun. Separate Sch. Dist.*, 355 F.2d 865 (5th Cir. 1966) (*Singleton II*); *Singleton v. Jackson Mun. Separate Sch. Dist.*, 348 F.2d 729 (5th Cir. 1965) (*Singleton I*); see also DOUGLAS, *supra* note 5, at 126-27 (discussing *Singleton I*, *Singleton II*, and *Jefferson*); Wilkinson, *supra* note 9, at 541-49 (same). See generally JACK BASS, *UNLIKELY HEROES* (1981) (recalling the southern judges of the Fifth Circuit and their applications of *Brown*).

ple, Judge Wisdom observed that the "only adequate redress for a previously overt system-wide policy of segregation directed against Negroes as a collective entity is a system-wide policy of integration."<sup>112</sup>

### B. Petersburg

Public officials in Petersburg monitored these activities in the rest of Virginia and the South.<sup>113</sup> The developments seemed to leave the Petersburg public school system, which remained completely segregated, essentially untouched.<sup>114</sup> Before 1958, Petersburg simply took no steps to integrate its schools and apparently deferred to state authorities, such as the General Assembly and the state pupil placement board.<sup>115</sup> The Petersburg School Board did not adopt a local pupil placement plan, and it acted as if the desegregation litigation that involved other locales in the Commonwealth were irrelevant to public education in the city.<sup>116</sup>

Until 1958, the General Assembly's efforts in fashioning, implementing, and defending Massive Resistance and the Petersburg School Board's inaction enabled my white classmates and me to complete our primary school education at fully segregated Walnut Hill Elementary. There were no black students and no black teachers at Walnut Hill. We had no interaction with our counterparts who were enrolled in historically black primary schools, and the only contact that most of us had with blacks involved the domestic employees who labored in our households.

During 1958, however, Reverend Wyatt Tee Walker—a civil rights advocate and a Southern Christian Leadership Conference official who had become the minister at Petersburg's Gillfield

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112. *Jefferson County Bd. of Educ.*, 372 F.2d at 869 (emphasis omitted). For analysis of school desegregation litigation from the mid-1960s until the early 1970s, see Frank T. Read, *Judicial Evolution of the Law of School Integration Since Brown v. Board of Education*, 39 LAW & CONTEMP. PROBS., Winter 1975, at 7, 28-38; Wilkinson, *supra* note 9, at 549-58. For analysis of subsequent litigation, see DOUGLAS, *supra* note 5; PRATT, *supra* note 10.

113. See DOUGLAS, *supra* note 5, at 25-26; PRATT, *supra* note 10, at 4.

114. See PRATT, *supra* note 10, at 4-10.

115. See *id.*

116. See *id.* at 4-11. The Richmond School Board acted similarly. See *id.* at 19-20.

Baptist Church and who knew of the *Adkins* case—sued on behalf of his school-aged children seeking the desegregation of Petersburg's public schools.<sup>117</sup> Reverend Walker filed the case in the Richmond Division of the United States District Court for the Eastern District of Virginia, where the district judge allowed the litigation to languish for several years, apparently because the plaintiffs had failed to exhaust their administrative remedies by seeking transfers.<sup>118</sup>

After 1958, the Petersburg School Board, like numerous others, developed and applied several stratagems for maintaining segregated public education and, failing that, for delaying any integration that was more than token.<sup>119</sup> Geographically centered assignment was one such technique.<sup>120</sup> Placing pupils in terms of their proximity to educational facilities maintained the segregated status quo at Walnut Hill Elementary School because no blacks lived in the relevant neighborhood.

Assignment premised on geography had less efficacy in some areas of the city. For example, more black schoolchildren probably lived near A.P. Hill Elementary School (named for a famous Confederate general), than did white schoolchildren. The relatively centralized locations of the city-wide junior high and high schools that whites had always attended concomitantly complicated efforts to employ geography as a means of perpetuating segregation. Another measure that the Petersburg School Board and a number of additional districts devised and employed was "freedom of choice," whereby students could ostensibly select the schools that they wished to attend.<sup>121</sup>

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117. See Tobias, *supra* note 9, at 856-57; see also TAYLOR BRANCH, PARTING THE WATERS 245, 284-86 (1988) (detailing Reverend Walker's activities in Virginia and his appreciation of the Norfolk school closing).

118. See *supra* notes 100-04 and accompanying text (discussing Fourth Circuit treatment of exhaustion).

119. See DOUGLAS, *supra* note 5, at 32-36 (discussing delay tactics in North Carolina).

120. See JEFFRIES, *supra* note 10, at 141; PRATT, *supra* note 10, at 27.

121. For discussion of freedom of choice, see KULL, *supra* note 109, at 176; PRATT, *supra* note 10, at 40-55; McKay, *supra* note 10, at 1053-55; Wilkinson, *supra* note 9, at 537-40. "Freedom of choice" had a deceptively egalitarian ring. The "problem with freedom of choice was the variance between theory and practice." *Id.* at 539; see also Walter Gellhorn, *A Decade of Desegregation—Retrospect and Prospect*, 9 UTAH L. REV. 3, 5-8 (1964) (discussing delay of desegregation).

The deployment of these mechanisms probably enabled the school board to buy considerable time. In the late 1950s and early 1960s, some black parents and schoolchildren may have been unaware that the students could apply to transfer schools. Many of those blacks who were cognizant of this option may have been reluctant to pursue it for numerous reasons. For example, most black parents and students would have confronted a bewildering array of obstacles in attempting to transfer or in exercising their freedom to choose.<sup>122</sup> A number of black parents and pupils probably found the application process daunting. Some may have been unwilling to expend innumerable hours completing lengthy written forms, collecting and furnishing significant quantities of written documentation, and answering irrelevant or insulting questions in personal interviews. Other adults and children may have been especially reluctant to devote substantial time and effort to a frustrating process in which they probably would encounter intransigent racist resistance, and ultimately, rejection.

Many black parents also worked for whites who could impose economic pressures on their employees.<sup>123</sup> Numerous black students who considered applying knew that, in the extremely unlikely event that the school board granted their transfer requests, white pupils would scrutinize their every act, ridiculing and demeaning them.<sup>124</sup> This hostile learning environment that awaited the black students may well have discouraged them. Some blacks might have been uninterested in attending

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122. See Wilkinson, *supra* note 9, at 539-40 (listing obstacles facing parents and students); see also DOUGLAS, *supra* note 5, at 47-48 (discussing the barriers that black parents faced when challenging segregation in the courts).

123. See DOUGLAS, *supra* note 5, at 47-48; PRATT, *supra* note 10, at 42-43; Hodding Carter, *Desegregation Does Not Mean Integration*, N.Y. TIMES, Feb. 11, 1962, § 6 (Magazine), at 21, 72.

124. See DOUGLAS, *supra* note 5, at 72 (describing the admission of Dorothy Counts to Harding High School in Charlotte); MUSE, *supra* note 19, at 114-15 (recounting the story of Dorothy Counts, who "was pursued by a rowdy crowd of juveniles . . . jeering, spitting, and throwing pebbles, sticks and paper balls"); U.S. COMM'N ON CIVIL RIGHTS, SOUTHERN SCHOOL DESEGREGATION, 1966-67, at 88 (1967); see also WILLIAM H. CHAFE, CIVILITIES AND CIVIL RIGHTS: GREENSBORO, NORTH CAROLINA, AND THE BLACK STRUGGLE FOR FREEDOM 100-02 (1980) (discussing hardships that the first black high school students in Greensboro experienced); PRATT, *supra* note 10, at 32-33 (discussing the experiences in Richmond).



schools formerly designated for whites or may have wanted to maintain exclusively black schools, particularly if they had equal resources. Not surprisingly, few blacks sought transfers or exercised their freedom to choose in the late 1950s and early 1960s.

When some black students, despite insurmountable hurdles, eventually did apply, the Petersburg School Board relied on various delaying techniques and questionable tactics to avoid integrating the schools.<sup>125</sup> One approach was the board's attempt to freeze students in those schools in which they had originally matriculated.<sup>126</sup> This meant that whites who began their primary education at Walnut Hill Elementary would remain there for five years and that blacks who commenced their primary schooling at racially segregated elementary facilities with fewer resources could not leave.

When students obviated this difficulty by finishing their schooling at specific elementary or junior high facilities and then seeking to transfer, the school board had various responses. It could consider applications to be untimely, treat requests as incomplete and demand voluminous supplemental material that was costly and inconvenient to supply, or require personal interviews in which members asked burdensome, meaningless, or humiliating questions.<sup>127</sup> The board also could find the applicants themselves scholastically deficient by employing unfair, irrelevant, or onerous testing mechanisms.<sup>128</sup>

Those blacks who had the enormous fortitude and stamina to complete the arduous administrative process, but whose transfer requests the Board rejected, may have lacked the wherewithal to continue the fight by appealing adverse determinations. Many of these individuals probably had limited time, money, and energy to complete their applications, much less to pursue courtroom

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125. See JEFFRIES, *supra* note 10, at 141; PRATT, *supra* note 10, at 13-14, 31, 36, 42; Wilkinson, *supra* note 9, at 539-40. See generally Rosen, *supra* note 33, at 508-10 (discussing the assignment system in Roanoke).

126. See JEFFRIES, *supra* note 10, at 141 (discussing this practice in Richmond).

127. "Sometimes birth and health certificates, personal appearances and notarized forms were required." Wilkinson, *supra* note 9, at 539. See generally DOUGLAS, *supra* note 5, at 63 (discussing the effect of attempted transfers).

128. See Wilkinson, *supra* note 9, at 540 (discussing academically unprepared black students).

litigation.<sup>129</sup> Even those blacks who might have entertained the thought of filing cases could have been dissuaded by the discouraging prospect of suing in the Richmond court of the federal judge who had delayed resolution of the *Walker* desegregation litigation since 1958.<sup>130</sup>

Very few white parents or pupils manifested much interest in those schools that blacks previously had attended.<sup>131</sup> Whites simply had little reason to enroll in educational facilities that had never received as many resources, to attend schools in which the whites knew no students and would constitute a tiny minority, and to undertake an act for which they would be ostracized.<sup>132</sup> In short, whites, who technically possessed considerable freedom to choose, had minimal incentive to select schools previously attended solely by black schoolchildren. In contrast, blacks had little actual freedom to choose, and even the small number who exercised this option were unlikely to be successful.<sup>133</sup>

These machinations of the state and local school authorities easily enabled my white classmates and me to conclude three years at Anna P. Bolling Junior High School and most of our four years at Petersburg High School with little awareness that our city-wide schools might be desegregated. We did not know of the efforts that ostensibly had been undertaken on our behalf. For example, the school board automatically enrolled at Bolling Junior High all white students who completed their education at Walnut Hill Elementary or any other primary facility previously attended by whites while enrolling no pupils who finished their schooling at any of the black elementary schools, even though a number of blacks lived closer to that junior high school.

Many students from Walnut Hill actually were more conscious

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129. See Carl Tobias, *Rule 11 and Civil Rights Litigation*, 37 *BUFF. L. REV.* 485, 495-98 (1988-1989). See generally PRATT, *supra* note 10, at 38-39 (discussing the persistence of some parents); TUSHNET, *supra* note 12, at 34, 311 (discussing the NAACP legal staff).

130. See *supra* notes 117-18 and accompanying text; see also PRATT, *supra* note 10, at 40-55 (providing additional helpful analysis of freedom of choice); Wilkinson, *supra* note 9, at 539-49 (same).

131. See PRATT, *supra* note 10, at 32, 42; Wilkinson, *supra* note 9, at 539.

132. See PRATT, *supra* note 10, at 32, 42.

133. See Wilkinson, *supra* note 9, at 539-40.

of class than of race. These Walnut Hill students, the families of whom owned expensive homes, drove fancy cars, and wore nice clothes, believed themselves superior to the blue collar pupils. Numerous whites from Walnut Hill had no greater contact with working-class whites than with blacks and accorded them little more respect. A number of the blue collar students justifiably resented the arrogant whites and vented this frustration by beating them up during recess and lunch. I escaped the terrorizing by playing basketball on the playground with working-class pupils who did not participate in the fights.<sup>134</sup>

For many white students, the years in high school passed with few concerns about integration. Desegregation loomed somewhat larger only during my senior year, and what actually occurred at that time was mere tokenism. Even in high school, most white students remained oblivious to the measures that the city had instituted to limit integration. Petersburg High School had no black students or teachers throughout my freshman, sophomore, and junior years, and I had virtually no contact with my black contemporaries.

To be sure, our faculty taught, and white pupils believed, that aggressive Yankees started the Civil War and bludgeoned into submission a valiant, severely disadvantaged South for reasons that were imperceptibly related to race. One history teacher delighted in proclaiming that John Wilkes Booth's birthday should be celebrated as a national holiday. Whites made deprecating comments about blacks and delivered racial epithets in educational and social settings. Much of my exposure to this type of activity came when playing basketball for the Petersburg Crimson Wave against schools with teams named for venerable Virginia lawyers, such as the John Marshall Justices. The most egregious incidents involved the apparently insatiable sexual drives of adolescent white boys from Walnut Hill. Ironically, the most virulent racists would boast in colloquial phrasing too

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134. Integration was closely linked to class. For example, in Little Rock, integration occurred first at Central High School, attended primarily by working-class whites, rather than at the school in Pulaski Heights, which was principally attended by upper-class whites. See FREYER, *supra* note 33, at 16-17. In junior high school, I remember having as few interactions with blacks and as few discussions of race as I had in elementary school.

crude to print how they had proven their manhood in Petersburg's black neighborhoods.<sup>135</sup>

When a local attorney learned that I was considering attendance at law school after college, he told me a similarly outrageous story. The attorney offered as part of the job description what a lawyer might do for his imaginary white male client who had impregnated a black woman. The attorney explained that the lawyer would offer the woman sufficient money to leave town and keep quiet, thereby protecting his client's interests. To this day, I have wondered why the attorney thought that this example would encourage me to attend law school.

In my senior year, the Petersburg School Board, like many others, seized on the dilatory tactic of token desegregation by permitting a tiny number of blacks to attend Petersburg High School. I remember the first day of school in September 1963 as though it were yesterday. I was standing on the front steps of Petersburg High School preparing to begin my senior year. We were cocky and preoccupied with the trivialities that absorb teenagers—clothes, music, and sports. The preppies among us were sporting brand new madras shirts, Villager blouses, and Weejuns.

I recall comparing my summer tan with that of one of the cheerleaders. We were as dark as many blacks whom the school board would not admit to our high school; however, the irony was completely lost on us. I had finished what I considered to be a successful summer, finely honing my basketball skills and waiting to be a high school hero. When the bell rang forcing us all indoors, several black students entered the building and became members of the class of 1964. In this utterly uneventful, anticlimactic manner, Petersburg formally integrated its public schools.

The opening of a new Petersburg High School in 1970 represented the consummate irony of the city's desegregation battle. The school board originally had authorized the building's construction in a location that was most distant from neighborhoods in which blacks resided, apparently to rely on patterns of residential segregation when placing students in schools. The Su-

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135. See JOHN DOLLARD, *CASTE AND CLASS IN A SOUTHERN TOWN* 139 (1937).

preme Court criticized pupil assignments that were premised on geography immediately after construction commenced but before the new structure opened.<sup>136</sup> This meant that considerable integration soon followed in Petersburg and that blacks became the principal beneficiaries of the state-of-the-art high school.

During the late 1960s, the pace of public education's integration began to accelerate. For several years, many parents of white schoolchildren continued to support the public school system. As integration of the Petersburg public schools increased, however, whites reduced their economic, moral, and other support of public education. By the early 1970s, most of the white parents whose children attended public schools were individuals who lacked sufficient resources to pursue other options.

From the time that the Supreme Court issued *Brown*, numerous white parents and pupils began exploring various alternatives to public education. Some parents sent their children to preparatory schools, such as Episcopal High School in Alexandria or St. Christopher's School in Richmond. A few students attended military schools, like those advertised in the *New York Times* Sunday magazine, or Saint Joseph's, the local parochial school.

A number of white parents also created Bollingbrook Day School, which had such limited resources that it probably afforded a considerably poorer education than did the public schools. I remember neighbors who purchased shares in the venture as a hedge for their children against threats that the public schools would close or would be fully integrated. I also recall a prominent local physician who sent his two children to Bollingbrook and accepted state tuition vouchers when doing so. My mother severely criticized the doctor for abandoning public education and for taking the vouchers. The students who remained in public schools promptly ostracized the physician's children.

No one in Petersburg established a Christian Academy like those that sprung up across much of Southside Virginia and the

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136. See *Goss v. Board of Educ.*, 373 U.S. 683 (1963); PRATT, *supra* note 10, at 28; Wilkinson, *supra* note 9, at 522-23. See generally JEFFRIES, *supra* note 10, at 154-56 (discussing school construction in Richmond); TRIBE, *supra* note 12, at 1490 (discussing the Court's decision in *Goss*).

rest of the South after *Brown*. As public school integration increased, however, a growing number of parents sent their children to Tidewater Academy, which was located twenty miles away. That activity exposed the hypocrisy of certain observers who criticized busing to achieve integration.<sup>137</sup>

### III. INTEGRATION OF OTHER PUBLIC FACILITIES IN PETERSBURG

This account of public school desegregation epitomizes similar developments involving the integration of other public facilities. For instance, during 1958, the Petersburg City Council voted to close Wilcox Lake, a substantial body of water owned by the city that was popular with white residents who had long used it for swimming, fishing, and picnicking.<sup>138</sup> The Council apparently decided to terminate public use of the facility because it feared that Reverend Walker and other black leaders would seek to integrate the lake<sup>139</sup> and because a 1958 Supreme Court decision seemed to mandate integration.<sup>140</sup>

I remember Wilcox Lake as one of the few oases available to local residents who sought relief from the unbearable heat and humidity that plague Southside Virginia during the summer. The recreation area also served as a social gathering spot for several generations of white Petersburg residents. My clearest recollections are of high school football players who served as lifeguards, high school cheerleaders who worked in the bathhouse or the snack bar, and 1950 red Fords—the vehicle of choice for teenage males.

In 1963, the city council reopened Wilcox Lake for fishing, but the lake has remained closed for swimming to this day.<sup>141</sup> The

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137. Professor Douglas identifies the closely related irony that "busing was used extensively until the mid-1960s to maintain racially defined public schools" in North Carolina. DOUGLAS, *supra* note 5, at 44; accord PRATT, *supra* note 10, at 58.

138. See Tobias, *supra* note 9, at 857.

139. See *id.*

140. See *New Orleans City Park Improvement Ass'n v. Detiege*, 358 U.S. 54 (1958) (per curiam); see also *Holley v. City of Portsmouth*, 150 F. Supp. 6, 7 (E.D. Va. 1957) (involving segregation of golf courses). See generally DOUGLAS, *supra* note 5, at 58 (discussing "behind-the-scenes" desegregation); McKay, *supra* note 9, at 709-13, 717-20 (discussing the legal challenges to the segregation of parks and public swimming pools).

141. See Tobias, *supra* note 9, at 857; see also MUSE, *supra* note 19, at 171 (report-

council members apparently thought that a partial reopening was more likely to withstand legal challenge and to preserve what they probably viewed as the most important form of segregation. The Council seemed very concerned about whites and blacks swimming in the same water body, interracial socializing, and all of the problems that the Council seemingly believed could result from those activities.

Lee Park Golf Course, a municipal golf course that Petersburg named for General Robert E. Lee, may have presented an easier case on the law and the facts. During 1955, the Supreme Court had issued a per curiam opinion that clearly required integration.<sup>142</sup> Moreover, this facility's integration might have seemed comparatively unthreatening. Relatively few blacks may have wanted, or could have afforded, to play golf, and the tiny number who did would only be sharing the course, the restroom, and the water fountains. When blacks requested that they be allowed to use the facility, the city simply acquiesced. In the final analysis, Lee Park's desegregation probably had greater symbolic than actual importance because golf was one of the most significant trappings of white privilege. Indeed, many blacks probably were more concerned about earning a decent wage than playing golf.<sup>143</sup>

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ing that the South Carolina legislature passed a resolution requesting the State Library Board to remove from circulation books that included illustrations of whites and blacks swimming together); Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763, 775 (1995) (affording a similar account of swimming areas in Cairo, Illinois).

142. See *Holmes v. City of Atlanta*, 350 U.S. 879, 879 (1955) (per curiam); see also *Holley*, 150 F. Supp. at 7 (abolishing the separate-but-equal doctrine in the context of golf courses). See generally DOUGLAS, *supra* note 5, at 60-61 (describing an integration dispute at a municipal golf course in Charlotte, North Carolina); McKay, *supra* note 9, at 713-17 (describing similar golf course cases that arose in Florida and Texas).

143. Petersburg treated the public basketball and tennis courts similarly, perhaps for numerous analogous reasons, such as the Supreme Court rulings in *Detiege*, 358 U.S. 54, and *Holmes*, 350 U.S. 879, and the Eastern District's ruling in *Holley*, 150 F. Supp. 6, which required desegregation of municipal facilities. See also *Wright v. Georgia*, 373 U.S. 284, 292 (1963) (invalidating the prosecution of blacks for peacefully playing basketball on a public playground). See generally Entin, *supra* note 110, at 773-81 (describing *Hermitage Methodist Homes of Virginia, Inc. v. Dominion Trust Co.*, 387 S.E.2d 740, 741 (Va.), *cert. denied*, 498 U.S. 907 (1990), a case involving a conveyance of land that was contingent upon the exclusion of blacks from

The Petersburg City Council voted to close the public library in May 1960, after hundreds of black residents staged several sit-ins seeking the library's integration.<sup>144</sup> The building that housed the library was a private residence that Clara McKenney had donated to the city in 1924.<sup>145</sup> The bequest provided that the main and second floors were to be maintained as a library for whites and that the basement, which was served by a separate entrance, was to be a library for blacks.<sup>146</sup> The gift probably was considered progressive at the time of the donation because it made some provision for blacks.

When blacks peacefully entered the library to protest its segregation, Petersburg convicted in municipal court a number of the demonstration's participants, including Reverend Walker, for trespassing; however, the charges were dismissed on appeal to Petersburg Hustings Court.<sup>147</sup> Petersburg's black citizens also filed suit in the Richmond federal district court seeking to integrate the library.<sup>148</sup> The library remained closed until November, when the city council reversed its decision and opened the facility to all residents.<sup>149</sup>

Local politics in Petersburg reflected similar attitudes. Thorough exposition of the machinations that attended the city council's desegregation must await subsequent treatment, but Petersburg politics deserve brief examination here.<sup>150</sup> Whites

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its use); McKay, *supra* note 9, at 720-21 (describing the integration of tennis courts).

144. Tobias, *supra* note 9, at 858-59. See generally DOUGLAS, *supra* note 5, at 58, 61 (describing the efforts to desegregate in Charlotte, North Carolina, after *Brown*); McKay, *supra* note 9, at 722-23 (describing the desegregation of public libraries); *infra* note 156 and accompanying text (describing sit-ins at private businesses).

145. Tobias, *supra* note 9, at 855.

146. *Id.*

147. *Id.* at 860, 864-66. The judge may have been prescient. See *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (holding that the application of a disorderly conduct statute to blacks who peacefully assembled at a public library violated the First and Fourteenth Amendments).

148. Tobias, *supra* note 9, at 863.

149. *Id.* at 867.

150. To gain a sense of those machinations, see *City of Petersburg v. United States*, 354 F. Supp. 1021, 1022-27 (D.D.C. 1972), *aff'd*, 410 U.S. 962, and *aff'd sub nom. Diamond v. United States*, 412 U.S. 901 (1973). Authors have written entire books about voting rights. See, e.g., GUINIER, *supra* note 10; ABIGAIL M. THERNSTROM, *WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS* (1987).



comprised only a bare majority of the city's population, but state and local authorities formulated and applied numerous measures to dilute black voting strength. For example, Virginia imposed various restrictions on suffrage, such as literacy tests and poll taxes, which meant that a relatively small number of blacks actually registered and voted.<sup>151</sup>

The city concomitantly devised and employed other techniques to limit black electoral power. For instance, when comparatively few blacks voted, city-wide or at-large balloting enabled whites to maintain control. Once more, when blacks secured the franchise and approached a majority of Petersburg's electorate, the city resorted to annexing the overwhelmingly white suburbs in the surrounding counties.<sup>152</sup>

During the early 1960s, whites who held moderate political views on racial issues commanded a Council majority, a phenomenon that the library's reopening probably evidenced. In 1964, a white candidate who favored segregation chose to run, and a black candidate who supported integration decided to seek office. Both won election, which splintered the Council, effectively destroying the moderate coalition that had existed. Electoral politics thereafter became increasingly bitter and divided along racial lines. During 1968, blacks threatened to capture a majority of the city council's seats. This development apparently terrified many whites and led to an "unusually large turnout of white voters in the white wards, as a result of which [the black incumbent] was defeated and the second black candidate also lost."<sup>153</sup>

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151. See *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 664 n.1 (1966) (describing a provision in Virginia's Constitution that required imposition of a poll tax); *Lassiter v. Northampton Election Bd.*, 360 U.S. 45, 47 (1959) (describing a provision in North Carolina's Constitution requiring imposition of a literacy test); see also *City of Petersburg*, 354 F. Supp. at 1025 (describing the restrictions on the ability of blacks to vote). See generally STEVEN F. LAWSON, *BLACK BALLOTS: VOTING RIGHTS IN THE SOUTH, 1944-1969* (1976) (describing the process by which blacks gained the right to vote); TRIBE, *supra* note 12, at 1092-94 (explaining that conditioning the right to vote on poll taxes and literacy tests is unconstitutional); TUSHNET, *supra* note 12, at 99-115 (describing white attempts to exclude black voters and black attempts to obtain the vote).

152. See *City of Petersburg*, 354 F. Supp. at 1022; see also PRATT, *supra* note 10, at 47-48 (describing a similar annexation effort in Richmond).

153. *City of Petersburg*, 354 F. Supp. at 1026 (citation omitted).

Public sector employment in Petersburg manifested analogous considerations. The city integrated this area of great symbolic and practical significance with no more "deliberate speed" than it had public education. I remember that no blacks served in the Petersburg fire or police departments when I was attending public schools.<sup>154</sup> Indeed, as recently as 1972, only one of seventy fire fighters was black.<sup>155</sup>

#### IV. INTEGRATION OF PRIVATE FACILITIES IN PETERSBURG

Private facilities, such as restaurants and motels, that were open to the public pursued various courses of action in response to sit-in demonstrations at lunch counters and other businesses across the South.<sup>156</sup> A few proprietors simply ceased operations. For example, Rucker-Rosenstock's, a large downtown department store, shut the doors of its Tea Room, where the upper-middle-class ladies of Petersburg had often lunched.

Some owners were openly defiant. One downtown restaurateur, whose establishment my family frequented for Sunday breakfast and for occasional suppers, posted prominently in the front window a large "Whites Only" sign. I did not understand why he needed to proclaim publicly his long-standing practice of refusing service to blacks.

Sit-in demonstrations by black residents and the public accommodations provisions that Congress included in the Civil Rights Act of 1964 forced most businesses to desegregate.<sup>157</sup>

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154. Petersburg certainly was not alone in its discrimination against blacks in these departments. *See, e.g.*, *Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 504-05 (1986) (involving race discrimination in the hiring and promoting of fire fighters); *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 565 (1984) (involving the underrepresentation of blacks in a fire department); *Williams v. City of New Orleans*, 729 F.2d 1554, 1555 (5th Cir. 1984) (involving race discrimination in the selection, training, and promotion of police officers).

155. *See City of Petersburg*, 354 F. Supp. at 1027 n.12; *see also Martin v. Wilks*, 490 U.S. 755, 776-77 n.12 (1989) (Stevens, J., dissenting) (recounting the history of racial discrimination in the fire and police departments of Birmingham, Alabama).

156. *See Daniel H. Pollitt, Dime Store Demonstrations: Events and Legal Problems of First Sixty Days*, 1960 DUKE L.J. 315; Note, *Lunch Counter Demonstrations: State Action and the Fourteenth Amendment*, 47 VA. L. REV. 105 (1961).

157. *See, e.g.*, *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964); Tobias, *supra* note 9, at 857; *see also* 42 U.S.C. § 2000a (1988) (prohibiting discrimination in places of public accommodation). *See generally* DOUGLAS, *supra* note 5, at 85-87, 96-

For instance, the Trailways Bus Station, which was located next door to my father's office, eventually merged the waiting areas, restrooms, and drinking fountains that previously had been separate.<sup>158</sup>

Numerous commercial entities initially avoided the issue altogether. Some, by virtue of their geographic locations, were inaccessible to many blacks, particularly individuals who lacked private transportation. A few sold goods or provided services in which most blacks had little interest or that they could not afford. A number of businesses merely relied on long-standing customs and patterns of commercial dealing. Few blacks may have wanted to enter stores in which members of their race had never shopped or to purchase goods from merchants who clearly discouraged black patrons. Indeed, old habits apparently die hard. For example, in a recent visit to a particular Petersburg restaurant, a premiere purveyor of southern barbecue and a longtime favorite of white diners, I noticed practically no blacks working or eating in the establishment, although numerous blacks purchased barbecue at the carry-out area, which has a separate entrance.<sup>159</sup>

The local transportation company was called the Petersburg Bus Lines; however, the corporation was a quasi-private entity. The buses afforded a compelling illustration of the power of custom in matters of race. Custom dictated that whites sit in the front and blacks sit in the rear of buses in Petersburg, as in nearly all southern cities. I remember no blacks challenging this longstanding tradition.<sup>160</sup> State and local authorities

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97 (describing protests in Charlotte, North Carolina); Note, *Recent Statute, The Civil Rights Act of 1964*, 78 HARV. L. REV. 684, 687-88 (1965) (analyzing the Civil Rights Act's public accommodations provision).

158. See PAULI MURRAY, *SONG IN A WEARY THROAT* 138-49 (1987) (describing the 1940 arrest of the book's author and a companion in Petersburg for challenging segregated seating on buses transporting interstate passengers).

159. This practice was, and apparently remains, typical. See, e.g., *Katzenbach v. McClung*, 379 U.S. 294, 296 (1964) (providing a similar description of Ollie's Barbecue).

160. See MURRAY, *supra* note 158, at 138-42, 232-38 (relating the consequences for blacks who violated this rule and discussing challenges to segregated seating on buses in Virginia). For discussion of Montgomery, Alabama, see *Gayle v. Browder*, 142 F. Supp. 707, 711 (M.D. Ala.), *aff'd*, 352 U.S. 903 (1956); *FRED D. GRAY, BUS RIDE TO JUSTICE* (1995). See also *Flemming v. South Carolina Elec. & Gas Co.*, 239 F.2d 277, 278 (4th Cir. 1956) (discussing South Carolina); DOUGLAS, *supra* note 5, at

throughout the South would pursue disorderly conduct charges against individuals who had the temerity to violate that understanding—though few statutes or ordinances clearly mandated the arrangement,<sup>161</sup> and the Supreme Court had invalidated segregated seating on buses engaged in interstate travel in 1946.<sup>162</sup>

Ironically, an overwhelming majority of people who owned small businesses in the city indicated their willingness to serve all comers, regardless of race. In a poll conducted by the Petersburg Improvement Society, a biracial commission constituted at the city council's instigation to foster interracial dialogue, eighty percent of those surveyed responded affirmatively, although the results were not publicized.<sup>163</sup>

It is certainly easy to understate—and this account may unintentionally oversimplify—the subtle and complex nature of the issues that were at stake in integrating all of these facilities during the decade after *Brown*. To caricature all whites as racists and all blacks as heroes is too facile and simply incorrect.<sup>164</sup> The reality was considerably more complicated for citizens of both races.

Some whites attempted to pursue comparatively moderate,

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58 (discussing Charlotte).

161. See, e.g., GRAY, *supra* note 160, at 50; MURRAY, *supra* note 158, at 138-45 (recounting her arrest for disorderly conduct). See generally CATHERINE A. BARNES, JOURNEY FROM JIM CROW: THE DESEGREGATION OF SOUTHERN TRANSIT (1983) (examining the struggle to end segregation in southern transportation).

162. See *Morgan v. Virginia*, 328 U.S. 373, 386 (1946); see also *Gayle v. Browder*, 352 U.S. 903 (1956) (affirming the district court's decision invalidating intrastate segregated seating); *City of Petersburg v. United States*, 354 F. Supp. 1021, 1025 (D.D.C. 1972) (describing the "long history of racial segregation and discrimination" in Petersburg resulting from the "operation of laws, customs, and official and individual behavior"), *aff'd*, 410 U.S. 962, and *aff'd sub nom.* *Diamond v. United States*, 412 U.S. 901 (1973); *Eastman, supra* note 141, at 773-77 (describing Cairo, Illinois, similarly).

163. Interview with individuals familiar with the Petersburg Improvement Society poll who requested anonymity; see also DOUGLAS, *supra* note 5, at 58-61, 86 (describing a similar commission and a similar poll in Charlotte).

164. Cf. Patricia N. Limerick, *The Canon Debate from a Historian's Perspective*, 43 J. LEGAL EDUC. 4, 7-8 (1993) (asserting that 15% of the members of every group are jerks). See generally NEIL R. McMILLEN, *THE CITIZENS' COUNCIL: ORGANIZED RESISTANCE TO THE SECOND RECONSTRUCTION, 1954-64* (1971) (describing the movement of resistance against desegregation).

efficacious approaches, and a few even openly opposed Massive Resistance. Some blacks similarly tried to find relatively conciliatory, effective courses of action. Although a number of blacks pressed for desegregation, numerous blacks were indifferent to or uncomfortable with integration, fearing that whites would retaliate against all blacks for efforts to end segregation. Some blacks apparently preferred to retain traditionally black schools, especially if they were fully funded.

Illustrative of rather moderate, constructive approaches were the endeavors of the Petersburg Improvement Society in searching for common ground and seeking to limit polarization on racial issues. The efforts of the blacks and whites who were involved in this work were laudable and unusual. It is difficult to overestimate the enormous pressures that people and groups that participated in these activities experienced. The slightest deviation from rigid opposition to integration could promptly end the careers of white public officials, teachers, and politicians.<sup>165</sup> Small business owners or attorneys who did not support separate facilities might lose patrons or clients and become social outcasts in the white community.<sup>166</sup>

The sheer number and strength of segregation's proponents overwhelmed these persons and entities. Less moderate individuals and organizations frustrated their efforts. For example, numerous white politicians capitalized on the fears and prejudices of whites who had few resources or who were members of the lower or middle classes. Those whites, together with the remaining middle- and upper-class whites, comprised an electoral majority that usually could defeat the small, but growing, numbers of recently enfranchised blacks. In the end, it was probably unrealistic to expect that whites and blacks would immediately, or even "with all deliberate speed," overcome generations and centuries of ingrained racism, distrust, resentment, fear, and hatred and become fully committed participants in a common endeavor whose ultimate outcome promised to be uncertain.

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165. See, e.g., BARTLEY, *supra* note 14, at 192-93; Douglas, *supra* note 1, at 128; Wilkinson, *supra* note 9, at 500-01.

166. See *infra* notes 182-83 and accompanying text (describing the ostracization of lower federal court judges in the South).

## V. IMPLICATIONS

To identify clearly and precisely all of the ramifications of the ten-year hiatus that ensued between the Supreme Court's issuance of *Brown* and the integration of Virginia's public schools is virtually impossible. The Massive Resistance, delay, tokenism, and evasion practiced by the Virginia General Assembly and by the various city and county school boards enabled many local school districts to avoid any desegregation throughout the entire decade.

On *Brown's* tenth anniversary, the percentage of black students who were attending integrated public schools in Virginia was minuscule and differed minimally from North Carolina. Desegregation in the two states was nearly indistinguishable when one allows for significant variability between the Old Dominion's school districts in metropolitan areas, such as Hampton Roads and Northern Virginia, a number of which were comparatively responsive, and less urban locales, such as Southside Virginia, most of which were resistant. For instance, Norfolk integrated its schools in 1959, while Petersburg did not desegregate until 1963 and then only in a token manner.<sup>167</sup>

All of the implications of the decade-long delay are difficult to delineate exactly; however, the profound actual and symbolic nature of the consequences warrants an attempt to identify them. The passage of ten years without integration had subtle, complex, palpable, and intangible ramifications for individuals, groups, Virginia, and society that affected these people and institutions economically, politically, morally, and socially.

The successful efforts to prevent integration by the General Assembly and the Petersburg School Board left my white classmates and me essentially untouched by *Brown*. The decade-long hiatus allowed many of us to remain ignorant of racial issues, particularly in school, and of black people as individuals. We could only dimly perceive that *Brown's* implementation had been delayed, and we had no sense of the education that our black contemporaries were receiving, much less of their personal lives.

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167. See *supra* notes 49-89 and accompanying text; *supra* part II.B. I recognize that Norfolk desegregated its schools only after lengthy and sharply contested litigation.

I can recall only a tiny number of serious conversations about racial questions during the whole period of my public education, and even fewer in homes, social contexts, or religious institutions. Most persons and entities in Petersburg treated matters of race as taboo subjects for discussion, polite or otherwise, and effectively relegated them to irrelevance. I remember few whites who were troubled that blacks attended schools with limited resources or that state and local authorities were evading *Brown's* promise, while most whites had minimal contact with blacks. Whites who did voice these concerns or who had contact with blacks instantaneously were stigmatized and branded with the epithet "nigger lover."<sup>168</sup>

The ten years that elapsed between the time of *Brown's* issuance and integration meant that the 175 white students in my graduating class received public school educations that were nearly identical to those of their predecessors. The seventy-five pupils who successfully completed the college preparatory courses of study easily gained college admission, and the students who wished to escape the insufferable insularity of a small southern town capitalized on that opportunity. Not a single one of my close high school friends now lives in Petersburg.

I am uncertain what the decade-long delay meant for the black pupils who attended segregated schools, which, despite the mandate of *Brown*, remained separate and unequal during that period.<sup>169</sup> The stalling tactics of the General Assembly and of local school boards limited the promise of economic and social equality, fair treatment, and improved public education that *Brown* represented.<sup>170</sup> So long as Petersburg could maintain segregated schools, the city would spend significantly more on the facilities that whites attended.<sup>171</sup> To the extent that resources constitute a measure of educational quality, black pupils apparently had decreased opportunities to acquire the schooling and skills that they would need to compete in an increasingly

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168. See BARTLEY, *supra* note 14, at 192-93; HODDING CARTER, *THE SOUTH STRIKES BACK* 18 (1959); DOLLARD, *supra* note 135, at 46-48; PRATT, *supra* note 10, at 4.

169. See PRATT, *supra* note 10, at 38; Wilkinson, *supra* note 9, at 485-87.

170. Cf. PRATT, *supra* note 10, at 4-10, 19-30, 54 (discussing stalling tactics).

171. *Id.* at 15 (discussing the lack of funds and concern necessary to equalize black schools with white schools in Richmond).

complex world.<sup>172</sup> Black students simply may have confronted greater obstacles to achieving what ostensibly remains one of America's most cherished dreams: the ability of individuals to realize their fullest potential as citizens.

I believe that all pupils forfeited the benefits that would have resulted from basic, daily educational, political, social, and personal interactions among students of different races. This interplay might have begun the slow, arduous, painful, but critically important, process of breaking down the intractable, centuries-old barriers that implicate race. That erosion had to await comparatively unsystematic interactions in other somewhat less congenial contexts, such as workplaces, the military, commercial dealings, and politics.

Petersburg has not thrived in the period since the integration of the public schools. The decade-long delay and the years of overheated rhetoric may have contributed to, even if they did not precipitate, Petersburg's downward economic spiral. In fairness, the city's financial outlook has not improved since the 1950s, and it is impossible to identify conclusively a direct cause-effect relationship between the fiscal circumstances and what happened during the decade after *Brown*.

Most of the major industrial employers terminated their Petersburg operations or relocated. For example, the Brown and Williamson Tobacco Company, which provided 7000 jobs—some for the 100 white graduates in the Petersburg High School class of 1964 who did not attend college—built a new plant in Macon, Georgia, and invited all employees of the Petersburg facility to relocate to Macon. The corporation wanted to install state-of-the-art equipment and apparently wished to hire a less expensive, more compliant work force. Many of the whites in Petersburg, whose children now comprise less than five percent of the pupils attending public schools, cannot afford to send them elsewhere, while most of the remaining whites provide minimal support for public education.<sup>173</sup>

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172. *Id.* (describing the inferior quality of resources in Richmond's black schools).

173. *Cf.* DOUGLAS, *supra* note 5, at 216 (describing the phenomenon of "white flight" in Charlotte); PRATT, *supra* note 10, at 48-53 (describing the phenomenon of "white flight" in Richmond).



The symbolic effects of the ten-year hiatus may have been nearly as deleterious as the very detrimental, pragmatic impacts.<sup>174</sup> Several harmful effects resulted from the Supreme Court's apparent willingness, out of a perceived need to assuage southern white sensitivities, to undercut *Brown's* moral force.<sup>175</sup> The Court eroded *Brown* by enunciating the "all deliberate speed" formulation,<sup>176</sup> by essentially acquiescing in the South's successful efforts to evade the law and to prevent integration,<sup>177</sup> by abandoning the school desegregation arena for a decade, and by concomitantly leaving enforcement to local, lower-court judges.<sup>178</sup> The Justices undermined the Court's own prestige and power, sharply circumscribed its ability to function as a constructive instrument of social change, and exposed the limitations of purely legal approaches to complicated, controversial societal issues.<sup>179</sup> The Justices also dampened the aspirations of many Americans and dashed the hopes, especially of blacks, that they would receive fair and equal treatment under the law.<sup>180</sup>

## VI. EXPLANATIONS

To ascertain how the Commonwealth of Virginia and the City of Petersburg were able to avoid integration of the public schools during the decade after *Brown* is a complex and subtle task. The coalescence of numerous factors, some of which are related, enabled the Old Dominion, Petersburg, and much of the remainder of the South to resist desegregation for most of the relevant period.

One important explanation is that the Supreme Court essen-

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174. See *supra* note 28.

175. See *supra* note 28.

176. *Brown v. Board of Educ.*, 349 U.S. 294, 301 (1955); see Tushnet & Lezin, *supra* note 28, at 1867.

177. See Carter, *supra* note 28, at 243-44; cf. Burt, *supra* note 28, at 1483 (noting conventional accounts of the Court's acquiescence but arguing that other reasons may have motivated the Court's approach).

178. See BICKEL, *supra* note 28, at 254; Carter, *supra* note 28, at 245-46; Wilkinson, *supra* note 9, at 486, 541.

179. See ROSENBERG, *supra* note 28, at 72-93; Carter, *supra* note 28, at 246.

180. See ROSENBERG, *supra* note 28, at 132-33.

tially left integration to southern circuit and district court judges for the ten years following its announcement of the "all deliberate speed" articulation in *Brown II*.<sup>181</sup> If the Court failed to exhibit the clear, strong resolve, to exercise moral leadership and to afford the instructive guidance that might have led to *Brown's* rigorous effectuation, it is unclear why lower federal court judges would have insisted upon integration's vigorous implementation. After all, those circuit and district judges came out of, and lived and worked in, the same society that had perpetuated segregation for centuries.

Indeed, it is remarkable that so many federal judges, such as Judge Walter Hoffman of Virginia, Judge Frank Johnson of Alabama, and Judges John Minor Wisdom and Skelly Wright of Louisiana had the courage to ensure that *Brown* and the Constitution received rigorous enforcement.<sup>182</sup> Their actions assume even greater significance in light of the enormous pressures that state and local legislative bodies, politicians, lawyers, the media, and society imposed on these judges. Most of the judges received death threats, and a number of their fellow citizens treated them as pariahs.<sup>183</sup>

Another important explanation for Virginia's ability to limit integration during the post-*Brown* decade was a distinct southern mentality.<sup>184</sup> Many white residents of the Old Dominion had never forgotten the South's defeat in the Civil War or the

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181. See Wilkinson, *supra* note 9, at 505-06; see also *id.* at 541 (asserting that "[i]t is a measure of the Supreme Court's inconspicuousness that the most influential school opinions from *Brown II* to *Green v. County School Board* in 1968 were written by two lower federal judges") (citation omitted); *supra* note 33 and accompanying text (noting that the Supreme Court decided only one major case involving desegregation between 1955 and 1963). See generally PELTASON, *supra* note 31 (discussing the role of southern federal judges in school desegregation).

182. See, e.g., JACK BASS, TAMING THE STORM: THE LIFE AND TIMES OF JUDGE FRANK M. JOHNSON, JR., AND THE SOUTH'S FIGHT OVER CIVIL RIGHTS (1993); BASS, *supra* note 111 (discussing Fifth Circuit judges); PELTASON, *supra* note 31 (discussing all southern federal judges); Abner J. Mikva, *Remembering Skelly Wright*, 98 YALE L.J. 211 (1988); *supra* notes 49-89 and accompanying text (discussing Judge Hoffman); *supra* notes 111-12 and accompanying text (discussing Judge Wisdom).

183. See DOUGLAS, *supra* note 5, at 176; Wilkinson, *supra* note 9, at 507; see also Roger K. Newman, *Black and Brown*, 29 U.S.F. L. REV. 635, 642 (1995) (describing ostracization of Supreme Court Justice Hugo Black for participation in *Brown*).

184. See PRATT, *supra* note 10, at 19-20; Wilkinson, *supra* note 9, at 495-505, 512-15.

conflict's aftermath.<sup>185</sup> They remembered the ostensible reason for fighting the war—to maintain that “peculiar institution” of slavery—the perceived humiliation that the North had visited on the South during Reconstruction, the concomitant economic decline that most of the region had long suffered, and the apparent disdain with which much of the remainder of the nation viewed the South.<sup>186</sup> For numerous white Virginians, *Brown's* issuance and its imminent implementation may well have resembled a second Reconstruction imposed by sanctimonious Yankees who maintained schools that were as segregated as many in the Old Confederacy but who claimed to know what was best for backward Southerners.<sup>187</sup>

*Brown* and its effectuation promised to strike at the very essence of the southern way of life for many whites, especially those with limited resources or who were lower or middle class. Particularly feared was the possibility of black “domination in all its forms: political, economic, social, and sexual.”<sup>188</sup> For instance, if blacks registered and voted, they might have elected local office holders, imposed high assessments and taxes on whites, filled the schools and police departments with blacks, and called whites to task before the law.<sup>189</sup>

Desegregated schools raised even more pointedly than voting the prospect of black control.<sup>190</sup> Educated blacks could have been demanding; they would have sought, and might have secured, everything imaginable, including jobs that previously had been the exclusive domain of whites.<sup>191</sup> Too much schooling

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185. See WOODWARD, *supra* note 7, at 170-71.

186. See *id.* at 167-91.

187. See, e.g., CARL M. BRAUER, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION (1977); JEFFRIES, *supra* note 10, at 131-39; PRATT, *supra* note 10, at 1-2. See generally MCMILLEN, *supra* note 164 (examining the history of the Citizens' Council and its resistance to desegregation).

188. Wilkinson, *supra* note 9, at 497; see also PRATT, *supra* note 10, at 29 (“At stake here was a way of life.”).

189. See ALEXANDER HEARD, A TWO-PARTY SOUTH (1952); see also *supra* notes 150-55 and accompanying text (discussing politics in Petersburg). See generally PAUL LEWINSON, RACE, CLASS & PARTY 79-97 (1963) (discussing the disfranchisement of black voters).

190. See Wilkinson, *supra* note 9, at 497.

191. See *id.*; see also Henry L. Gates, Jr., *A Dangerous Literacy: The Legacy of Frederick Douglass*, N.Y. TIMES, May 28, 1995, § 7 (Book Review), at 3 (noting the

would yield employees who were dissatisfied with performing menial labor as domestics or farm workers and who complained about their economic circumstances.<sup>192</sup>

The largest fear—even eclipsing concerns that blacks would dominate politics, education, or employment—was social.<sup>193</sup> The image that struck terror in the hearts of many white Southerners was social interaction between the races. The mere possibility that both white and black students would attend school dances after football games or the junior prom was unthinkable. A contemporaneous account that appeared in the popular magazine *Look* accurately captured these ideas:

[Southerners] will tell you that sooner or later, some Negro boy will be walking his daughter home from school, staying for supper, taking her to the movies . . . and then your Southern friend asks you the inevitable, the clinching question: "Would *you* want your daughter to marry a Nigra . . . ?" [S]exual neurosis makes many white[s] impervious to logic. They are obsessed by the notion that Negroes, given a chance, will take over their women as well as their golf clubs and legislatures.<sup>194</sup>

The white inhabitants of Southside Virginia, in the center of which stood Petersburg, held these attitudes most broadly and fervently.<sup>195</sup> Southside comprised the Commonwealth's black belt.<sup>196</sup> Southside whites fully appreciated that compliance with *Brown* would be most problematic in areas that had the largest black populations<sup>197</sup> and that integration in locales with few blacks eventually could isolate the black belt.<sup>198</sup> Poli-

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disquiet of some abolitionists at Douglass's literary skill).

192. See Wilkinson, *supra* note 9, at 497.

193. See GUNNAR MYRDAL, *AN AMERICAN DILEMMA* 587 (1944); PRATT, *supra* note 10, at 29; Wilkinson, *supra* note 9, at 497.

194. William Attwood, *Fear Underlies the Conflict*, *LOOK*, Apr. 3, 1956, at 26; see ELY, *supra* note 37, at 97 (reproducing similar, but more subtle, statements of Senator Byrd and Governor Almond); Wilkinson, *supra* note 9, at 497 (suggesting that "the driving fear was the least rational, and it was social").

195. See PRATT, *supra* note 10, at 1-4; ROUSE, *supra* note 10, at 9; WILKINSON, *supra* note 22, at 9-22; Wilkinson, *supra* note 9, at 496.

196. See Wilkinson, *supra* note 9, at 496.

197. See PRATT, *supra* note 10, at 4; Wilkinson, *supra* note 9, at 496, 498.

198. See Wilkinson, *supra* note 9, at 496, 498.

ticians from this region, therefore, developed and effectuated a strategy of rigid and absolute statewide opposition to integration.<sup>199</sup> In 1956, Mills Godwin, a Southside state senator who later served two terms as governor, summarized these views: "Integration, however slight, anywhere in Virginia would be a cancer eating at the very life blood of our public school system."<sup>200</sup>

The resistance to integrating public education in Virginia reflected certain economic, social, and geographic realities. It could also be ascribed to some important political practicalities. For instance, Massive Resistance was a central tenet of the Byrd machine, the powerful political organization centered in Virginia's courthouses, that Senator Harry Flood Byrd, Sr., established and perpetuated.<sup>201</sup> Efforts to minimize school integration and to limit black political strength were thus intertwined.

Phenomena relating to class as well could explain the opposition to public school integration. For example, integrated public education did not seriously threaten upper-class whites.<sup>202</sup> Those individuals rarely used public facilities, could afford to send their children to private schools, and had virtually no contact with blacks, so that desegregated education would not jeopardize their prerogatives economically, politically, socially, or in workplaces.<sup>203</sup> In sharp contrast, numerous whites who possessed limited resources or who were members of the lower or middle class, perceived public school integration as a palpable threat to their financial, political, employment, and social circumstances.<sup>204</sup>

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199. *See id.* at 498-99.

200. *27 Backers of Stanley Plan Speak Out at Public Hearing*, RICHMOND TIMES-DISPATCH, Sept. 5, 1956, at 1, 8; *see also* James Latimer, *State Democrats Back Firm Segregation Policy: No Specific Plan Endorsed To Prevent Mixed Schools*, RICHMOND TIMES-DISPATCH, July 28, 1956, at 1 (reproducing a similar statement of Southside Representative William Tuck); *supra* notes 23-24 and accompanying text (noting political opposition to desegregation).

201. *See* WILKINSON, *supra* note 22, at 113-14; *see also supra* notes 23-24 and accompanying text (discussing the "vociferous opposition" to desegregation).

202. *See* PRATT, *supra* note 10, at 29-30.

203. *See id.*

204. *See id.*

Many ideas analyzed above illustrate the inherent limitations that constrain essentially legal approaches to complex societal issues. The Supreme Court's pronouncements, purporting to declare the law of the land and to interpret the Constitution, no matter how forcefully, elegantly, or morally phrased, were, in the final analysis, merely legal statements.<sup>205</sup> Intrinsic restrictions limit what courts can accomplish by only proclaiming changes in the law without careful attention to efficacious implementation and corresponding modifications in political and social attitudes.<sup>206</sup>

The law and legal institutions may not be particularly effective agents of social change, especially implicating issues as complicated and controversial as race and integration.<sup>207</sup> Some of these inherent limitations, pragmatic realities involving the effectuation of *Brown* and of integration, and some political and social practicalities coalesced to undermine the promise of *Brown's* legal holding during the decade following its enunciation.<sup>208</sup>

Indeed, a few of the attorneys who pursued much of the high-profile school and other desegregation litigation and certain individuals who participated in those suits and in activities, such as sit-in demonstrations that were intended to promote integration, recognized the limitations of the law and cases relatively soon after the Court's issuance of *Brown*.<sup>209</sup> For example, Thurgood Marshall appreciated that legal solutions and litigation victories might not foster long-term improvements in society, and this realization and frustration that litigation had become less central to advancing civil rights may even have led him to resign as Director-Counsel of the NAACP Legal Defense

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205. Other commentators have examined the ideas above, particularly in the context of race and desegregation. See, e.g., DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* 51-74 (1987); BICKEL, *supra* note 28, at 68-72, 250-54; ROSENBERG, *supra* note 28, at 72-93; C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 152-53 (3d rev. ed. 1974).

206. See BICKEL, *supra* note 28, at 68-72, 250-54; WOODWARD, *supra* note 205, at 152-53.

207. See BELL, *supra* note 205, at 51-74.

208. See ROSENBERG, *supra* note 28, at 72-93.

209. See TUSHNET, *supra* note 12, at 268, 301-13 (focusing on Thurgood Marshall).

Fund.<sup>210</sup> The contemporaneous statements of blacks who actively participated in endeavors aimed at desegregation are concomitantly replete with allusions to the limited efficacy of law, legal remedies, and litigation.<sup>211</sup>

## VII. CONCLUSION

I have told one story of how the Supreme Court's failure to ensure that *Brown's* mandate received rigorous implementation, in conjunction with Virginia state and local governmental authorities' efforts to prevent public school integration, delayed desegregation for a decade after *Brown*. This Essay has also examined the important consequences of not realizing *Brown's* promise and the way in which this failure happened. The analysis reveals that the Old Dominion's public schools experienced little more integration than did those of North Carolina, even though the Commonwealth couched its rhetoric in more defiant terms and judges scrutinized Virginia's educational system more closely. The Old Dominion did enjoy significantly less economic prosperity than did North Carolina, and the Commonwealth arguably paid for its recalcitrance in terms of foregone financial development. This piece affords a snapshot of the ten-year period subsequent to *Brown* in Virginia and Petersburg. Considerably more research analogous to the valuable work that Professor Douglas has performed remains to be undertaken on issues involving race and public schools in other states and localities during that time and the three decades since 1965.<sup>212</sup>

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210. See *id.*

211. Contemporaneous newspaper accounts of the desegregation fight over the Petersburg Public Library included speeches by numerous blacks warning about these inherent limitations. See, e.g., Tobias, *supra* note 9, at 865-66.

212. Of course, some writers already have undertaken this work, and I have relied on it in this Essay. See, e.g., DOUGLAS, *supra* note 5. Numerous other writers treat these issues broadly or examine specific states or localities briefly. See, e.g., Drew S. Days, III, *The Other Desegregation Story: Eradicating the Dual School System in Hillsborough County, Florida*, 61 FORDHAM L. REV. 33 (1992); Klarman, *supra* note 5. It would be valuable to have additional analyses that concentrate on specific states and localities. Related developments in the North are beyond the scope of this piece; however, they too deserve analysis. See, e.g., RONALD P. FORMISANO, BOSTON AGAINST BUSING: RACE, CLASS, AND ETHNICITY IN THE 1960S AND 1970S (1991); GEORGE R. METCALF, FROM LITTLE ROCK TO BOSTON: THE HISTORY OF SCHOOL DESEGREGATION (1983).