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# BOOK REVIEW

## Charlotte and the American Dilemma

Carl Tobias\*

"Race, today as much as ever, is the American dilemma."<sup>1</sup> Paying homage to Gunnar Myrdal<sup>2</sup> and recognizing nearly four centuries of American history, Professor Davison Douglas tellingly opens his book *Reading, Writing and Race: The Desegregation of the Charlotte Schools (Reading, Writing and Race)*.<sup>3</sup> Professor Douglas comprehensively and perceptively assesses desegregation of the public schools in that moderate southern city during the two-decade period after the United States Supreme Court's 1954 issuance of *Brown v. Board of Education*.<sup>4</sup> His focus is the integration of public education in Charlotte; however, Professor Douglas instructively evaluates many additional issues that principally involve race. *Reading, Writing and Race* ends with an observation that is as sobering as the one with which it begins: "America in the 1990s has by no means resolved the problem of race."<sup>5</sup> Nonetheless, Professor Douglas concludes that the efforts to desegregate the Charlotte public schools show that, "on occasion, both political protest and judicial action have been remarkably effective in forging the convergence of white and black interests necessary to secure the full promise of racial equality."<sup>6</sup>

In this Review, I first descriptively analyze *Reading, Writing and Race*. The Review then emphasizes Professor Douglas's valuable contributions in numerous important areas. I next pose a number of difficult, and perhaps unanswerable, questions primarily implicating race, most of which *Reading, Writing and Race* expressly addresses and others of which the book implicitly treats. These queries are meant to encourage continuing dialogue and to suggest promising avenues for future exploration.

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\* Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas. I wish to thank Peggy Sanner and Hank Waters for valuable suggestions, Cecelia Palmer and Charlotte Wilmerton for processing this piece, as well as the Harris Trust and the Rogers Foundation for generous, continuing support. Errors that remain are mine.

1. DAVISON M. DOUGLAS, *READING, WRITING AND RACE: THE DESEGREGATION OF THE CHARLOTTE SCHOOLS I* (1995).

2. See GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1944).

3. See *id.*

4. 347 U.S. 483 (1954).

5. DOUGLAS, *supra* note 1, at 254.

6. *Id.*

I. DESCRIPTIVE ANALYSIS OF *READING, WRITING AND RACE*

The initial chapter of *Reading, Writing and Race* includes a brief discussion of the nearly century-long history, following the Civil War, of separate and unequal public education in North Carolina and the few essentially unsuccessful efforts to challenge this system.<sup>7</sup> Professor Douglas devotes the remainder of *Reading, Writing and Race* to assessing the developments respecting desegregation that ensued principally in Charlotte during two periods, each of which lasted approximately a decade in the years following the 1954 *Brown* decision.<sup>8</sup>

Professor Douglas suggests that the first ten or fifteen years subsequent to *Brown*'s issuance were characterized by token integration and by the Supreme Court's effective abandonment of the public school desegregation field.<sup>9</sup> Moreover, direct action protest, as well as Congress and the executive branch, was more responsible than litigation for the desegregation that occurred. The succeeding decade witnessed substantially increased integration and greater responsiveness of the Supreme Court and lower federal courts to desegregation lawsuits. The federal legislative and executive branches concomitantly evinced decreasing receptivity and even hostility to integration.

*Reading, Writing and Race* shows that North Carolina and Charlotte, unlike many states and cities in the remainder of the South, charted and pursued courses of action that they intended to appear moderate during the period immediately following the Court's decision in *Brown*.<sup>10</sup> For example, most of North Carolina's political leaders initially reacted to *Brown* in reserved ways, and the tenor of these responses strikingly contrasted with the defiant rhetoric that public figures elsewhere employed in denouncing the Supreme Court.<sup>11</sup> Moreover, North Carolina enacted relatively few school laws relating to race; some of the statutes, such as those passed by the legislature addressing school closing measures, were primarily intended as safety valves and were never invoked.<sup>12</sup> Charlotte was correspondingly one of the first southern cities to desegregate public education, albeit in a limited manner.

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7. *Id.* at 6-24.

8. *Id.* at 25-244.

9. *See id.* at 25-106; *see also* J. Harvie Wilkinson, III, *The Supreme Court and Southern School Desegregation, 1955-1970: A History and Analysis*, 64 VA. L. REV. 485, 505 (1978).

10. DOUGLAS, *supra* note 1, at 25-49; *see also* Carl Tobias, *Public School Desegregation in Virginia During the Post-Brown Decade*, 37 WM. & MARY L. REV. 1261, 1265-72 (1996) (discussing the more extreme response to *Brown* in Virginia).

11. *See* DOUGLAS, *supra* note 1, at 25-26.

12. *See id.* at 31-33, 44-45. *See generally* ROBBINS L. GATES, *THE MAKING OF MASSIVE RESISTANCE* 62-65 (1965) (discussing a similar situation in Virginia).

Direct political action and the efforts of Congress and the executive branch were more important than courts and litigation to desegregation efforts in Charlotte during the initial ten to fifteen years following *Brown's* issuance. The Charlotte School Board apparently undertook early token integration to forestall the prospect of greater desegregation and to minimize possible violence, as well as judicial scrutiny, which attended integration of other school systems.<sup>13</sup> Political pressure and the threat of demonstrations in Charlotte concomitantly led the city's merchants to desegregate public accommodations, such as restaurants and hotels, before many other municipalities took similar action.<sup>14</sup> Charlotte's political and business leadership persuaded these establishments' proprietors to integrate for similar reasons, such as the desire to avoid potential violence and to appear moderate. The two federal cases seeking greater integration pursued by litigants in Charlotte between 1960 and 1965 were consequently unsuccessful.<sup>15</sup>

Direct action protest in Charlotte and elsewhere in the United States eventually led Congress during the mid-1960s to pass civil rights legislation, whose rigorous executive-branch enforcement significantly accelerated the pace of desegregation.<sup>16</sup> For example, the Department of Health, Education and Welfare threatened to cut off federal funding of school districts that maintained dual systems, and many school districts in the South responded by increasing integration.<sup>17</sup>

Professor Douglas attributes the moderate posture assumed by North Carolina and Charlotte to several factors.<sup>18</sup> He suggests that the business, political, and legal elites who led the state and city apparently recognized that strident opposition was futile and eschewed defiance, while they understood the value of looking restrained and believed that token integration would restrict judicial intervention and limit integration. The leaders seemed to appreciate that North Carolina's retention of its reputation for moderation in matters of race, as well as its reputation for good public schools and its appearance as a racially harmonious society, was important to maintaining fiscal growth and attracting economic

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13. See DOUGLAS, *supra* note 1, at 106.

14. See *id.* at 105-06.

15. See *id.* at 107, 115-19.

16. See *id.* at 113-14 (discussing the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 28 U.S.C. § 1447 (1994) and 42 U.S.C. §§ 1971, 1975a to 1975d, 2000a to 2000h-6 (1994)); see also ANDREW KULL, *THE COLOR-BLIND CONSTITUTION 177-78* (1992) (discussing the impact of the Civil Rights Act of 1964 on school desegregation). See generally James R. Dunn, *Title VI, the Guidelines and School Desegregation in the South*, 53 VA. L. REV. 42 (1967).

17. See DOUGLAS, *supra* note 1, at 113-14.

18. See *id.* at 25-83. See generally BENJAMIN MUSE, *TEN YEARS OF PRELUDE: THE STORY OF INTEGRATION SINCE THE SUPREME COURT'S 1954 DECISION* (1964).

development. Moreover, much of the state's financial and political power was concentrated in the Piedmont region, where comparatively few African Americans lived, rather than in the so-called "Black Belt" of eastern North Carolina, and the Tar Heel state had fewer counties in which African Americans constituted a majority than most other southern jurisdictions.<sup>19</sup>

The manner in which Charlotte and North Carolina proceeded proved very "successful" in realizing the goals that many political and business leaders and most white residents apparently wanted to attain during the first decade after *Brown*.<sup>20</sup> Charlotte, by practicing token integration, managed to seem moderate on racial issues as well as to limit judicial scrutiny and significant desegregation of public education in the city. North Carolina's schools experienced less integration than those of its defiant neighbors, such as Virginia and South Carolina, in this period.<sup>21</sup> Charlotte's and North Carolina's retention of their reputations for racial harmony and moderation enabled both the municipality and the state to enjoy enhanced economic growth.

*Reading, Writing and Race* shows that very different circumstances obtained during the time from approximately the mid-1960s until the mid-1970s. For example, Charlotte's white political and business leadership and many other white citizens were initially ambivalent about, or opposed to, the possibility of more than token integration, especially the prospect that white children would be bused to schools in African-American neighborhoods.<sup>22</sup> Moreover, the Charlotte School Board resisted efforts, namely the *Swann*<sup>23</sup> school desegregation litigation, that sought additional integration.

The *Swann* litigation eventually led to increased integration, and many whites subsequently realized that equally sharing integration's benefits and disadvantages was fairer. Litigation and the federal courts, therefore, became rather successful avenues for seeking and securing more than token integration.<sup>24</sup> Congress and the executive branch, perhaps reflecting the national mood, were considerably less responsive to additional integration.<sup>25</sup>

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19. See DOUGLAS, *supra* note 1, at 41-43; see also Wilkinson, *supra* note 9, at 496 (suggesting the "Black Belt" was named partly for its substantial African-American population and partly for the "dark, rich soil that once supported the plantation aristocracy and its slaves"). See generally V.O. KEY, *SOUTHERN POLITICS IN STATE AND NATION* (1949). In light of these factors, Charlotte's white citizenry probably found public school integration less threatening.

20. See DOUGLAS, *supra* note 1, at 25-49.

21. See *id.* at 36-41, 48-49; see also Tobias, *supra* note 10, at 1297 (discussing integration in Virginia during the first decade following *Brown*).

22. See DOUGLAS, *supra* note 1, at 162-71.

23. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

24. See *id.* at 190-214.

25. See *id.* at 153, 162-63.

The Charlotte public school desegregation suit was critical because it became the focal point of national controversy and debate over the advisability and efficacy of various measures, particularly busing, for achieving enhanced integration in urban areas.<sup>26</sup> The African-American plaintiffs and their counsel, Julius Chambers, skillfully and persistently pursued increased integration by developing and presenting a convincing case that Charlotte's school desegregation efforts had been inadequate. Professor Douglas shows how Chambers fashioned innovative legal theories, proffered creative forms of possible relief, and supplied relevant factual predicates to support the plaintiffs' view of the law.

*Reading, Writing and Race* correspondingly examines the significant role played by United States District Judge James McMillan, who heard the suit.<sup>27</sup> The book demonstrates how the jurist was extremely sensitive to his constitutional duties as a federal judge and diligent about enforcing what he thought the Constitution required of the defendants while being responsive to the plaintiffs' constitutional claims and creative in exercising his equity powers. Judge McMillan also assiduously refrained from dictating to the school board, even as he doggedly encouraged it to adopt a workable desegregation plan with the assistance of a citizen's advisory group.<sup>28</sup>

In addition to the litigation's careful handling by Julius Chambers and its effective resolution by Judge McMillan, Professor Douglas analyzes numerous phenomena that explain the success that Charlotte ultimately achieved when integrating its schools. The author suggests that the city's success can be attributed partly to the community's overarching commitment to high-quality public education and to many residents' sense of fair play, which required that the burdens and benefits of integration be equitably distributed.<sup>29</sup>

*Reading, Writing and Race* claims that African-American litigants and individuals were able to secure in court a fully integrated school system, a result which they could never have achieved in the streets or in Congress or through the executive branch, institutions that had become decreasingly responsive to integration efforts.<sup>30</sup> Charlotte's success in terms, for example, of students' test scores, the avoidance of white flight, public commitment to better schools, and acceptability of integration contrasted with most other cities.<sup>31</sup>

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26. *See id.* at 162-214.

27. *Id.* at 131.

28. *See id.* at 236-39.

29. *See id.* at 215-44.

30. *Id.* at 254.

31. *See id.* at 244-54.

## II. CONTRIBUTIONS OF READING, WRITING AND RACE

Professor Douglas enhances the understanding of many important developments principally involving public school desegregation and ensuing during the two decades following *Brown*. *Reading, Writing and Race* supplements, complements and corroborates a valuable, growing corpus of research in numerous significant fields implicating, for instance, civil rights, public law litigation, and integration. The book, therefore, can be profitably compared with this body of work. Professor Douglas's intensive exploration of public school desegregation in a moderate southern city can also be productively contrasted with similar accounts that examine less successful efforts elsewhere. For example, several observers have carefully recounted the violence that attended desegregation in Little Rock and Boston<sup>32</sup> and the white flight that accompanied integration in Richmond.<sup>33</sup>

### A. *Desegregation Litigation During the Post-Brown Period*

#### 1. Introduction

One critical area in which *Reading, Writing and Race* increases comprehension involves southern federal judges' treatment of desegregation litigation during the post-*Brown* period. There is considerable, instructive work on how these circuit and district court judges handled those cases in the first decade after *Brown*'s issuance when the Supreme Court had effectively abandoned the field and afforded the judges little specific guidance. For instance, the very title, *Fifty-Eight Lonely Men*, of Jack Peltason's 1961 classic accurately captures the jurists' professional and personal circumstances in the years immediately following *Brown*.<sup>34</sup> His analysis also shows how most judges' reluctance to apply the decision's mandate rigorously or to read the opinion generously was partly responsible for the delayed realization of *Brown*'s promise during this period. In contrast, Jack Bass's biography of Judge

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32. See RONALD P. FORMISANO, *BOSTON AGAINST BUSING: RACE, CLASS, AND ETHNICITY IN THE 1960S AND 1970S passim* (1991); TONY FREYER, *THE LITTLE ROCK CRISIS: A CONSTITUTIONAL INTERPRETATION passim* (1984); GEORGE R. METCALF, *FROM LITTLE ROCK TO BOSTON: THE HISTORY OF SCHOOL DESEGREGATION passim* (1983).

33. See JOHN CALVIN JEFFRIES, JR., *JUSTICE LEWIS F. POWELL, JR.* 140-50, 308-18 (1994); ROBERT A. PRATT, *THE COLOR OF THEIR SKIN: EDUCATION AND RACE IN RICHMOND, VIRGINIA 1954-89*, at 40-55 (1992).

34. J. W. PELTASON, *FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION* (1961).

Frank Johnson<sup>35</sup> and Bass's portrait of four members of the Fifth Circuit<sup>36</sup> demonstrate that some judges vigorously enforced the Constitution and the *Brown* decision between 1954 and 1966.

Professor Douglas's account is particularly helpful because authors have undertaken fewer evaluations of how judges resolved desegregation litigation in the second decade after *Brown*.<sup>37</sup> Judicial treatment of these cases was crucial because by the mid-1960s there was relatively substantial consensus that de jure segregation must cease. Nonetheless, considerable disagreement remained over the precise amount of de facto integration that was appropriate and over how quickly and how best to attain it. The focal points for addressing integration shifted from direct political action and the federal legislative and executive branches to litigation and federal courts. These changes occurred with the Supreme Court's reentry into the desegregation field and its new willingness to enforce *Brown* rigorously, as well as with the growth of public resistance and concomitant political branch opposition to measures, namely busing, that were intended to enhance integration.

## 2. Judge McMillan and the *Swann* Litigation

Professor Douglas thoroughly analyzes Judge McMillan's handling of the Charlotte public school desegregation litigation, *Swann v. Charlotte-Mecklenburg Board of Education*.<sup>38</sup> *Reading, Writing and Race* emphasizes the judge's unwavering dedication to discharging faithfully and comprehensively his constitutional responsibilities and to enforcing and implementing strictly his understanding of what the Constitution demanded in the suit.<sup>39</sup>

The book shows how the jurist artfully wove together diverse, relevant strands of legal doctrine and applied that law to the facts. Professor Douglas explores how Judge McMillan harmonized the Fourteenth Amendment's generalized commands; the relevant Supreme Court desegregation jurisprudence, including often terse, somewhat inapt, and vacillating pronouncements; the applicable Fourth Circuit precedent; and

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35. See JACK BASS, *TAMING THE STORM: THE LIFE AND TIMES OF JUDGE FRANK M. JOHNSON, JR., AND THE SOUTH'S FIGHT OVER CIVIL RIGHTS* (1993) [hereinafter BASS, *TAMING THE STORM*].

36. See JACK BASS, *UNLIKELY HEROES* (1981) [hereinafter BASS, *UNLIKELY HEROES*].

37. Authors have tended to emphasize litigation in the first decade after *Brown*. See BASS, *UNLIKELY HEROES*, *supra* note 35; FREYER, *supra* note 32; PELTASON, *supra* note 34.

38. 402 U.S. 1 (1971); DOUGLAS, *supra* note 1, at 107-89. See generally BERNARD SCHWARTZ, *SWANN'S WAY: THE SCHOOL BUSING CASE AND THE SUPREME COURT* (1986).

39. DOUGLAS, *supra* note 1, at 158-61.

the pertinent federal and state legislative activity.<sup>40</sup> More specifically, *Reading, Writing and Race* examines the judge's careful adaptation of the Supreme Court's *Green* decision,<sup>41</sup> which treated public education's integration in a rural setting, to an urban school system.<sup>42</sup>

The book also describes how Judge McMillan considered, organized, and applied voluminous, relevant factual information in *Swann*. For instance, the judge scrutinized the more than one-hundred schools in the Charlotte-Mecklenburg School District and their respective locations, as well as the percentages of white and African-American students and teachers at each educational facility, in searching for a resolution that would vindicate the plaintiffs' constitutional rights and be thorough, fair, and workable.<sup>43</sup>

Professor Douglas explains how Judge McMillan encountered few problems recognizing the plaintiffs' rights and their violation but experienced considerable difficulty in granting and crafting effective relief, especially when attempting to solve efficaciously the vexing complications of implementation.<sup>44</sup> *Reading, Writing and Race* focuses on the school desegregation plan as the centerpiece of the remedial regime prescribed, tracing in detail the developments that led to its adoption. Readers learn of the many complex specifics that attended the painstaking effort to fashion a satisfactory plan. These particulars are as theoretical as applying the general phrasing of the Equal Protection Clause in the public school desegregation context and as pragmatic as locating enough buses that could transport children to their respective schools when attempting to achieve the optimal level of pupil mixing.

Professor Douglas shows how Judge McMillan persistently and carefully urged the Charlotte-Mecklenburg School Board to suggest a satisfactory plan, one that would pass constitutional muster; safeguard the rights and interests of litigants and non-parties; and be sufficiently workable and garner the requisite public acceptance to succeed.<sup>45</sup> *Reading, Writing and Race* demonstrates how the judge meticulously attempted to avoid even the appearance of proposing a specific result, usurping the Board's prerogatives, or interfering with the schools' operations, much less

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40. See *id.* at 130-89; see also *Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19 (1969) (addressing integration of Mississippi schools); *Nesbit v. Statesville City Bd. of Educ.*, 418 F.2d 1040 (4th Cir. 1969) (addressing integration of North Carolina and Virginia schools).

41. *Green v. County Sch. Bd.*, 391 U.S. 430 (1968) (ordering integration in rural Virginia).

42. See DOUGLAS, *supra* note 1, at 130-61. See generally Sanford Jay Rosen, *Judge Sobeloff's Public School Race Decisions*, 34 MD. L. REV. 498, 525-26 (1974) (discussing the impact of Judge Sobeloff's public school race decisions).

43. See DOUGLAS, *supra* note 1, at 175-76.

44. See *id.* at 150-61.

45. See *id.*

administering them. When the city-county school board failed to adopt an acceptable plan, Judge McMillan rejected several requests by the plaintiffs' counsel that he hold the board in contempt, even though it might have deserved to be found in contempt.<sup>46</sup>

*Reading, Writing and Race*, therefore, constitutes an extensive study of possible remedies that were available in desegregation litigation, including the busing mechanism, a widely used, but highly controversial, technique. Professor Douglas affords perceptive insights into the theory and practice of busing, particularly its complex politics. "The School Busing Storm Comes to Charlotte," one chapter's title, aptly characterizes how Charlotte became the crucible for an impassioned national debate that was contemporaneously raging.<sup>47</sup> *Reading, Writing and Race* explores the highly charged emotions that busing evoked and the various responses, ranging across a broad spectrum that encompassed fervent opposition to and avid support of the prospect of busing by individuals and entities in the community. Professor Douglas examines the efforts of Charlotteans to resolve the controversy surrounding busing, to seek effective compromise, and to draft and implement a desegregation plan that would fairly allocate integration's benefits and disadvantages. *Reading, Writing and Race* can, thus, be usefully compared with a volume on school busing that Professor Douglas recently edited<sup>48</sup> and with much work in this area and related fields.<sup>49</sup>

### 3. School Desegregation Litigation as Public Law Litigation

*Reading, Writing and Race* provides a valuable assessment of public school desegregation cases as the quintessential type of public law litigation in a discrete context. Scholars have found *Brown* intriguing as

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46. See *id.* at 166. Professor Douglas's analysis of Judge McMillan's resolution of *Swann*, therefore, warrants comparison with evaluations of how other district judges, such as Frank Johnson and Robert Merhige, handled school desegregation cases. Compare DOUGLAS, *supra* note 1, with BASS, TAMING THE STORM, *supra* note 35 (discussing Judge Johnson); PRATT, *supra* note 33 (discussing Judge Merhige); and Ronald J. Bacigal & Margaret I. Bacigal, *A Case Study of the Federal Judiciary's Role in Court Ordered Busing: The Professional and Personal Experiences of U.S. District Judge Robert R. Merhige, Jr.*, 3 J.L. & Pol. 693 (1987) (discussing Judge Merhige).

47. See DOUGLAS, *supra* note 1, at 162-89.

48. See SCHOOL BUSING: CONSTITUTIONAL AND POLITICAL DEVELOPMENTS (Davison M. Douglas ed., 1994).

49. See DAVID J. ARMOR, FORCED JUSTICE: SCHOOL DESEGREGATION AND THE LAW 154-210 (1995); LINO A. GRAGLIA, DISASTER BY DECREE: THE SUPREME COURT DECISIONS ON RACE AND THE SCHOOLS 160-202 (1976); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 39-169 (1991).

the progenitor of this form of modern litigation.<sup>50</sup> Yet, *Brown* was a rarified, cryptic Supreme Court pronouncement that spoke at a high level of abstraction and generality and offered minimal guidance for achieving integration.

Professor Douglas's analysis of the *Swann* lawsuit, particularly Judge McMillan's handling of the case, illustrates many important, pragmatic attributes of public law litigation in a concrete setting. *Reading, Writing and Race* evaluates Judge McMillan's creative exercise of the enormous power and broad judicial discretion, especially in fashioning relief, which are available to a court sitting in equity.<sup>51</sup> More specifically, the judge considered all relevant information and provided for expression of the maximum possible viewpoints, including those of individuals and entities that were non-parties, while he was attentive to important public values that were at stake in the litigation. Furthermore, Judge McMillan carefully forged a link between the plaintiffs' rights and the remedy granted, crafting relief that honored these rights and was workable at an operational level in terms, for instance, of public acceptability.

*Reading, Writing and Race* also assesses Judge McMillan's employment of numerous unusual procedures. For example, the judge met ex parte with lawyers and parties on both sides of the case;<sup>52</sup> with people and organizations interested in, and potentially affected by, the suit;<sup>53</sup> and with newspaper officials to plan strategy for informing the public about the litigation.<sup>54</sup> Moreover, Judge McMillan called, as witnesses, advocates and opponents of various desegregation plan provisions to solicit their views and afford them an opportunity to be heard; freely questioned experts and others who testified for each side in the *Swann* case; and ultimately placed substantial reliance on the plaintiffs' expert witness in drafting and implementing a plan.<sup>55</sup>

Professor Douglas correspondingly shows how Judge McMillan seemed to exhibit a keen sense of the controversial, delicate nature of equitable relief, or so-called "government by decree,"<sup>56</sup> and of the need for public acceptability, even as he would not allow public opinion to influence

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50. See, e.g., ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* 68-72, 250-54 (1962); ROSENBERG, *supra* note 49, at 39-169. See generally RICHARD KLUGER, *SIMPLE JUSTICE* (1976) (discussing the history of *Brown*); RAYMOND WOLTERS, *THE BURDEN OF BROWN* (1984).

51. DOUGLAS, *supra* note 1, at 130-89.

52. See *id.* at 186-87.

53. See *id.* at 146-47.

54. See *id.* at 147-48.

55. See *id.* at 173-89.

56. See, e.g., GRAGLIA, *supra* note 49 (discussing the effect of judicial school desegregation efforts); ROSENBERG, *supra* note 49 (discussing judicial efforts to address various social issues).

his view of the Constitution.<sup>57</sup> The judge displayed a remarkable willingness to explain candidly at various public gatherings his perspectives on the desegregation litigation and his understanding of what the Constitution required, despite strong public opposition.

*Reading, Writing and Race* thus contributes significantly to comprehension of modern public law litigation. The book enhances appreciation of many attributes of the suits, such as the judge's enlarged role and responsibility; the questions of legitimacy that the great power and discretion, which a judge can exercise, raise; and the potential for conflicts between the levels and branches of government. Professor Douglas's book, therefore, deserves comparison with other works that both praise and criticize this controversial, but institutionalized, form of litigation.<sup>58</sup>

#### 4. Judge McMillan and Other Southern Federal Judges

Professor Douglas paints a poignant portrait of Judge McMillan who was resolutely committed to, and never deviated from, implementing his constitutional duties or applying and effectuating, especially through the exercise of broad equity powers, his interpretation of what the Constitution mandated. Judge McMillan persisted even in the face of strong public resistance and of arguable claims that he misunderstood the judicial role or misread the Constitution, assertions that critics attempted to substantiate by comparing Judge McMillan's actions with those of other southern judges who were less willing to order integration.<sup>59</sup>

Professor Douglas demonstrates that Judge McMillan was one of a few federal judges in the South who attempted to guarantee the rigorous enforcement of *Brown* and the Constitution by requiring greater integration, for instance, than the local white populace apparently wanted.<sup>60</sup> These judges' resolution of desegregation cases provoked staunch opposition among certain elements of the media and numerous white citizens and politicians while prompting criticism from a number of attorneys and many lay people.<sup>61</sup> Most of the judges experienced threats to their lives and were professionally and personally ostracized.<sup>62</sup> Professor Douglas's examination of Judge McMillan can thus be productively compared with similar assessments of Judge Frank Johnson and Judge

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57. See DOUGLAS, *supra* note 1, at 146-47.

58. See, e.g., GRAGLIA, *supra* note 49 (criticizing litigation); Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976) (praising litigation).

59. See DOUGLAS, *supra* note 1, at 167-70.

60. See *id.* at 176-84.

61. See *id.* at 141-45.

62. See *id.* at 188.

Robert Merhige and the four Fifth Circuit judges who wrote opinions requiring desegregation or increased integration.<sup>63</sup>

## 5. Desegregation Litigation Strategy

Professor Douglas offers instructive insights into the litigation strategy pursued by the NAACP and Julius Chambers, who was the lead attorney for the plaintiffs in *Swann* and subsequently became the organization's Director-Counsel. *Reading, Writing and Race* analyzes Chambers's skillful planning and execution of the *Swann* suit.<sup>64</sup> Professor Douglas examines how Chambers deftly steered a course through Supreme Court and Fourth Circuit precedent that often was not clearly apposite or was in flux. Chambers fashioned new legal theories and possible remedies or recalibrated traditional ones, meticulously developed and supplied supporting facts, and effectively deployed expert witnesses. He also capitalized on Judge McMillan's receptivity to the plaintiffs' constitutional claims, as well as his willingness to employ broad equity powers and his capacity for creativity.<sup>65</sup> *Reading, Writing and Race* considers Chambers's single-minded pursuit of complete, efficacious relief for plaintiffs, even in the face of vociferous public opposition and physical violence in the form of bombings of his office and his home.<sup>66</sup>

Professor Douglas affords a perceptive account of the NAACP Legal-Defense-Fund (LDF) strategy to desegregate public schools and its implementation in one significant southern city.<sup>67</sup> An important example is his examination of the NAACP's integrationist goals and the entity's emphasis on litigation as the primary instrument for achieving those objectives. *Reading, Writing and Race* explores the disagreement in the African-American community, particularly in Charlotte, over increased integration's advisability and over how to attain greater integration.<sup>68</sup> Some African Americans seemingly opposed efforts to secure more integration or opposed reliance on the tactic of litigation because they may have been reluctant to challenge the white power structure.<sup>69</sup> Other African

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63. See BASS, TAMING THE STORM, *supra* note 35, at 124-27 (discussing Judge Johnson); BASS, UNLIKELY HEROES, *supra* note 35, at 15-25 (discussing four Fifth Circuit judges); PRATT, *supra* note 33, at 96-99 (discussing Judge Merhige). See generally Bacigal & Bacigal, *supra* note 46 (discussing Judge Merhige).

64. DOUGLAS, *supra* note 1, at 136-40, 150-52, 157-60.

65. See *id.* at 134.

66. *Id.* at 120-23.

67. See *id.* at 61-63, 77-80, 130.

68. *Id.* at 154-56.

69. See *id.* at 196-97; see also Tobias, *supra* note 10, at 1296 (noting some African Americans feared broad retaliation in response to desegregation efforts).

Americans might have wanted to retain their own schools or might have found preferable separate African-American schools, if they had adequate funding.<sup>70</sup> Even a number of African Americans who subscribed to the NAACP's integrationist agenda disagreed with the organization over its focus on litigation and believed, for instance, that direct action protest was more efficacious.

Professor Douglas's treatment, therefore, can be profitably compared with additional analyses of the LDF's goals and its dependence on litigation and with analyses of efforts to integrate elsewhere. For example, *Reading, Writing and Race* effectively complements Professor Mark Tushnet's valuable work on the NAACP's national desegregation strategy.<sup>71</sup> Moreover, Professor Douglas's examination of Charlotte deserves comparison with analogous studies in other cities, such as Little Rock and Richmond, where integration proved less successful.<sup>72</sup> *Reading, Writing and Race* also contributes to longstanding debates over the advisability of "integration" and of "separatism," involving, for instance, race, gender and sexual preference, and to debates over the relative efficacy of methods for achieving the objectives of proponents of various goals.<sup>73</sup>

## 6. Additional Participants in Charlotte Desegregation Litigation

Professor Douglas offers valuable descriptions of numerous individuals and institutions that participated in the unfolding drama of public school desegregation in Charlotte. For example, in addition to the federal court and the Charlotte School Board, readers learn about an organization of residents who assembled in an effort to oppose busing, particularly by electing candidates to the Board.<sup>74</sup> *Reading, Writing and Race* also emphasizes the formation and work of a citizen advisory group that was instrumental in forging consensus on, and galvanizing public acceptance

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70. See DOUGLAS, *supra* note 1, at 89-99, 196-97; *cf. id.* at 19-23 (suggesting some African Americans were concerned about securing greater resources for traditionally African-American schools at the college level).

71. See MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961* (1994); MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* (1987); see also JACK GREENBERG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (1994) (discussing the history and importance of the NAACP Legal Defense and Educational Fund); ROSENBERG, *supra* note 49, at 39-169 (discussing the events surrounding *Brown*).

72. See FREYER, *supra* note 32 (discussing Little Rock); PRATT, *supra* note 33 (discussing Richmond); see also SCHWARTZ, *supra* note 38 (briefly analyzing integration in Charlotte in treatment devoted mainly to the Supreme Court and the *Swann* opinion).

73. See, e.g., MARY DALY, *GYN/ECOLOGY: THE METAETHICS OF RADICAL FEMINISM* (1978); MALCOLM X, *THE AUTOBIOGRAPHY OF MALCOLM X* (1977).

74. See DOUGLAS, *supra* note 1, at 144, 184-85.

of, school integration and busing by supporting an inclusive membership and soliciting and seriously considering the views of all affected interests.<sup>75</sup>

Professor Douglas evaluates the important role that the *Charlotte Observer*, the major local newspaper, played in influencing public opinion and helping to facilitate integration, especially in easing the transition from a dual to a unitary school system.<sup>76</sup> For instance, *Observer* officials worked closely with Judge McMillan to increase community acceptance of integration by writing editorials that supported the judge's rulings and by meeting with him to determine what information involving *Swann* should be publicized.

*Reading, Writing and Race* paints vivid portraits of several individuals, in addition to those of Judge McMillan and Julius Chambers, which I discussed earlier, who were involved in Charlotte desegregation activities. For example, Professor Douglas describes Reginald Hawkins, a leader of the African-American community, whose willingness to employ direct political action led to substantial desegregation, particularly of public facilities, such as hospitals.<sup>77</sup> *Reading, Writing and Race* also explores the endeavors of William Poe, who was the school board chair and the frequent adversary of Julius Chambers and Judge McMillan in *Swann*.

## B. Additional Contributions

### 1. Legal and Other Factors Affecting Discrimination

Professor Douglas substantially enhances comprehension of why racial discrimination seems so ingrained in American society. He describes how discrimination infected many facets of daily existence in Charlotte, epitomizing the longstanding southern way of life and permeating the local culture. By relating the story of African-American residents' fight against racial discrimination in public education, *Reading, Writing and Race* shows that the complex web of discrimination extended far beyond the rather narrow, but crucial, confines of the public schools.

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75. *Id.* at 238-44. Professor Douglas also describes the important role that the North Carolina Institute of Government played when a University of North Carolina law professor set the tone for moderation by assembling an early balanced study of *Brown* and public school desegregation. The effort in North Carolina can be usefully contrasted with less successful endeavors in other states, such as Virginia. Compare DOUGLAS, *supra* note 1, at 25-49, with Tobias, *supra* note 10, at 1266-71.

76. See DOUGLAS, *supra* note 1, at 58-59, 97-100, 147-49, 182-83; see also Garrett Epps, *The Littlest Rebel: James J. Kilpatrick and the Second Civil War*, 10 CONST. COMM. 19 (1993) (discussing constitutional arguments that purported to justify segregationist politicians' use of the power of state government to frustrate the implementation of *Brown*).

77. See DOUGLAS, *supra* note 1, at 89-105, 120-23, 147-52, 173-74, 213-19, 233-35.

Professor Douglas trenchantly illustrates how a subtle, complicated mix of laws and legal institutions, as well as societal practices and understandings, historically played critical roles in contributing to, reinforcing, and maintaining racial discrimination. For example, *Reading, Writing and Race* demonstrates how Jim-Crow segregation statutes, which governed voting—as well as the laws and related legal requirements and societal practices that covered public and private accommodations, employment, and housing—were responsible for and perpetuated discrimination.<sup>78</sup>

More specifically, when Judge McMillan attempted to craft a remedy for the plaintiffs in the public school desegregation case, he confronted, and had to treat, the polycentric problem posed by a pervasive array of closely related indicia of discrimination.<sup>79</sup> These phenomena encompassed governmental and private racially discriminatory practices that applied to the transfer of private residences and similar policies that involved the siting of public housing and public schools.<sup>80</sup> They led to and preserved racially homogeneous neighborhoods and seriously complicated efforts to formulate effective relief, requiring, for instance, that the judge order extensive busing to secure meaningful integration.

Professor Douglas also shows how a panoply of societal practices and understandings apparently had at least as much responsibility as law and legal institutions for creating and sustaining discrimination. Illustrative is Charlotte's long, tortured history of housing discrimination, which is mentioned in the paragraph above.<sup>81</sup> Numerous phenomena at the same and different times contributed to racially homogeneous patterns of residential living.<sup>82</sup> These included governmental discrimination embodied in federal housing loans and urban renewal projects and in local governmental platting, zoning and siting of public housing. They also encompassed private discrimination in the form of restrictive covenants, the construction of suburban subdivisions, and realtors' practices, such as redlining and sales premised on race, as well as economic realities, namely financial restraints that precluded many African Americans from purchasing certain residences.

*Reading, Writing and Race* affords additional examples of how numerous factors, which were unrelated to law, fostered and perpetuated

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78. DOUGLAS, *supra* note 1, at 82-106.

79. *See id.* at 50-55, 89-93; *see also* Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 394-404 (1978) (analyzing polycentricity).

80. *See* DOUGLAS, *supra* note 1, at 51-55, 62-63, 89-93, 111-15.

81. *See id.* at 51-55; *see also supra* notes 43-44 and accompanying text.

82. *See* DOUGLAS, *supra* note 1, at 62-63, 89-93, 111-15.

racial discrimination. Segregation was prevalent in many private contexts, such as workplaces, clubs, recreational facilities, and religious institutions. The inability of many American localities to integrate their schools successfully, even after federal judges had ordered integration, similarly attests to the strength of social practices and understandings apart from law and legal institutions.<sup>83</sup>

Professor Douglas, therefore, demonstrates certain limitations of law, litigation, and legal solutions in reducing racial discrimination and in overcoming the powerful hold of longstanding legal requirements and societal practices that have led to and maintained discrimination. Illustrative is the Supreme Court's issuance of *Brown*, as well as the Court's abandonment of the desegregation field; the failure of most appellate and district judges to enforce the opinion's mandates; and *Brown's* concomitant unrealized promise for a decade thereafter. Even with the subsequent abrogation of de jure segregation, the intractable nature of discrimination apparently limited the success of numerous American cities in achieving de facto integration, and the law may essentially have been powerless to affect these conditions.

*Reading, Writing and Race* shows that a subtle, complex mix of legal requirements and institutions, as well as societal practices and understandings, similarly appeared to play significant roles in reducing discrimination, or at least segregation, in Charlotte.<sup>84</sup> For example, the success that Charlotte enjoyed in integrating its public schools can be ascribed as much to nonlegal factors, such as community commitment to quality education and residents' good will and good faith, as to plaintiffs' skillful and persistent pursuit of desegregation litigation and to Judge McMillan's willingness to eliminate the dual school system.<sup>85</sup>

## 2. Race and Electoral Politics

Professor Douglas increases understanding of race and electoral politics. For instance, he considers President Richard Nixon's "Southern

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83. See *id.* at 44-46, 144-45, 195-98.

84. *Id.* at 215-44.

85. See *id.* Professor Douglas's work corroborates the contentions of authors, such as Reinhold Niebuhr, that African Americans would not realize equality solely by relying upon the good faith, or appealing to the morality, of whites, see REINHOLD NIEBUHR, *MORAL MAN AND IMMORAL SOCIETY: A STUDY IN ETHICS AND POLITICS* 252-53 (1932), and the ideas of writers, such as Derrick Bell, that African Americans have often secured greater equality when their interests and those of whites converge, see Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 522-33 (1980).

strategy" and the success that the Republican Party enjoyed in North Carolina and across the region, partly by capitalizing on fears and concerns of whites, particularly regarding integration.<sup>86</sup> More specifically, *Reading, Writing and Race* shows how busing in Charlotte, in North Carolina and in the nation became a code word for race and was employed to exploit racial division.<sup>87</sup>

The manipulation of race in electoral politics enjoys a long, sordid history in the United States and is a strikingly resilient practice. Indeed, Senator Jesse Helms recently defeated Harvey Gantt, an African-American architect and former Charlotte mayor, in an ugly campaign marked by racial overtones.<sup>88</sup> Professor Douglas suggests, however, that the resolution of Charlotte's busing controversy marked a transformation in political attitudes and practices.<sup>89</sup> *Reading, Writing and Race* shows how voters elected a school board and a city council that were much more diverse, thereby dislodging the predominantly white, male business and political elite who resided in Charlotte's southeastern quadrant and had dominated local politics for much of the century.<sup>90</sup> Further evidence of this transformation was Grant's election as Mayor twice, both times with significant white support.<sup>91</sup> Yet, the result when Grant challenged Senator Helms indicates that any such transformation was not complete and, in fact, may have been peculiar to Charlotte and other progressive cities.

In short, Professor Douglas's book makes a number of valuable contributions that implicate numerous issues respecting the integration of public education and many closely related questions. The author substantially enhances appreciation of certain legal and nonlegal factors that were integral to desegregation as well as a number of other important fields, such as litigation, racial relations, and politics.

### III. DIFFICULT QUESTIONS

*Reading, Writing and Race* illuminates numerous ideas in areas that are significant to public school desegregation. Nonetheless, difficult, and perhaps unanswerable, questions remain. Professor Douglas specifically

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86. See DOUGLAS, *supra* note 1, at 178-81, 192-93. See generally KEY, *supra* note 19 (surveying political characteristics throughout the southern United States); C. VANN WOODWARD, *THE BURDEN OF SOUTHERN HISTORY* (rev. ed. 1968) (observing the heritage and character of Southerners).

87. DOUGLAS, *supra* note 1, at 44-46, 144-45, 195-98.

88. See *Senator Handed 5th Term*, NEWS AND OBSERVER (Raleigh, N.C.), Nov. 6, 1996, at A1.

89. See DOUGLAS, *supra* note 1, at 251.

90. DOUGLAS, *supra* note 1, at 222-28.

91. See DOUGLAS, *supra* note 1, at 251.

mentions or implicitly addresses most of them and acknowledges that a few resist felicitous, if any, solution. In fairness, a number have existed "since a Dutch ship brought twenty Africans to Jamestown in 1619."<sup>92</sup> Efforts to treat some could have doubled the size of *Reading, Writing and Race*, while others exceeded the book's scope. Moreover, it is unrealistic to expect that the examination of public school desegregation in a single locale over a twenty-year period—even an exploration as searching as the one that Professor Douglas conducted—will respond to, much less resolve, many intractable problems involving race, which bedevil American society. In the final analysis, certain of these questions may simply defy resolution. However, I pose several queries in an effort to foster ongoing discussion and to suggest fruitful avenues for future inquiry.

One critical question is why Charlotte achieved such success when desegregating its public schools, in terms, for example, of realizing increased integration, minimizing white flight, and improving students' test scores, especially when contrasted with so many other southern and northern localities. Charlotte may at least have been very unusual, if not *sui generis*. Indeed, Charlotte's success might have resulted from the coalescence of a mix of complex, subtle phenomena, some of which were apparently unforeseeable and others of which even seemed serendipitous, such as the earlier 1960 decision to consolidate the city and county school districts.<sup>93</sup> Professor Douglas identifies the district's consolidated nature and its enormous geographic magnitude as significant factors that complicated white flight.

He concomitantly finds important white and African-American citizens' commitment to moderation and to racial justice and harmony; the community's rather widespread acceptance of integration; the convergence of white economic interests and African-American demands for equality; and certain benefits offered by a school district that encompassed urban, suburban, and rural areas.<sup>94</sup> Another explanation may also be Charlotte's relatively small population of African Americans in proportion to whites. This factor probably enabled the city to maintain a majority-white school system and made integration less threatening to whites. Moreover, *Reading, Writing and Race* emphasizes the significance of skillfully

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92. *Id.* at 1. See generally MYRDAL, *supra* note 2.

93. See DOUGLAS, *supra* note 1, at 76-78.

94. See *id.* at 215-54; see also Drew S. Days, III, *The Other Desegregation Story: Eradicating the Dual School System in Hillsborough County, Florida*, 61 *FORDHAM L. REV.* 33 (1992) (discussing desegregation in a similar school district).

pursued desegregation litigation and of a judge who was responsive to plaintiffs' claims and was committed to the Constitution's rigorous enforcement.

Class cooperation is an additional phenomenon to which Professor Douglas attributes the success in Charlotte.<sup>95</sup> For instance, *Reading, Writing and Race* describes how lower and middle-income whites eventually joined with African Americans in an unusual coalition to insist on fair distribution of busing's benefits and burdens. An analogous coalition may correspondingly have been responsible for the election of a more diverse city council and school board, which facilitated integration of the public schools. These efforts affected most directly the upper and middle income white residents of southeast Charlotte, the area in which the business and political elite who historically dominated Charlotte lived and which was initially exempted from busing.

Charlotte's moderate, new-South image and reputation for wanting to please or at least not offend might have been important. The explanations could be as straightforward as the Scotch-Irish origins, or the occupations as small farmers or business people, of the individuals who initially settled much of North Carolina's western region or could even be the frontier, albeit long-settled, ethos that characterizes Charlotte.<sup>96</sup> The city, as a booming commercial center, also had a transient, growing population and experienced a steady influx of new residents, a number of whom probably possessed diverse and relatively open-minded viewpoints, especially regarding race.<sup>97</sup> These perspectives and the attitudes of many Charlotte residents differed significantly from those of numerous people who lived in the "Black Belt" of eastern North Carolina and even the eastern segments of the Piedmont, as well as much of the South.<sup>98</sup>

Professor Douglas intimates that considerations apart from carefully pursued desegregation litigation; a sympathetic, conscientious judge; the economic self-interest of whites; and even the convergence of that concern and African-Americans' demands for equality contributed to Charlotte's success.<sup>99</sup> Efforts to integrate the city's schools could not have enjoyed so much success absent more altruistic phenomena, such as a core of good

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95. See DOUGLAS, *supra* note 1, at 222-28.

96. See *id.* at 50-56.

97. See *id.*

98. See *supra* notes 10-12 and accompanying text. Indeed, North Carolinians proudly describe the Tar Heel State as a valley of humility between two mountains of conceit and generally enjoy a comparatively progressive reputation, particularly on racial issues. *But see supra* notes 88-91 and accompanying text.

99. See DOUGLAS, *supra* note 1, at 243-44.

will, as well as African-Americans' and whites' commitments to racial harmony, equality, and justice and to the elimination or reduction of racial discrimination and of racism. The traditional southern way of life and centuries-long history of discrimination give credence to these ideas.

Another closely related question is whether instructive insights can be derived from evaluating the experience of integrating Charlotte's public schools against that of numerous cities that realized less success, especially the greater number of localities that could fairly be denominated failures because racial division, white flight, and even violence attended their integration efforts. Professor Douglas does compare and contrast Charlotte with a few other cities.<sup>100</sup>

Illustrative is his informative comparison between Charlotte and Richmond, metropolitan areas that had similar populations.<sup>101</sup> *Reading, Writing and Race* shows that many whites in Richmond resisted desegregation, that the city practiced at most token integration, and that its schools witnessed no greater desegregation than those of Charlotte during the post-*Brown* decade.<sup>102</sup> Professor Douglas describes how Richmond responded quite differently from Charlotte to the prospect of more than token integration with vociferous opposition, white flight, and racial division over the succeeding ten years.

*Reading, Writing and Race* indicates that Richmond's efforts were considerably less successful than those of Charlotte when measured in terms, for instance, of integration achieved, public acceptance, and students' test scores. Professor Douglas ascribes Richmond's experience to a lack of community commitment and to phenomena, such as the existence of surrounding suburban counties whose inhabitants were predominantly white and which had school districts separate from that of the city, thereby facilitating white flight.<sup>103</sup> *Reading, Writing and Race* also briefly compares Charlotte with rather successful localities, namely

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100. *See id.* at 246-54.

101. *Compare* DOUGLAS, *supra* note 1 (discussing Charlotte), *with* JEFFRIES, *supra* note 33, at 140-50, 308-18 (discussing Richmond), *and* Pratt, *supra* note 33 (discussing Richmond).

102. DOUGLAS, *supra* note 1, at 247.

103. *See id.* Professor Douglas mentions the experiences of other cities that achieved success similar to, and even more limited than, that of Richmond. He affords, for example, comparative data on white flight. Richmond is a harder case because it enjoys a new-South, prosperous image, like Charlotte, yet is more racially divided and less successfully integrated. Petersburg, the city in which I attended public schools, provides a helpful contrast. Petersburg only integrated its schools in 1963 and then in a token manner. Once integration was more than token, the city experienced white flight and whites ended their support of the schools. *See* Tobias, *supra* note 10; *see also* Mike Allen, *The Segregated Reunions of an Integrated School*, N.Y. TIMES, Aug. 4, 1996, at A14 (describing the 25th reunion of an integrated class from a Petersburg high school, which only African-American members were expected to attend).

Atlanta and Dallas, which Professor Douglas labels as relatively progressive, and several Florida subdivisions, which had school districts that included urban, suburban, and rural areas, like Charlotte.<sup>104</sup>

One question, which the ideas immediately above provoke, is whether the analysis of other localities in light of Charlotte would be instructive. A second, more specific query is whether the Charlotte experience and its comparison with that of additional subdivisions will increase understanding and inform the possible amelioration of racial discrimination and racism that seems as intractable as ever.

Delicate, controversial questions are whether the goal of public school integration was advisable and whether the means, such as litigation and busing, for securing it were effective. The rather limited success attained in numerous localities has led some observers to suggest that it may have been better to pursue other objectives or different ways of realizing various goals and even arguably preferable to maintain separate African-American schools, provided they are equal.<sup>105</sup>

Professor Douglas apparently assumes that integration—as well as lawsuits and busing as instruments for achieving it—are valuable, if not unqualified, goods. Perhaps he does so because separate African-American educational facilities by definition would never be equal, given the white majority's reluctance to support them with adequate resources and the ambivalence of many African Americans about such schools.

A few observers contend that the integrationist ideal could have been condescending, insofar as it presumed that merely associating with whites would benefit African Americans.<sup>106</sup> Moreover, litigation was a potentially divisive instrument for accomplishing the desired ends, while the use of lawsuits might have raised issues involving the appropriate judicial role in resolving desegregation disputes and might have reduced public acceptability. Busing was also a relatively cumbersome, and perhaps inefficient, technique in certain circumstances. Reliance on busing proved controversial in a broad range of communities where numerous whites and some African Americans sharply criticized it, and a number of whites found busing so offensive that they abandoned the public schools.<sup>107</sup>

The stubborn persistence of discrimination in public education and

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104. DOUGLAS, *supra* note 1, at 4, 222; *see also* Days, *supra* note 94 (discussing desegregation in the Hillsborough County, Florida school system).

105. *See* GRAGLIA, *supra* note 49, at 17; ROSENBERG, *supra* note 49, at 336-43.

106. *See* GRAGLIA, *supra* note 49, at 270-77.

107. *See* DOUGLAS, *supra* note 1, at 215-19, 233-34, 246-47.

additional areas, such as housing, however, could have meant that litigation and busing were efficacious ways to attack discrimination and to increase integration. The strong opposition of many whites to greater integration and busing might concomitantly have made desegregation cases an effective vehicle for fighting discrimination and for enhancing integration.

An important question is whether law, legal solutions, and litigation are effective instruments of social change, particularly for combating racial discrimination, which is essentially a social problem. Professor Douglas suggests that these phenomena implicating law were central to the success achieved in Charlotte.<sup>108</sup> Nonetheless, the comparatively limited success, and even failure, in this city before 1965 and elsewhere before 1965 and subsequently, as well as Charlotte's eventual success, may indicate that additional factors, such as community commitment to quality education and racial harmony, or lack thereof, had equal significance.

A final query is whether scholars, politicians, and other observers have overstated the significance of *Brown* and its progeny but scrutinized less critically certain pragmatic realities of *Brown's* implementation, as well as the realities of additional efforts to improve race relations and other circumstances of life in the United States for many African Americans since *Brown*. For example, it is relatively easy to praise litigation successes while overlooking the practicalities of *Brown's* effectuation, as well as the racism, discrimination, and poverty that have apparently not been ameliorated, much less eliminated, in this nation.

#### IV. CONCLUSION

Professor Douglas has painted a compelling portrait of public school desegregation in the moderate southern city of Charlotte during the two decades after the Supreme Court issued *Brown*. *Reading, Writing and Race* contributes substantially to understanding in numerous important areas involving race, litigation, and societal relations. The United States needs more valuable studies of successful and failed efforts to overcome racial discrimination—similar to the one that Professor Douglas performed—if the country is to eradicate discrimination.

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108. See *id.* at 246, 248, 250-51, 253-54.