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ERRATA

- P. 51, Line 3 -- "constitutional" should be "unconstitutional"
- P. 52, Line 2 -- "Hirabauashi" should be "Hirabayashi"
- P. 55, Quotation from transcript. Last answer of Mr. Johnson,
line 9, insert semicolon after "phenomenon"
- P. 59, Line 6 -- delete comma after "that"
- P. 69, Par. 3, line 5 -- "real" should be deleted
- P. 75, Line 1 -- "would" should be "could"
- P. 81, Par. 3, line 7 -- insert comma after "Jefferson"
- P. 212, Line 3 -- delete comma after "map"
- P. 297, Footnote 105 -- "Blanche" should be "Branche"

CIVIL RIGHTS U.S.A.

PUBLIC SCHOOLS

CITIES IN THE NORTH AND WEST

1962



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Staff Reports Submitted To
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Introduction

Protests of racial segregation in Northern and Western States have been mounting in number and vehemence since the decision of the Federal district court in the *New Rochelle* case¹ in January 1961. The court there found that the school board had denied the Negro plaintiffs equal protection of the laws under the 14th amendment by actions indicating a policy to create and maintain racial segregation in one of its schools.² The lower court decision was affirmed by the Court of Appeals for the Second Circuit and review has been denied by the Supreme Court.³

Success in New Rochelle has stimulated Negro citizens in other cities from coast to coast to protest the segregation of their children in public schools. At the date of writing, formal protest of segregation or discrimination to the boards of education in 22 cities located in 11 different States have been reported. Administrative action has brought about at least a temporary solution in half of these cities. Studies are being made by NAACP officials in at least four other cities in three additional States which, in the near future, may lead to formal protests of practices alleged to cause segregation of or discrimination against Negro pupils. In 19 instances in which no relief was secured by protest, suits have been filed of which to date 2 have been settled and 3 dismissed for failure to exhaust administrative remedies under State law. Thus, at this time, agitation against segregation and discrimination northern style is actively being pursued in 43 cities in 14 Northern and Western States. Numerically, it is doubtful that any single 18-month period since 1954 has seen as much intensive activity, even in the Southern States.

The charges made against school officials in the cities of the North and West are various. They include gerrymander of school zone lines, transfer policies and practices, discriminatory feeder pattern of elementary to secondary schools, overcrowding of predominantly Negro schools and underutilization of schools attended by whites; site

¹ *Taylor v. Board of Education of New Rochelle*, 191 F. Supp. 181 (S.D.N.Y. 1961), 6 *Race Rel. L. Rep.* 90 (1961).

² *Id.* at 183, 6 *Race Rel. L. Rep.* at 93.

³ 294 F. 2d 36 (2d Cir. 1961), 6 *Race Rel. L. Rep.* 708 (1961), *cert. denied*, 368 U.S. 940 (1961).

selection to create or perpetuate segregation, discrimination in vocational and distributive education programs and in the employment and assignment of Negro teachers.

The statutory directive to this Commission⁴ which authorizes the collection and study of information in the field of public education is national in scope, subject only to the limitation that the developments studied constitute a denial of equal protection of the laws under the Constitution. Of course, a determination that any particular situation infringes the equal protection clause cannot be made without a study of all the relevant facts and even at that point may be inconclusive without judicial determination.

In its *1961 Report*, Volume 2, *Education*, the Commission reported on court decisions in the North post-*Brown* up to and including the *New Rochelle* case. The types of situations which existing case law showed might constitute a denial of equal protection in schools systems not organized on a racially separate basis were there analyzed. There have been no additional decisions in the North and West on the merits of any case since the *1961 Report*.

The first of this series of studies includes Highland Park, Mich.; New Rochelle, N.Y.; Philadelphia, Pa.; Chicago, Ill., and St. Louis, Mo.⁵ Highland Park is a small city in which at least a temporary solution of the problem of racial segregation in one school was worked out by agreement of the parties before trial. This study, based primarily on the transcript of a hearing on a motion for a preliminary injunction, is of interest because of the plan of reorganization of two schools accepted by the plaintiffs as a settlement of the issue. New Rochelle, another small city, suffered the trauma of protracted litigation. In the New Rochelle study, the dynamics of a dispute in this northern community which could not be settled outside of the judicial arena are examined. The 2,000-page transcript of the trial yielded insight not otherwise available. In the Philadelphia, Chicago, and St. Louis⁵ studies typical big-city problems are considered. These studies were prepared for the Commission, under contract, by lawyers then living in or near the community studied, except for Highland Park which was the work of Commission staff. The work was supervised and coordinated by the Public Education Section of the Commission staff. To the greatest extent possible, editing of reports prior to publication was done in consultation with the individual reporters.

⁴ 42 U.S.C. 1975 e (1958).

⁵ Although the St. Louis public school system was organized on a racially segregated basis in 1954, it desegregated all its schools completely in the school years 1954-55 and 1955-56. Since that time its problems of racial imbalance in individual schools have been those shared by all big cities of the North and West which have a large Negro population.

CIVIL RIGHTS U.S.A.

Public Schools

Cities in the North and West

1962

HIGHLAND PARK



A Report To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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Part 1. Highland Park, Michigan

The Problem

On August 30, 1961, four parents of schoolchildren in Highland Park, Mich., and a community improvement association filed suit against the Highland Park Board of Education in the U.S. District Court for the Eastern District of Michigan, Southern Division. They sought an injunction directing the board to adopt and carry out a plan for assignment of elementary school pupils whereby the Thomson Elementary School in Highland Park would not be a racially segregated public school. The plaintiffs also sought a temporary injunction, pending final decision in the case, to require the board to transfer those children residing in the Thomson School attendance area, for whom applications had been filed, to nonsegregated public schools in Highland Park effective with the 1961-62 school year.

At the time suit was filed it appeared that Highland Park, Mich., might become the New Rochelle of the Middle West. Highland Park, like New Rochelle, is a small city and has about the same concentration of Negro residents.¹ In Highland Park,² however, unlike New Rochelle,³ the dispute was settled by the parties without a trial of the issues, without a court order to desegregate, and thus without subsequent appeals to higher courts. Many residents, and others who were closely involved in the case, are of the opinion that the example of the New Rochelle litigation, plus official recognition by the school authorities that a problem existed, brought about prompt corrective action. Although the Highland Park settlement may not be final since it left some issues unresolved, it serves to show that if reasonable men will sit down together, reconciliation of differences is not impossible. The Highland Park controversy, following so quickly after

¹The 1960 census reports Highland Park to have a population of 38,063 as compared with 76,712 for New Rochelle. The nonwhite population of Highland Park is 21 percent of the total as against 14 percent in New Rochelle.

²*Woods v. Board of Education of the City of Highland Park*, Civ. No. 21593, E.D. Mich.

³*Taylor v. Board of Education of New Rochelle, New York*, 191 F. Supp. 181 (S.D.N.Y. (1961)) 6 *Race Rel. L. Rep.* 90 (1961), *aff'd*, 294 F. 36 (2d Cir. 1961), 6 *Race Rel. L. Rep.* 708 (1961), *cert. denied*, 368 U.S. 940 (1961).

New Rochelle, may suggest to other northern school districts the nature of the problems ahead for them. Judge John Feikens, who heard oral arguments for a temporary injunction in the *Highland Park* case, placed heavy responsibility on northern and western communities to lead the way in the solution of racial questions in the schools. After the oral arguments, he said to the parties: ⁴

I cannot close my mind to the fact that I sit here as a judge in a metropolitan area of a northern city at a time when, if ever, we ought to set examples for people in the South; this is the place and this is the State in which that should be done.

⁴ Transcript of proceedings had on an "Order to show cause" in *Woods v. Board of Education of the City of Highland Park*, *supra*, note 2, before the Hon. John Feikens, District Judge, at Detroit, Mich., on September 5 and 7, 1961, p. 67. Excerpts from proceedings: 6 *Race Rel. L. Rep.* 982 (1961).

Historical Background




THE CITY

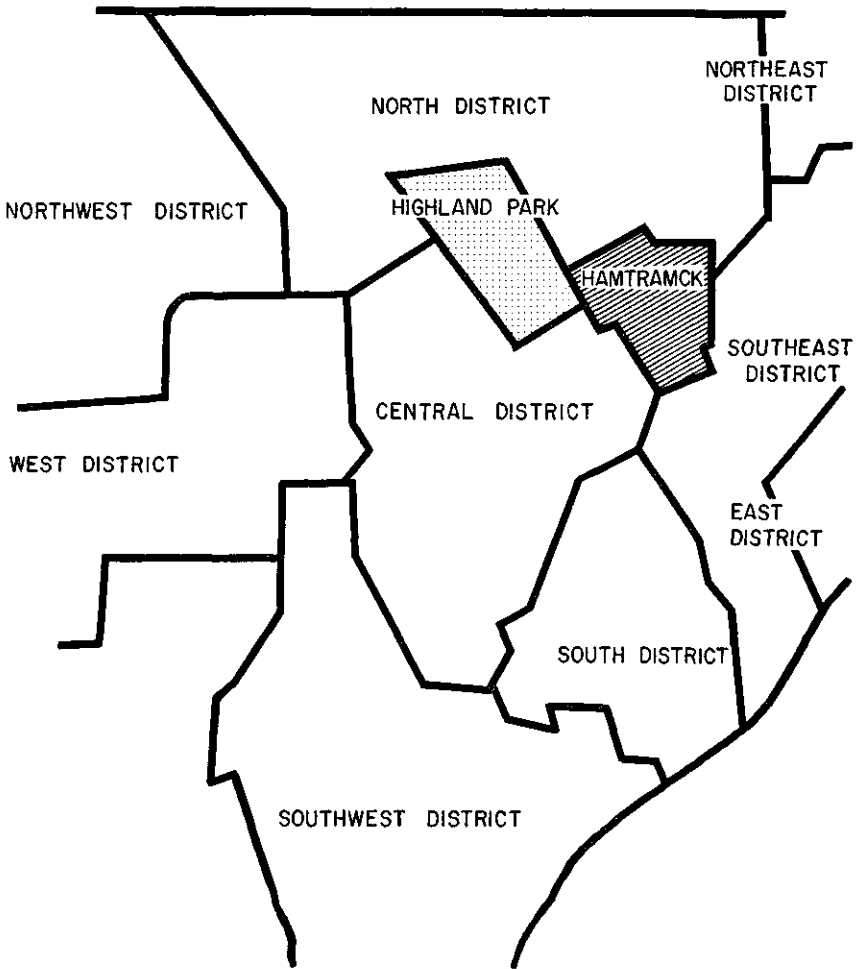
Highland Park, Mich., is an independent city located within the Detroit metropolitan area. It is completely surrounded by the city of Detroit except where it briefly touches the city of Hamtramck, another independent city also encompassed by Detroit. (See map 1, p. 10.) Highland Park is about 3 miles square and characterizes itself as a "city within a city," a place offering all the conveniences of urban living yet having a suburban atmosphere. Perhaps its chief claim to fame is that it was the home of Ford Motor Co.'s first mass assembly plant. The 1960 census reports the population of Highland Park to be 38,063, which is 18 percent less than its population in 1950.

As an independent community it has its own mayor, elected city council, fire and police departments, city-owned water and filter system, newspaper, and public school system. The latter is considered to be among the top 10 in the State. At one time a swimming pool was considered "standard equipment" in the schools of Highland Park. Highland Park, however, is physically distinguishable from the adjacent cities only by its black on yellow street signs, as opposed to Detroit's black on white and Hamtramck's white on black.

Highland Park's history begins in 1806 when Congress granted the city of Detroit a 10,000-acre tract of land to sell to defray the cost of erecting new public buildings, practically all having been destroyed by fire the preceding year. In 1824 Judge Augustus B. Woodward bought from Detroit 320 acres of land, which is now the heart of Highland Park, and laid plans for developing a village which became the first suburb of Detroit. In 1907 Henry Ford bought land in the village and by 1910 had constructed a factory for building Model-T cars. This marked the beginning of the end of Highland Park as a rural community, and, in 1918, the village of Highland Park became an incorporated city. In 1920 Walter P. Chrysler established the headquarters for his company in the city, and in following years other industries also located there. As Highland Park grew, Detroit grew around it. Woodward Avenue, named for the founder of Highland Park, is one of the main thoroughfares of both Detroit and Highland Park.

SCHOOL DISTRICTS IN THE DETROIT METROPOLITAN AREA

-  DETROIT
-  HIGHLAND PARK
-  HAMTRAMCK



MAP 1

The houses and the public and private buildings in the city range from large brick structures to small frame dwellings; but all have one factor in common—age. With rare exception the buildings in Highland Park are about 40 years old. The larger, more expensive houses were formerly occupied by executives of the Ford and Chrysler plants; many of the smaller, less expensive houses were the homes of other employees of these companies. Although Ford still manufactures tractors in Highland Park, its large plants, as well as those of Chrysler, are now elsewhere. Highland Park residents take community and personal pride in the fact that the city has no slum area; but currently Highland Park, like many other urban centers, has undertaken an urban renewal project.

THE DEVELOPMENT OF THE DISPUTE

The population of Highland Park decreased about 18 percent between 1950 and 1960. During the same period, however, the Negro population of the city more than doubled. In 1950, there were 3,877 Negro residents. In 1960 the number had climbed to 7,947, an increase of 104 percent.

Prior to 1940 residents of the city were primarily Caucasian, many of them of European descent, although there were a few Negroes. During and immediately after World War II, a significant number of Negroes moved into a section of Highland Park, that was described by counsel for the plaintiffs in the Federal court action as a piece of land "setting off like an appendix on a person's body, way off there at the end of the city." The area is in the southeastern part of the city, surrounded on two sides by Detroit, adjacent to the Chrysler plant on a third side, and touching another residential district of Highland Park on only one side. The Thomson school, the smallest school building in the system, lies in the area. By about 1945, a residential area of nine square blocks around Thomson school had become almost completely Negro.

Change in classification of schools

For some years the Highland Park public school system operated on a kindergarten through 8th grade elementary school (k-8) and 9th through 12th grade high (9-12) school system (except for Angell school, which was always a kindergarten through 6th grade school (k-6)). During this time there were nine public schools in the city,

seven elementary schools, one high school and a junior college. No new schools were built in Highland Park between 1927 and 1960.







In 1958 the school board sought, through a bond issue, to undertake a school building and renovation program. The bond issue was twice defeated, the original plan in 1958 and a less expensive plan in 1959. However, in 1960 the school board started a smaller scale school construction program which did not require voter approval. As a result, two new elementary schools were built and two former elementary schools were converted for use as junior high schools. All were ready for occupancy by September 1961. During the summer of 1961 the school board announced that beginning in September 1961 all schools would be operated on a 6-3-3 plan (elementary schools, grades 1-6; junior high, grades 7-9; high school, grades 10-12).

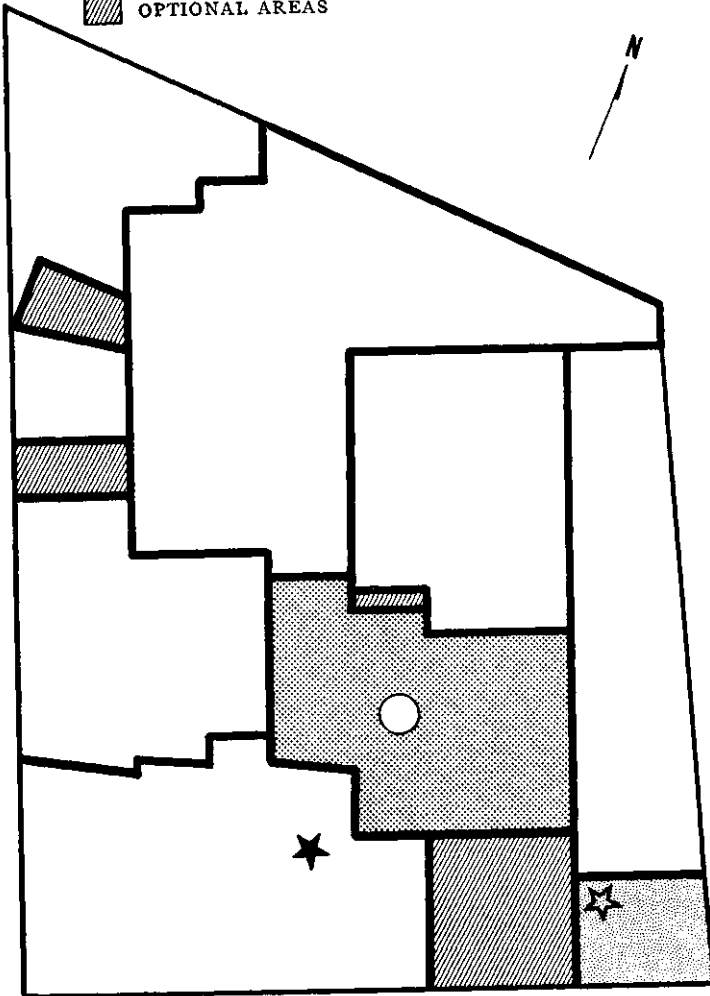
Change in school attendance area boundary lines

Prior to 1945, the Board of Education of Highland Park Public Schools had established mandatory attendance zones for each elementary school in the city. (All high school students attended the city's one 4-year high school.) On April 10, 1945, the school board changed the school attendance zones. Four optional areas were created and the boundaries of several mandatory attendance areas were changed. (See map 2, p. 13.) One such optional area was a residential area adjacent to the nine square blocks of Highland Park, already mentioned, which had become predominantly Negro. The other three optional areas were smaller and located in other sections of the city. Parents residing in an optional area had the choice of sending their children to one of two or more schools designated to serve the area. The residents of the optional area adjacent to the mandatory attendance area for Thomson school had a choice between Ferris (now a junior high school), Barber, and Thomson schools.

On July 6, 1961, at a public meeting, the school board announced that because the schools in the future would be operated on a 6-3-3 plan, it was necessary to change the boundary lines of the elementary schools. As a result of the change, all four optional areas were abolished and new mandatory attendance areas were created. About five blocks of the formerly optional area immediately adjacent to the mandatory attendance area for the Thomson school and the latter were combined, and all children residing therein in grades kindergarten through sixth grade were assigned to the Thomson School. (See map 3, p. 14.) Several parents and citizens and some members of the Massachusetts Avenue Improvement Association who were present at the board meeting spoke in protest of the proposed new





HIGHLAND PARK SCHOOL ATTENDANCE AREAS ESTABLISHED APRIL 1945

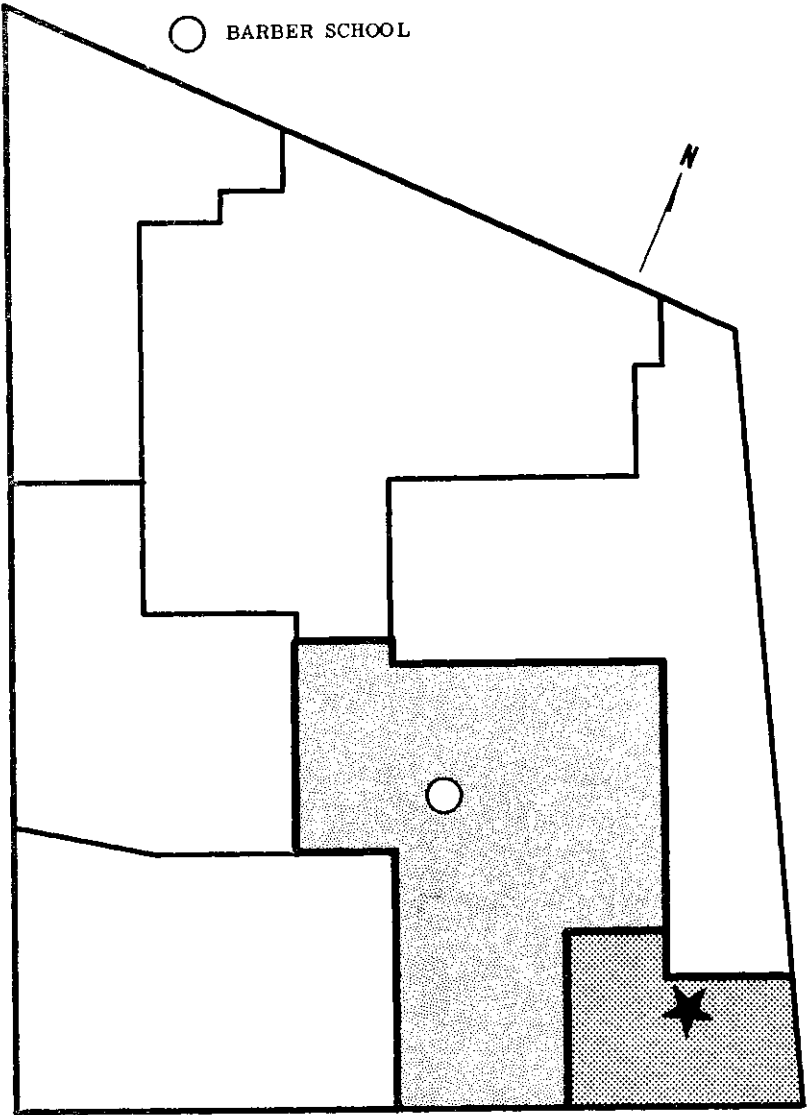
-  THOMSON SCHOOL ATTENDANCE AREA
-  THOMSON SCHOOL
-  BARBER SCHOOL ATTENDANCE AREA
-  BARBER SCHOOL
-  FERRIS SCHOOL
-  OPTIONAL AREAS



MAP 2

HIGHLAND PARK SCHOOL ATTENDANCE AREAS ESTABLISHED JULY 6, 1961

-  THOMSON SCHOOL ATTENDANCE AREA
-  THOMSON SCHOOL
-  BARBER SCHOOL ATTENDANCE AREA
-  BARBER SCHOOL



MAP 3

attendance area for Thomson. They objected on the ground that the new zone as proposed would result in segregation of Negroes at the Thomson school. Representatives of the association made several attempts to meet with the school board immediately thereafter to discuss the reasons for their dissatisfaction. However, no such meeting was held. The school board admits that the association sought unsuccessfully to meet with them but claims that it was impossible to get a quorum of members together for a meeting because of summer vacations and normal out-of-town business. The officers of the association believe that the board did not want to meet with them.

Thereafter, around the 25th of August 1961, the superintendent of schools received written requests from approximately 120 parents who lived in the new Thomson school attendance area for transfer of their children to other schools in the system. All of these requests were denied by the superintendent with a note saying that he had no authority to grant such transfers. At the same time he notified them that he would submit their requests to the school board at his first opportunity.

On August 28, a group of more than 130 white and Negro parents and citizens of Highland Park marched in an orderly fashion, carrying placards and signs protesting segregation, from the vicinity of the new attendance area for Thomson school to the office of the superintendent of schools. There they presented their requests for transfer orally. At this protest meeting, a spokesman for the group announced that if the transfers were not granted, a suit would be filed in the Federal courts to obtain relief. The superintendent reiterated that he had no authority to grant the desired transfers. The group then left in the orderly manner in which it had arrived. On August 30, 1961, suit was filed.

The Case

The suit was brought by 4 parents of 10 minor children assigned by the school board to attend the Thomson School and the Massachusetts Avenue Improvement Association against the Board of Education and School District of the City of Highland Park to vindicate the rights of the individual infant plaintiffs under the 14th amendment and the rights of all other persons similarly situated. The complaint charged that the Thomson school was a segregated Negro school due to policies and actions knowingly taken by the defendant. (The detailed charges are discussed below.) Plaintiffs asked for a permanent injunction to require the defendant school board to adopt and effectuate a plan whereby the Thomson school would not be conducted as a racially segregated public school; and a temporary injunction, pending the final decision, to require the school board to transfer all children within the Thomson attendance area, for whom applications for transfer had been filed, to nonsegregated public schools in Highland Park for the school year 1961-62. One of the plaintiffs was a resident of the old mandatory Thomson attendance area, and the other three were residents of the old optional area adjacent to Thomson school which the school board had abolished on July 6, 1961, and made a part of the new attendance zone for Thomson.

HEARING ON MOTION FOR TEMPORARY INJUNCTION

There was no formal hearing on the merits of the lawsuit. However, a hearing was held on the plaintiffs' motion for a temporary injunction before Federal Judge John Feikens on September 5. The plaintiffs urged the court to issue a temporary injunction so that they might not suffer the irreparable injury which would result from the board's reorganization of the school system. The defendants argued that balancing the equities, the rights of the plaintiffs did not outweigh the rights of all the other schoolchildren in the city of Highland Park and the board should be allowed to proceed with the reorganization which was in the interests of the city as a whole. The hearing brought out the events which had built up to the Federal court action.

The allegations of the individual plaintiffs

The individual plaintiffs were two white and two Negro parents who brought suit on behalf of their ten children, collectively, and all other persons similarly situated. This is one of the very few school desegregation suits brought by both white and Negro parents.⁵

The individual plaintiffs alleged that, by the year 1945, a nine-square-block area in the southeast corner of Highland Park had become almost all Negro. They pointed out that the housing in the area was relatively poor, and, prior to the influx of Negroes, was inhabited for the most part by immigrants and their families, there having been no racially restrictive covenants on the land and housing in that particular part of the city. The plaintiffs contended that the large influx of Negroes into this section of Highland Park during the war years caused the school board to change the school attendance areas and to create both mandatory and optional zones. In 1945, the plaintiffs said, the optional area adjacent to the nine-square-block Negro area was inhabited primarily by white families who exercised the option to enroll their children in Barber or Ferris schools rather than Thomson school. (See map 2, p. 13.) The plaintiffs claimed that the optional area was created for the sole purpose of allowing white parents to send their children to other schools where their children would not be a racial minority. From these facts the plaintiffs concluded that the action of the school board in creating the optional area in 1945 had made Thomson school a racially segregated Negro school.

The plaintiffs stated further that in 1948, after restrictive covenants became unenforceable in the courts as a result of the U.S. Supreme Court decision in *Shelley v. Kraemer*,⁶ Negroes began to move into the optional Thomson area where the existence of restrictive covenants had previously blocked their entry.⁷ They said that this movement of Negroes into the optional area had continued, with the result that in 1961 substantial parts of it were inhabited by Negroes, although there were still some streets in it occupied by both white and Negro families. The plaintiffs claimed that during the period

⁵ In the Nashville (*Kelly v. Board of Education of Nashville*, 159 F. Supp. 272 (M.D. Tenn. 1958), 3 *Race Rel. L. Rep.* 180 (1958), *aff'd*, 270 F. 2d 209 (6th Cir. 1959), 4 *Race Rel. L. Rep.* 584 (1959), *cert. denied*, 361 U.S. 924 (1960), and Volusia County, Fla. cases (*Tillman v. Board of Public Instruction of Volusia County, Fla.*, Civ. No. 4501, S.D. Fla. 1960)), white and Negro parents were joined as parties plaintiff in desegregation suits. On May 23, 1962, plaintiffs composed of 10 families, 4 of whom are white, filed suit against the Rochester, N.Y., Board of Education for desegregation of its schools. (N.Y. Times, May 29, 1962, pp. 1 and 20.)

⁶ 334 U.S. 1 (1948).

⁷ For some years prior to 1948, a local organization also called the Massachusetts Avenue Improvement Association was active in enforcing the observance of restrictive covenants in this area.

1948 to 1961 many of the new Negro residents of the area, as the white families they had replaced, had exercised the option to send their children to the Ferris or Barber schools. The plaintiffs thought it significant that only when the optional area became substantially Negro did the school board abolish it and require the residents to send their children to the Thomson school.

The Negro plaintiffs objected to sending their children to a segregated school. The white plaintiffs felt themselves additionally aggrieved because their children would be an isolated racial minority in the school. All the plaintiffs agreed that the presence of a few white children at Thomson school would not change the segregated character of the school and cited the *New Rochelle* case in support of their position. (In New Rochelle, although 6 percent of the total enrollment was white, the school was held to be a segregated Negro school.)

In addition to their claim that Thomson school was a racially segregated school, the plaintiffs also argued that it was the most poorly equipped school in the entire system, having no auditorium, workshops, or home economics facilities, and a substandard library. In preparation for a hearing on the merits the attorney for the plaintiffs secured the following statistics concerning the elementary schools in the city for the school year 1960-61.⁸

Enrollment by race in the Public Elementary Schools in Highland Park, Mich., 1960-61

Schools	Year built	Number of pupils	Number of teachers	Estimated percent of Negro enrollment
Angell Elementary.....	1914	417	14	Unknown
Barber Elementary.....	1926	642	23	10
Liberty Elementary.....	1917	683	24	5-10
Willard Elementary.....	1912	931	32	85
Thomson Elementary.....	1917	223	8	100
Courtland Elementary.....	*1961			
Midland Elementary.....	*1961			

*Occupied for the first time in September 1961.

The contentions of plaintiff-association

The Massachusetts Avenue Improvement Association is a nonprofit corporation, composed of individual members who are residents of

⁸ The data were compiled by members of the Massachusetts Avenue Improvement Association on the basis of direct inquiry of parents and school personnel since school records did not record the race of pupils.

Highland Park. It was organized under the laws of the State of Michigan in 1957 for the following purposes:⁹

To improve, promote, and protect the rights and interest of the owners of the real property situated and being located on Massachusetts Avenue, Highland Park, Wayne County, Michigan; to engage in any non-political activity that might improve said avenue and property situated thereon.

Massachusetts Avenue runs through both the old Thomson attendance zone and the formerly optional area adjacent thereto. The association claimed a right to be a party plaintiff because its members were interested in maintaining the value of their property. The association asserted that it is a general belief that property values decline when a neighborhood becomes all Negro. It also contended that out-migration of white residents is accelerated when the school their children must attend becomes predominantly Negro; that whites will sell their homes and move rather than have their children isolated in a segregated school. The plaintiff-association, like the individual plaintiffs, claimed that the school board had made Thomson school a segregated Negro school by changing the attendance areas. The association concluded that the action of the school board would be the direct cause of panic selling by white residents zoned into the Thomson school and of the resultant decline in property values. This suit is believed to be the first in which a biracial property-owners association was a plaintiff in a school desegregation case.

Arguments of all plaintiffs

The plaintiffs' position was that the decision in *Taylor v. Board of Education of New Rochelle, New York*,¹⁰ established a precedent for their case. In the *New Rochelle* case a Federal district court found that prior to 1949 the school board had gerrymandered elementary school attendance areas so as to create and maintain racial segregation in the Lincoln school. Until 1949 white children living in the Lincoln zone were allowed to transfer to other schools but in 1949 this practice was discontinued and a few whites were zoned into and only permitted to attend that school. In 1945 the Highland Park School Board had created the optional area which allowed white children living there to attend a white school, while at the same time it made the nine-square-block area, which was predominantly Negro, a mandatory attendance area for Thomson school. The plaintiffs claimed that, just as in *New Rochelle*, the acts of the Highland Park School Board constituted gerrymander; that the optional area was both designed to and did bring about segregation in the Thomson school.

⁹ Articles of incorporation of the association.

¹⁰ *Supra*, note 2.

The most unique argument presented by all the plaintiffs was that they wanted to preserve the racially integrated character of the optional area. They suggested that perhaps, "boards of education of every community have the affirmative duty to take steps to make sure that the children not only get an education in reading, writing, and arithmetic, but in living with people who are not exactly the same color as they are."¹¹ In their opinion, schoolchildren of different races and colors would profit educationally from going to school together.

The defense of the school board

On the motion for a temporary injunction the school board not only argued that the welfare of all children in the city had to be considered, not merely that of the plaintiffs or the residents of the Thomson school zone, but pointed out to the court that the date of filing the suit, August 30, placed an unreasonable burden on the school board since the hearing was being held on September 5 and school was scheduled to open the following day. The board claimed that, in view of these facts, plaintiffs' requests for transfer were in effect requests to close the Thomson school.

Anticipating the argument of counsel for the plaintiffs, the attorney for the school board asserted that the elementary school attendance areas were drawn so as to serve young children in the neighborhood where they lived and were not drawn along racial lines. The board pointed out that there would be 15 white children in the Thomson school in 1961-62, so that the school could not be considered to be racially segregated. The school superintendent acknowledged that Thomson school did not have an auditorium, workshop, swimming pool, or home economics facilities. He explained, however, that some of those facilities were used only in the junior high school grades and that since, under the reorganization of all the schools into a 6-3-3 system, Thomson was to be a k-6 school, there would be no need for some of these facilities; indeed, such facilities in the other elementary schools were not used by elementary school children.

THE SETTLEMENT

On September 5, after the arguments on the motion for temporary relief had been heard, the judge indicated that he would issue the temporary injunction as requested by the plaintiffs, saying, ". . . I

¹¹ *Supra*, note 4 at 56.

can easily foresee that if these schoolchildren are compelled to be registered under the plan of the board of education irreparable injury may occur.”¹² The judge then requested counsel for both parties to go into chambers with him so that the terms of the injunction could be drawn up. Judge Feikens told a Commission investigator that he had not wanted to issue an injunction and had hoped that the parties could agree upon some alternative solution. To this end he suggested that the parties meet separately and then together, and advised them that he would hold the matter in abeyance until 10 a.m., Thursday, September 7, to allow them time to resolve their differences.

As suggested by Judge Feikens, the school board met in special session on September 5 and decided not to open any of the schools of Highland Park the next day as previously scheduled, except the junior college which was not affected by the controversy, and to postpone the opening of schools until Monday, September 11. The plaintiffs also met on September 5 to clarify their positions.

THE PLAN ADOPTED

On September 7, when the parties met in the Federal court to report on their efforts to resolve their differences, counsel for the school board stated:¹³

The Highland Park School Board is certainly cognizant of this very acute problem having to do with segregation.

The school board, frankly, did not appreciate nor did it recognize the seriousness of this problem, and has dedicated itself to eliminating the segregation many times that [sic] it appeared in the school district.

This statement was interpreted by the plaintiffs to mean that until suit was filed on August 30 the school board had not taken their protests seriously.

The school board counsel then presented to the court its plan to meet plaintiffs' objections. It provided that Thomson would be operated as a k-3 school for the area designated on July 6 as the new attendance zone for Thomson plus about 10 adjacent blocks, and the Barber school would be operated as originally announced as a K-6 school for pupils living in the Barber zone and also take the fourth-, fifth-, and sixth-grade pupils from the Thomson school. (See map 4, p. 22.) In its formal proposal the school board stated:¹⁴





Although the School Board does not maintain records on the color of students in the community, it was concluded that this plan would accomplish integration without adversely affecting the other educational requirements of the students in the area.

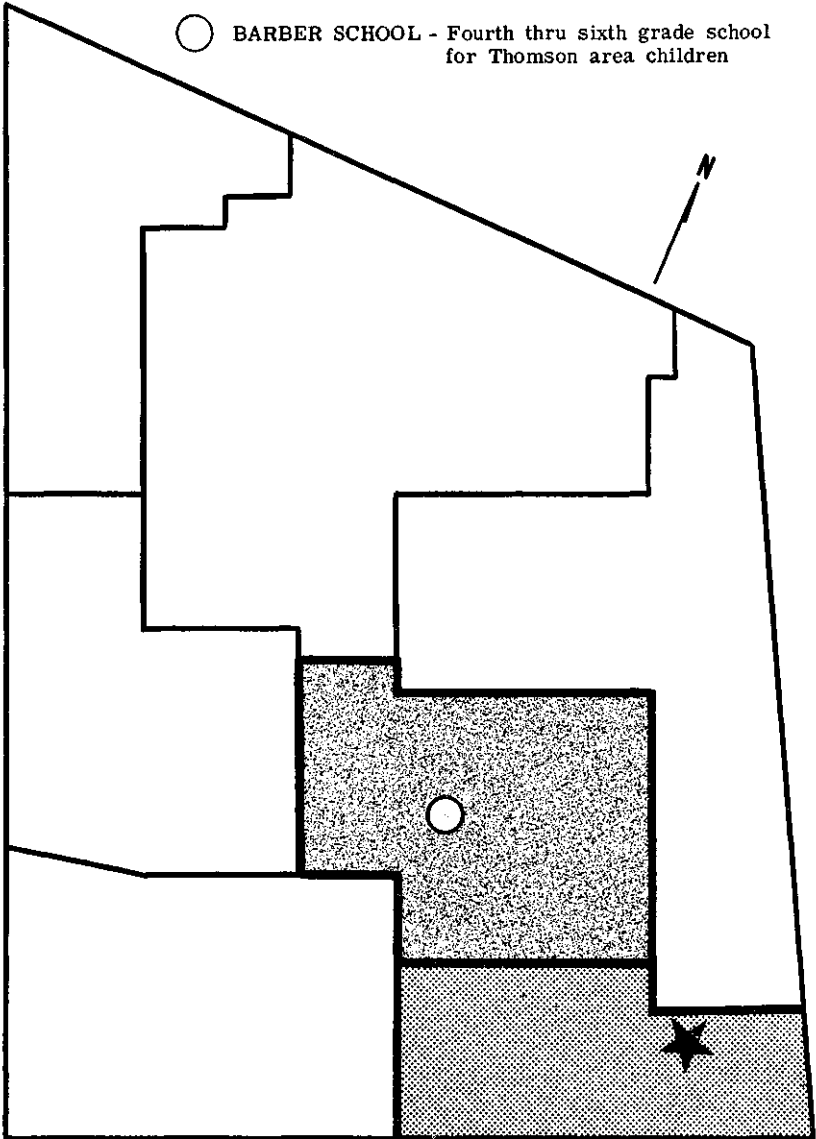
¹² *Supra*, note 4 at 85.

¹³ *Supra*, note 4 at 87-88.

¹⁴ Statement of Highland Park School Board, Sept. 12, 1961, p. 6, 6 *Race Rel. L. Rep.* 984, 987 (1961).

HIGHLAND PARK SCHOOL ATTENDANCE AREAS ESTABLISHED SEPTEMBER 6, 1961

-  THOMSON SCHOOL ATTENDANCE AREA
-  THOMSON SCHOOL - Kindergarten thru third grade
-  BARBER SCHOOL ATTENDANCE AREA
-  BARBER SCHOOL - Fourth thru sixth grade school for Thomson area children



MAP 4

Some of the plaintiffs construed this statement as an admission by the board that the Thomson school was a segregated school.

The plaintiffs agreed that the board's proposal would be satisfactory as to Thomson pupils in grades 4, 5, and 6, but took the position that it was not adequate as to the Thomson area pupils in the kindergarten through the third grade. For that reason the plaintiffs said the school board's proposal could not be considered to be a final solution to the problem. The plaintiffs suggested an alternative plan as to grades k-3 Thomson children which called for making Angell, as well as Thomson a k-3 school and in effect would have given residents of both zones a choice of either school. The school board rejected the proposal for several reasons, most importantly because the Angell school zone was the site of the city's urban renewal project. The school board said that population shifts resulting from urban renewal would make planning involving that area impractical for the immediate future.¹⁵ Plaintiffs had no other suggestion as to how the racial concentration at Thomson might be reduced.

In support of its proposal, the school board prepared figures showing what the composition of the Barber and Thomson schools would be if its scheme were carried out. The compilation was made from information supplied by the principals and teachers in the two schools, since school records did not indicate the race of pupils enrolled.¹⁶

	Grades							Total
	K	1	2	3	4	5	6	
BARBER SCHOOL								
White.....	50	54	46	50	82	74	82	438
Negro.....	1	0	0	0	36	31	62	130
Total.....	51	54	46	50	118	105	144	568
Percent:								
White.....	98	100	100	100	69	70	57	77
Negro.....	2	0	0	0	31	30	43	23
THOMSON SCHOOL								
White.....	10	11	13	10	-----	-----	-----	44
Negro.....	36	54	55	62	-----	-----	-----	207
Total.....	46	65	68	72	-----	-----	-----	251
Percent:								
White.....	22	17	19	13	-----	-----	-----	17
Negro.....	78	83	81	87	-----	-----	-----	83

¹⁵ *Supra*, note 4 at 98.

¹⁶ Statement of Highland Park School Board, Sept. 12, 1961, exhibit 1.

The school board's plan was accepted by Judge Feikens on September 7 as a progressive step toward the goal of accomplishing a non-segregated school system. In accepting it the judge said:¹⁷

It is my hope, as I know that it is yours, that this may well be the basis of a start in metropolitan areas for a solution of our difficulties in this field.

Accordingly, I will say this: that this Federal Court finds you have made a good start towards integration and that the ear of this court is always open to problems as they develop in this field.

And since the proposals and discussions and settlements have been arrived at with a view toward continued discussions and no longer require the aid of this Court, there will be no need for restraint of any kind, and therefore no restraining order will be entered.

Furthermore, in view of the statements made by counsel for both sides, the suit which has heretofore been instituted will be dismissed, and of course it will be dismissed without prejudice to the rights of plaintiffs at any time in the future it should be necessary to raise questions again. I am hopeful that that will not be necessary, because I think in the way this problem has been approached by you men and the people whom you represent [there] is a real accomplishment here.

COMMUNITY ATTITUDES

Essentially, the attitude I have seen demonstrated by the Board, by the parents here, is that they desire to find solutions which would permit their children, whatever their race, to begin to live and play together in school and thereby learn to live and work together as adults.¹⁸

These were the words of Judge Feikens on September 7 when he accepted the plan of the school board and dismissed the suit. His words undoubtedly expressed the attitude of a majority of citizens and parents in Highland Park at that time, although almost everyone interviewed by the Commission's representative said that during the time when the controversy was constantly in the news, community feeling ran high.¹⁹ After the schools opened on September 11, the superintendent received calls from a few dissatisfied parents, and members of the association received similar calls. However, once a plan was agreed upon, the 1961-62 school year got under way without any obvious difficulties.

There are patrons of the school who feel that the decision of the school board created more problems than it solved. Some of these problems have to do with race; others concern all children. There were many complaints about operating Thomson school on a k-3 basis. Some parents feared for the safety of the children in getting to and from school without the usual safeguards. They pointed out that small children need the protection of school patrols who are usually

¹⁷ *Supra*, note 4 at 103-104; 6 *Race Rel. L. Rep.* 982, 984.

¹⁸ *Supra*, note 4 at 102-103.

¹⁹ The reports of the public press were entirely factual and in no way inflammatory in the presentation of the day-by-day developments.

fifth and sixth graders in crossing streets and that the number of paid guards was insufficient to protect these young children adequately. Some parents observed that prior to 1961 children of the same family went to the same school which was no longer true. For example, under the new plan first, fourth, and seventh grade children in a family residing in the Thomson zone attend three different schools; in the Barber zone, two. As a result, older children could not take responsibility for getting their younger sisters and brothers to school safely; they no longer left for school, came home for lunch and in the afternoon at the same time nor from the same place. These seem to be valid worries and to have no relation to race.

Parents living in the Thomson zone complain that it is still a segregated school for k-3 pupils. The plaintiffs believe that Judge Feikens placed a duty on the school board to work out a plan to eliminate segregation of the remaining grades at Thomson. They point to his words: "you have made a good start toward integration" and that a settlement was reached "with a view toward continued discussions" to support their belief that the court expected further action. The day after school opened the school board announced that it would continue its investigation of the overall problems of the school district with the objective of finding better solutions than are now available.²⁰

Although he acknowledged the statement, the superintendent told a Commission investigator that the court did not place any affirmative duty on the board to take any further action. He said the board was willing nevertheless to discuss the matter with interested parties at any time.²¹ Counsel for the school board took the position that when the case was dismissed after the proposal of the school board was accepted, the matter was closed.

²⁰ Statement of the Highland Park School Board, Sept. 12, 1961, p. 5, 6 *Race Rel. L. Rep.* 984, 987 (1961).

²¹ The superintendent's testimony at the Commission's Fourth Annual Education Conference held in Washington, D.C., May 3 and 4, 1962, suggests that he does not view the settlement as final and complete. He said: "The solution that was arrived at was a temporary one, at least in part. . . ." (Transcript, p. 129.)

Conclusion

The approach which Highland Park, Mich., employed in reconciling its school segregation dispute seems to be unique in that it was treated as a community rather than a Negro problem. Since the protestants included both white and Negro parents and other interested citizens, the experience became for all a lesson in community living.

Although the Thomson school had been attended almost exclusively by Negro children for many years, community sentiment was aroused only when other Negro and some white parents were notified that their children could no longer attend the predominantly white Barber or Ferris schools, but would have to attend Thomson. Residents of the old mandatory attendance area for Thomson had to be convinced that they, too, should protest the segregated character of the school as violative of the Federal Constitution. They were skeptical of their new champions. Their children had been required to attend Thomson for many years and no one had suggested before that the resultant segregation was unlawful.

A property improvement association as a party to a school desegregation suit was a new development. Insofar as it is a recognition that schools affect the entire community, not just their patrons, this is a wholesome development.

There are some people in Highland Park who regret that the case was not heard and decided on its merits because they feel some constructive precedents might have been set. However, the Federal judge who heard the argument on the motion for a temporary injunction expressed the view that the problem was one that should be solved by the community, not a court. Most Americans would agree that it is the preferable way. Although the judge clearly said he would issue the injunction sought, he was pleased that the parties sat down together and worked out their most pressing difficulties. Both the plaintiffs and the school board publicly expressed their thanks for the constructive way in which the court had handled the case.

All of Highland Park's school segregation problems were not solved on September 7, 1961; among those remaining is the fact that Thomson is still a predominantly Negro school for k-3 children residing in the zone. However, if the citizens and school authorities of Highland Park continue to approach school issues as community problems rather than as individual or racial problems, it seems possible that solutions satisfactory to all may yet be reached.

CIVIL RIGHTS U.S.A.
Public Schools
Cities in the North and West
1962

NEW ROCHELLE

By JOHN KAPLAN



A Report To
THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

Although this report concentrates on the New Rochelle litigation, it does not restrict itself to the happenings in court. To be sure, all the court records together with the approximately 2,000 pages of reporter's transcript and exhibits were studied, and interviews were held with most of the participants in the case. A great deal that went into this report, however, was obtained from the more than 100 residents of New Rochelle, including the school authorities, who consented to be interviewed and provided a great number of documents for study. Without their help, the writing of this report would have been impossible.

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AUGUST 1, 1962.

(29)

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Part 2. New Rochelle, New York

Introduction

More school "desegregation" cases are pending in the State of New York today than in any other State in the Union. In each of these disputes, as well as in many others throughout the North, a powerful argument for settling out of court has been the cry, "We don't want to become another New Rochelle." Although the *New Rochelle* case¹ is the only decision to date² in which a northern community has been found to have violated³ the constitutional prohibitions laid down in *Brown v. Board of Education*, its importance extends far beyond the boundaries of that small city.

New Rochelle is important not only because it became the "Little Rock of the North," but because its case presented in microcosm so many of the vital moral, constitutional, and educational questions facing the United States today. Since this case has been so widely misunderstood both as to its facts⁴ and the law⁵ it laid down, this report will concentrate primarily upon the litigation itself. By doing this it is not implied that the events leading up to the Federal court action or its aftermath are of any less importance. In fact, a strong argument can be made for the proposition that the really important questions about the *New Rochelle* case are, first, how did community relations in a liberal northern community break down so completely that this dispute had to be resolved in the courts; and second, how is New

¹ *Taylor v. Board of Education of New Rochelle, N.Y.*, 191 F. Supp. 181 (S.D.N.Y. 1961), 6 *Race Rel. L. Rep.* 90 (1961) appeal dismissed, 288 F. 2d 600 (2d Cir. 1961), 6 *Race Rel. L. Rep.* 418 (1961); 195 F. Supp. 231 (S.D.N.Y. 1961), 6 *Race Rel. L. Rep.* 700 (1961), aff'd., 294 F. 2d 36 (2d Cir. 1961), 6 *Race Rel. L. Rep.* 708 (1961) stay denied, 82 Sup. Ct. 10, cert. denied, 82 Sup. Ct. 382 (1961).

² In *Clemons v. Board of Education of Hillsboro*, 228 F. 2d 853 (6th Cir. 1956), 1 *Race Rel. L. Rep.* 311 (1956), cert. denied, 350 U.S. 1006 (1956), the plaintiffs also received relief but Hillsboro, Ohio, located across the Ohio River from Kentucky, was at this time more southern than northern in outlook.

³ It is ironic, in view of later happenings, that shortly after the Supreme Court decided *Brown v. Board of Education*, teams of students and teachers from Washington, D.C., and Baltimore visited New Rochelle to see a successfully integrated school system in operation.

⁴ See *Time*, Sept. 7, 1962, p. 33.

⁵ See e.g., 38 *Chi-Kent L. Rev.* 169 (1961).

Rochelle attempting to pick up the pieces left after the community has been badly split, after its educational system has been severely strained, and after the large majority of its citizens has been completely routed in a series of battles with a much smaller group.

New Rochelle, in southeastern Westchester County, is a long thin suburb of New York City, separated from that city only by a narrow strip of the Pelhams on the very south. It runs northward into central Westchester County, extending like a wedge into Scarsdale⁶ on the north. Its population as of the 1960 census was about 77,000, of whom approximately 14 percent were Negro, 45 percent were Catholic⁷ and 30 percent were Jewish. The Negro population of New Rochelle is primarily located in the center of the city, while the southwest is predominantly Italian and the north overwhelmingly Jewish.

This clumping of ethnic groups has never caused any problem in either the senior or junior high schools. New Rochelle has a single comprehensive senior high school serving the whole city, and two junior high schools, each of which also has a heterogeneous population, reasonably representative of the entire community. In the elementary schools, however, there was at the time of the litigation a much more serious problem. Seven of these schools—Lincoln, Washington, Mayflower, Webster, Columbus, Stephenson, and Barnard—could be called “central schools”; three—Ward, Davis, and Roosevelt—“northern”; and two—Trinity and Jefferson—“southern.” (See appendix H.) Just two of these elementary schools, Stephenson and Barnard, contained truly mixed student bodies reflecting the community’s ratio of Italian, Irish, Jewish, Negro, and white Protestant population, but it was only the dichotomy between Negroes and whites that became relevant in the Lincoln dispute. As appendix A shows, eight of the elementary schools are racially integrated: they contain a population in which neither whites nor nonwhites could be regarded as overwhelmingly preponderant in view of the overall community ratio. Of the remaining nonintegrated schools, only one was the focus of the New Rochelle litigation. This was the Lincoln Elementary School.

Although, of course, more details will be supplied during the consideration of the litigation and the facts brought out therein, the following brief review of the Lincoln dispute will serve for orientation. The Lincoln school was built as the Winyah Avenue School in 1898 to serve an all-white, “silk stocking” neighborhood in the northern part of the town. After 1898, areas farther and farther north of the school became more heavily settled, with the effect

⁶ The northern end of New Rochelle, a high-priced residential area, extends into Scarsdale, which is often called America’s richest community.

⁷ About half the Catholic population is made up of persons of Italian extraction; most of the rest are of Irish descent.

of moving the center of town nearer the school. Meanwhile, Negroes began moving into this area, so that by 1930 the school was almost one-fourth Negro.

Sometime before 1930, the Winyah Avenue school was renamed the Lincoln school, and minor as this change is, it is in a way typical of a great part of the battle in New Rochelle. Certain of the Negro leadership has charged⁸ that this renaming was a recognition of the increasing percentage of Negroes in the school, and that it either was meant derisively or sprang from a misplaced feeling that Negroes would be proud to go to a school named after the man who freed the slaves. This charge has been attacked as irresponsible by others who assert that the school name was changed when Winyah Avenue was renamed Lincoln Avenue, apparently because of difficulty in pronouncing and spelling such an unusual name, and because Winyah Avenue, New Rochelle, was an extension of Lincoln Avenue in the nearby communities of North Pelham and Mount Vernon.⁹

Over the years the Lincoln school became more and more heavily Negro until by 1949 it was 100 percent Negro. Then, in response to a growing number of complaints from Negro and prointegration white groups, the New Rochelle School Board¹⁰ took its first concrete action aimed at altering the racial imbalance in the Lincoln school. It had been noticed that white children in the Lincoln area had taken advantage of the board's transfer policy to attend other schools. It was calculated that since 106 white pupils residing in the Lincoln school zone were attending other elementary schools, and since only 200 Negro children were attending Lincoln, an integrated school, approximately two-thirds Negro, could be achieved if transfers were prohibited. Accordingly, the school board announced a rigid zoning policy whereby transfers out of the zone of residence were in effect prohibited. Few of the area's white students, however, returned to Lincoln. They either entered parochial and other private schools, or moved out of the Lincoln district within a year or two. Thus, by 1960, the student body of Lincoln school was approximately 94 percent Negro,¹¹ and although no one can state precisely the racial com-

⁸ Brief of Appellants "In the Matter of the Appeal of Hallie Taylor, Evelyn Bartee, Dorothy Tisdale, Barbara Hall, Eula Williams from the action of the Board of Education of the City School District of New Rochelle, New York," in proposing to build a new K-6 school on the present site. . . . Before the Commissioner of Education, p. 9.

⁹ In fact, neither version appears to be correct. The Lincoln school received its name in 1919 when the board renamed the Winyah Avenue School after Abraham Lincoln, and the Weyman Avenue school after Thomas Jefferson. At the time, Lincoln's Negro population was less than 10 percent. Winyah Avenue was renamed Lincoln Avenue much later, at the same time as North Pelham changed its Fourth Street to correspond to Lincoln Avenue in Mount Vernon.

¹⁰ The school board, technically called the board of education, is composed of nine residents of the community appointed by the mayor for 5-year terms.

¹¹ It should be noted that while the Lincoln School was 94-percent Negro, two-thirds of the Negro elementary school pupils in New Rochelle attended schools other than Lincoln.

position of the Lincoln zone itself, most observers state that, since the restriction on transfers, the population of the area has become more heavily Negro.¹²

Although there had been numerous complaints about the Lincoln problem, no general community attention was focused on it until the school board proposed in 1957 to rebuild the by then obsolete Lincoln on the same site. This proposal was submitted to the voters, along with many other requests for school funds, and together with most of the other proposals, it was soundly defeated. It was generally believed in the community that the Lincoln issue was not a major reason for the defeat suffered by the board, the main causes being the size of the total amount requested and a dispute over the location of the proposed new high school. Nevertheless, both the NAACP and the Urban League had opposed the rebuilding of Lincoln school, and it was generally felt that the problem of racial imbalance in Lincoln was a contributing reason for the rejection of the board's bond proposals.

During and after the 1957 referendum campaign as a result of the attention focused on the Lincoln school, the board undertook to have a number of studies of the problem made. The most comprehensive was the Dodson report, prepared by a distinguished team of educators headed by Prof. Dan W. Dodson, director of the Center for Human Relations and Community Studies at New York University. The then superintendent of schools of New Rochelle, Dr. Herbert C. Clish, now dean of the School of Education at St. John's University in New York, also prepared a number of reports, and interested citizens and groups submitted and debated their own solutions. Meanwhile, the Lincoln school was growing steadily more antiquated, and in 1960 the board of education, over the vigorous dissent of two of its members, proposed a referendum to rebuild it on the same site. Before this decision was made, three of the many proposals which had been put forth had received support from factions on the board. These were (1) the closing of the Lincoln school and the distribution of its students by rezoning of nearby school districts; (2) the building of a k-3 (kindergarten through third grade) school on the site of Lincoln to provide a neighborhood school for the kindergarten and the first three grades while allowing the top three grades to be distributed to the surrounding schools; and (3) the rebuilding of the

¹² One of the major reasons for the preponderance of Negroes in the Lincoln school is the location in the area of a large public housing project, the Hartley Houses. This project is overwhelmingly Negro. A great deal of semantic effort has been expended over whether this is mere imbalance, in housing and in schools, or is "segregation." Certainly, it is not segregation by operation of law, southern style, where the separation of races is the effect intended by law. On the other hand, if, as the dictionary indicates, segregation means merely a state of separation, simple racial imbalance regardless of the cause is segregation. This, of course, merely puts off the important question as to what effect the Supreme Court segregation decision has on racial imbalance, actual segregation, or whatever one calls it.

Lincoln school on the same site. At the board meeting called to dispose of the problem, it became obvious after a short discussion that the first course of action would not be approved, since only two of the nine board members supported it. The second was defeated by a 5-4 vote, with the two members who supported the closing of Lincoln school joining two others. The five-member majority who voted against the first two plans felt that the only course open to the school board was to ask the voters to approve a bond issue to replace Lincoln with a school of the same size, on the same site. At this point, one of the minority members suggested a compromise whereby the new school would be built to house 400 pupils,¹³ 100 less than its actual enrollment of 500. These 100 pupils would then be distributed to other schools, thus allowing one-fifth of the Lincoln student body to attend schools that were not racially unbalanced. The remainder of the students in the zone would attend the new Lincoln school and wait either for a change in the neighborhood or for their entrance into junior high school before they would attend a racially balanced school. After some discussion the majority agreed to this compromise, and it was passed by a 7-2 vote.

Before the board's proposition could be placed on the ballot, however, a number of Lincoln parents brought an action before the New York Commissioner of Education to restrain the school board from attempting to rebuild the Lincoln school and to require it to take steps to end the racial imbalance there. The commissioner ruled against their contentions on the ground that the decision of the board did not appear discriminatory on its face and was within the general jurisdiction of a board of education to decide questions of site selection, zoning, and construction of schools.

The proposition to rebuild the Lincoln school was then placed on the ballot by the board of education, and after a vigorous campaign during which reams of literature were produced by all sides, the bond issue carried by a 3-to-1 majority. Amidst the general rejoicing and relief in the community that the Lincoln issue had finally been solved, one fact escaped general notice. While every other zone had supported the proposition to rebuild the Lincoln school, the residents of the Lincoln area had voted against it.¹⁴

¹³The capacity of the Lincoln school was approximately 625 students.

¹⁴More specifically, while the voters in each of the other elementary school election districts supported the referendum by margins of from approximately 3 to 1 to about 6 to 1, the voters in the Lincoln district rejected the proposal by about 1.36 to 1. It is interesting to note that no observable pattern appears in the voting in the other districts. Although, aside from the Lincoln district itself, there were wide variations between districts in the percentage in favor of the Lincoln referendum, these variations did not appear to correspond to the distance from Lincoln, the percentage of Negroes, Italians, or Jews, or the average income in the district.

Nonetheless, at this point the school board felt that the controversy was in great part over; that the unhealthy split in the community was well on its way to being repaired; that the rebuilding of the Lincoln school could begin; and that the racial imbalance in the Lincoln school was to be with the community for the foreseeable future. The board reckoned, however, without Paul Zuber.

Despite the widespread belief in the community that Mr. Zuber was one of a number of professional agitators who solicited the legal business from a group of local Negroes and then financed and directed the litigation, the truth appears to be that the plaintiffs who had lost their case before the New York Commissioner of Education had decided not to give up the battle, and approached Paul Zuber at his home in Croton-on-Hudson. Mr. Zuber, a 35-year-old Negro lawyer, was just beginning to make a reputation as a successful advocate in this type of suit. He had recently won the famous *Skipwith*¹⁵ case in New York City, wherein the court held that no Negro child could be compelled to attend an overwhelmingly Negro school where such schools were demonstrably inferior. Mr. Zuber advised the New Rochelle group to follow the tactics that he had successfully employed in *Skipwith*: they were to withdraw their children from the Lincoln school and attempt to register them at other public schools. This would, Mr. Zuber felt, not only garner a great deal of publicity, but would also create a favorable climate of opinion for the litigation which was to follow. The parents followed Mr. Zuber's program and received even more publicity than anticipated when the New Rochelle authorities prosecuted them for truancy and for loitering near a school. Then Mr. Zuber commenced the Federal court litigation.

¹⁵ *In the Matter of Skipwith*, 180 N.Y.S. 2d 852 (Dom. Rel. Ct. N.Y.C. 1958), 4 *Race Rel. L. Rep.* 264 (1959). The issue arose in a domestic relations court proceeding brought by the board of education to declare Negro parents guilty of neglect because they had withdrawn their children from the school system in protest against allegedly inferior schools. The court not only refused to find the parents guilty of neglect, but held that they had a right to refuse to obey the New York compulsory education law because the racially unbalanced schools to which they had been assigned had been allowed by the city to become inferior.

The Complaint

On Friday, October 21, 1960, Mr. Zuber filed his complaint against the New Rochelle Board of Education. It charged the defendant school board with violating the constitutional rights of the Negro plaintiffs and others similarly situated by "pursuing a policy . . . generally described as the neighborhood school policy." Mr. Zuber's complaint went on to state:

It has been well recognized that in many cities of New York State, and elsewhere, ghettos exist in which minority groups, usually minority racial groups, are crowded. As a result thereof, the public schools in such neighborhoods in such cities are segregated, reflecting the segregated pattern of the neighborhood. The utilization of the "neighborhood school" policy in such areas must, of necessity, produce segregated schools. This fact pattern set forth herein also exists in the city of New Rochelle. It exists there by reason of the fact that the defendants continue to maintain the aforesaid "neighborhood school" policy as a basis for the registration of children required, under the Education Law of the State of New York, to attend the elementary schools. The fact is that so long as the defendants adhere to this "neighborhood school" policy in the city of New Rochelle, segregated schools will exist there.

The complaint further alleged that (1) the Lincoln school was "attended only by Negro children," (2) the "educational background and length of experience" of its teachers was inferior to that of teachers in "white" schools, (3) the curriculum offered at Lincoln was inferior to that offered in the "white" schools, and (4) as a result of the use of the neighborhood school policy—

. . . the plaintiff children, and other Negro children attending the racially segregated school, do not achieve at their natural intellectual potential, as the white children attending the all-white school achieve in respect to their natural intellectual potential.

Accordingly, the complaint asked that the court enjoin the operation of the neighborhood school plan as applied to the Lincoln district, require the school board to register the plaintiffs at racially integrated schools, and prevent the construction of the new Lincoln school so long as the neighborhood school policy was in force. It should be noted that this complaint did not charge the board with deliberately taking any action for the purpose of discriminating against the plaintiffs because they were Negro, nor did it charge the board with gerrymandering or with any other bad motive. The complaint, in essence, was a frontal assault on the problem of "de facto segregation" and was based upon this simple syllogism: A neighborhood school in an all-Negro area will be all-Negro, and, therefore, segregated. The State cannot constitutionally compel any student to go to a segregated

school. Therefore, the application of the neighborhood school policy to an all-Negro residential area is unconstitutional.¹⁸

In addition to the relief requested in the complaint, Mr. Zuber, in a separate order to show cause, asked for a temporary injunction, that is, a preliminary injunction preventing the school board from taking any action which might be in violation of the constitutional rights of the plaintiffs, until the matter had finally been determined by litigation. An order to show cause is merely a procedural step whereby the defense is called upon to present its reasons why a preliminary injunction should not be granted, pending final decision of the case. Contrary to the implications of its title, the order to show cause does not alter the burden of proof in any way. As in all cases, the plaintiff must still prove that he is entitled to the relief he has requested. However, where, as here, a preliminary injunction is at issue, all the plaintiff needs to prove is that he might possibly win on the merits of the litigation and that he requires the injunction for his protection until the court determines the final result of the suit.

On October 27, the date set for the hearing on the order to show cause why the preliminary injunction should not be granted, Murray Fuerst, corporation counsel for the city of New Rochelle and attorney for the board of education, appeared and asked the court not to grant a preliminary injunction, arguing that to do so would stamp the community with a judicial condemnation. Mr. Fuerst stated that the matter could be gone into thoroughly any time the plaintiffs were ready—"in a day or a week, as the court may choose"—and that, therefore, a temporary injunction was not necessary. Moreover, to show the good faith of the school board, Mr. Fuerst agreed that the construction of the new Lincoln school would not begin until the litigation had been concluded, and that the hearing on the preliminary injunction might be combined with the final trial on the merits, so that only one decision would be necessary. Mr. Zuber and Judge Irving R. Kaufman agreed to this, and the trial was set for November 15.

At this hearing Mr. Fuerst, an extremely competent lawyer with an encyclopedic knowledge of school law, agreed to combine the preliminary injunction hearing with the trial on the merits for two reasons: first, he assumed that the granting of a temporary injunction by Judge Kaufman would have stamped the community with a "badge of infamy." This would have been true, to paraphrase Justice Harlan, only if the community had so considered it. In reality, the granting of the temporary injunction merely would have meant that

¹⁸ Despite this allegation in the complaint that the Lincoln school was all Negro, Mr. Zuber realized that the school had 6 percent white children. Once his basic proposition had been established, Mr. Zuber expected to argue that the difference between all Negro and 94-percent Negro was not legally significant.

there was a constitutional question here—which nobody really denied—and that the plaintiffs' rights had to be protected until the question was decided. In theory, of course, the judge in granting a preliminary injunction might have done more than merely enjoin the rebuilding of the Lincoln school; he might have ordered the admission of the plaintiffs to racially balanced schools pending the trial. This, however, would have been most unlikely since Federal judges are, in general, extremely careful to restrict the use of the temporary injunction to cases where serious harm might result—not to cases where, as here, the plaintiffs have been living under the conditions complained of for some time. Moreover, it is most unlikely that Judge Kaufman would have required the admission of these plaintiffs to schools other than Lincoln, realizing that a final order might determine that they had no such right and might allow their removal back to Lincoln. Secondly, Mr. Fuerst agreed to the early trial on the merits simply because he had not appreciated the complexity of the case. He had been misled by the general allegations of Mr. Zuber's complaint and by the lack of any charge of deliberate gerrymandering or other actions with bad motives.

Shortly after the October 27 hearing, the school board called in Julius Weiss to take charge of the litigation. Mr. Weiss, a New York attorney and a former president of the New Rochelle Board of Education, was widely respected in New Rochelle where he had been active in civic affairs for over 30 years. At this point in the litigation it was clear that the acts of the board of education, over a reasonably long period, would be challenged. Thus, in accepting the case, Mr. Weiss, as one of the presidents of the board of education during the 1950's,¹⁷ put himself in a position in which he might have to defend his own actions, as well as those of the board. Although Mr. Weiss' complete familiarity with the factual background of the case would be an advantage in view of the short time for preparation, his closeness to the problem might prevent him from giving the dispassionate and objective services that are a most important stock in trade of the lawyer.

On coming into the case, Mr. Weiss discovered that the issues were a great deal more complicated than had first appeared and that the case would require a great deal of time, effort, and investigation. On November 14, the day before the trial was to begin, he therefore appeared in Judge Kaufman's chambers and asked for an additional month to prepare for trial. At first, Judge Kaufman suggested granting a 24-hour delay, but, after some urging the

¹⁷ In fact, he was president of the board's referendum committee working for passage of the ill-fated 1957 referendum.

judge finally compromised with Mr. Weiss, agreeing that the combined trial and hearing be postponed for 1 week and set for November 22. It should be noted that, despite charges that Judge Kaufman hurried the board into trial, this speed was not unusual so long as the question of the preliminary injunction remained. Since the issue on the temporary injunction was vastly less complicated than the final resolution of the merits, the judge felt that the board had already been given too much time. But since the school board had agreed that the injunction hearing and trial be combined, Mr. Weiss was still thinking in terms of a final trial on the merits.

On November 21st, the day before the combined hearing on the preliminary injunction and the trial on the merits, Mr. Weiss again appeared before Judge Kaufman. This time he made a formal motion for the appointment of a panel of three judges to decide the constitutional question. The Federal statute¹⁸ providing for the three-judge court was passed to prevent the disorganization of State functions by single Federal judges declaring State statutes unconstitutional. Because of its drain on the manpower of the Federal judiciary, however, the three-judge requirement has been construed very narrowly, and no three-judge court is required where only a State administrative action or a municipal ordinance, as distinguished from a State statute, is alleged to be unconstitutional. Although Mr. Zuber had not challenged any State statute in his complaint but merely a policy of the board of education, Mr. Weiss made and argued his motion vigorously, and Judge Kaufman denied it.

Mr. Weiss next announced that he was going to move on the following day, the date set for the combined hearing and trial, to dismiss the complaint, and that he wished this motion to be decided before he made his final preparations for trial. A motion to dismiss a complaint is not an unusual one. It is based on the argument that the complaint does not, in the language of rule 12(b) of the Federal Rules of Civil Procedure,¹⁹ "state a claim upon which relief could be granted." In other words, even if every word in the complaint were true, the school board would still have violated no constitutional right of the plaintiffs. This motion was by no means obviously ill-founded. A

¹⁸ 28 U.S.C. sec. 2281: *Injunction against enforcement of State statute; three-judge court required.*

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

¹⁹ Technically Mr. Weiss did not follow the wording of the Federal rule, but rather used the State practice of moving to dismiss "for failure to state a cause of action."

strong argument can be made that Mr. Zuber's bare allegations, without any charge of intentional discrimination by the board, were not a sufficient charge of unconstitutional action. Mr. Zuber had presented, in his frontal attack on the neighborhood school policy, an extremely difficult question of constitutional law. In a New York State court the judge would have been required to determine this legal question and dismiss the complaint without hearing witnesses if he decided against the plaintiffs. Federal courts, however, do not follow what is known as "fact pleading," but rather what is called "notice pleading." In the Federal courts, the only function of the complaint is to alert the parties to the general issues involved in the litigation, while the pretrial narrowing and sharpening of the issues is done by requests for admissions, interrogatories, depositions, and pretrial conferences. Therefore, the Federal courts have generally held that if under any conceivable circumstances the plaintiff's general area of complaint could state reasons for the court to grant relief, the motion to dismiss the complaint should be denied and a hearing held on the merits of the case.

In announcing his forthcoming motion to dismiss, Mr. Weiss took the view that since the motion was to be made on the day of the combined hearing and trial, the judge should decide the sufficiency of the complaint and then set a new date for the calling of witnesses. Otherwise, Mr. Weiss argued, the judge might grant the motion to dismiss the complaint and unnecessarily inconvenience all the witnesses who had come expecting to be heard. To Judge Kaufman, however, this request suggested a desire on the part of the school board to delay the proceedings. It is standard procedure in the Federal courts to rule that where a defendant makes a motion to dismiss, he must be prepared to proceed with the case in the event the motion is denied. It is not regarded as any confession of weakness to be prepared for the loss of a motion, and even though it may require extra time and effort to summon witnesses who may prove unnecessary in the event of the dismissal, the common sense observation that nowadays very few complaints are in fact dismissed has made it the general practice of Federal judges not to delay the calling of witnesses²⁰ pending the decision on such motions.

In discussing the procedure to be followed on Mr. Weiss's motion to dismiss the complaint, Judge Kaufman again made clear his concern with the necessity for speed where temporary injunctions were involved.

[Because of your statement] "Yes, I will go to trial November 15th." . . . I then induced Mr. Zuber to [consent to the combination of the trial and] temporary injunction, because I said, "Let's dispose of the whole thing now." . . .

²⁰ Rule 12(c) of the Federal Rules of Civil Procedure explicitly provides that a related motion—for judgment on the pleadings—not be made so as to delay trial.

Now I don't think I need labor the point. If you want time for trial, it is another thing. I want to expedite this, but I am going to proceed with dispatch on the hearing for this temporary injunction . . . There seems to be a difference of opinion now as to whether you want a trial. But as to the hearing then on the motion for temporary injunction, that I cannot delay any more. It is almost a month since it was returnable . . . we will proceed then on a hearing of the motion for temporary injunction.

The next day court opened with the formal argument of the board's motion to dismiss the complaint. Although the result of this motion was a foregone conclusion, the argument is most interesting because it contains a somewhat more colloquial description of the plaintiffs' legal theory. In defense of the complaint, Mr. Zuber stated his position as follows:

I think that we state in our complaint that the plaintiffs are Negro youngsters ; that they are eligible to attend the public schools of the city of New Rochelle ; and by the acts of the defendants they are compelled to attend the school which we allege is racially a segregated school ; and it is a racially segregated school as a result of the acts of the defendants ; and that this is not something that has been spontaneous, but has been something that has been more or less perpetuated over a period of years.

Now, in going further to that, following the *Brown v. Board of Education* case, we go on to cite that as a result of this segregated education, that the children are receiving an inferior education, because of the watering down or modification of the curriculum ; the inadequacy of the teaching staff ; the inadequacy of the physical plant.

Then we go one step further in our complaint. We proceed to allege that not only by the utilization of the neighborhood school policy have the defendants perpetuated this segregated situation, knowing the residential composition of the community, knowing the student population of the Lincoln School, but then they have the audacity to go before the plaintiffs and others of their class and decide to construct another school, at an expenditure of 1.3 million dollars, on the same site.

Judge Kaufman took a 5-minute recess and then overruled the motion to dismiss on the ground that: "The plaintiffs in the present action are clearly entitled to a hearing at which they can attempt to elicit the particular facts and circumstances which they claim render the defendants' conduct unconstitutional."

Judge Kaufman then separated the hearing on the temporary injunction from the trial on the merits, and since ". . . the movant in a motion for a temporary injunction is entitled to have an adjudication one way or another with fairly reasonable dispatch, particularly in a case where constitutional issues are raised," he ordered the hearing to begin immediately. Thus, the school board had been relieved by Judge Kaufman from their agreement to combine the trial on the merits with the hearing on the preliminary injunction. The ultimate merits of the case were no longer before Judge Kaufman, who merely was concerned with the question of whether to afford the plaintiffs any temporary relief before the issues could finally be determined in a full-scale trial.

The Hearing

Mr. Zuber began his case by calling two formal witnesses on the question of the inferiority of the Lincoln school. The first was Hallie May Taylor, a high school graduate, the wife of a postal employee, and the mother of the plaintiff Leslie Taylor. She stated that her daughter Leslie, who was 8 years old, was not presently attending Lincoln school and was receiving private tutoring instead because "I feel that at Lincoln School my child Leslie was not achieving up to her potential, and I want her to have an education at an integrated school."

Mr. Zuber's second witness, William H. Sneed, a school psychologist, stated that he had tested Leslie Taylor and that not only had she scored 136 on her IQ test, but her score would have been even higher had her vocabulary and reading ability not pulled it down. Dr. Sneed testified further that in his opinion Leslie's poor scores in vocabulary and reading could reflect a lack of academic stimulation in the school. At this point Mr. Weiss objected that "putting in testimony of this kind . . . as to the character of the school will only put the court in the position of having to condemn a school system of over 11,000 children." The objection was overruled. Dr. Sneed stated that in his experience 80 to 90 percent of deprived children show this type of development. He added that it is characteristic of segregated schools—schools with an ethnic-religious-nationality preponderance of over 90 percent. On cross-examination he admitted, however, that this kind of lag in vocabulary and reading can also be caused by the child's socioeconomic group and be due mainly to his home environment.

After these two brief witnesses, Mr. Zuber proceeded to present his star witness, Bertha Oden White, a housewife and private tutor. It was she who testified to the crucial element that was missing from Mr. Zuber's complaint—gerrymandering. Mrs. White testified that she had been studying the Lincoln problem since 1948, that she had carefully searched the records of the school board back to 1909, and that she had talked to many longtime residents in the community. She stated that her research showed that in 1930, when the Webster school was built to the northwest of Lincoln, its boundaries were drawn so that they included an all-white area right across the street from the Lincoln school; as Negroes moved into this area the boundaries of

Webster were gradually withdrawn closer and closer to Webster school until Lincoln again had a reasonably regular shape. (See appendix I.) She stated further that students who had been at Lincoln during this period had told her that at the same time the Webster school was opened, the all-white Rochelle Park neighborhood to the east of Lincoln was moved out of the Lincoln zone and into the Mayflower zone. Although this transfer clearly took place, Mrs. White was unable to find any record of such a decision in the board minutes.

The most remarkable thing about Mrs. White's testimony on the issue of gerrymander is that it was hearsay and inadmissible as evidence. Mr. Weiss, although he had objected to the greater part of the plaintiff's testimony up to this point, at no time objected²¹ to the hearsay elicited from Mrs. White. Thus, it was properly available for consideration by the judge and indeed was the only evidence introduced on the issue by either side.

The significance, then, of Bertha White's testimony cannot be overestimated. Here instead of the dry syllogism of the complaint we have direct testimony that the board, at least in 1930, had gerrymandered the Lincoln zone so that white students were sent to the new Webster school and to the Mayflower school, leaving the Lincoln school more heavily Negro. Moreover, the unusual shape of the altered Lincoln zone and the failure to note in the minutes the removal of the Rochelle Park area from the Lincoln attendance area were at least evidence that this decision had been made deliberately. Strangely enough, although it is clear that unconstitutional segregation can be accomplished by gerrymandering as well as by State decree, this was the last time that gerrymandering was mentioned in the hearing. No real effort was made to shake Bertha White on cross-examination, or to introduce evidence either contradicting or putting some other interpretation on the facts she stated.

Since then, other possible explanations for these facts have been tendered by New Rochelle residents. The most popular is that when the Webster school was constructed, it was built to serve a rapidly growing area, and it was, therefore, expected that some years would

²¹ A witness is in general permitted to testify only on his own observations, not on facts he was told by others. Here, Mrs. White's only knowledge of which areas along the Webster boundary were white and which were Negro in 1930 came from her conversations with longtime residents. Nor, as she testified, did she have any personal knowledge concerning the removal of the Rochelle Park section from the Lincoln zone at the same time. Thus it was hearsay. Hearsay evidence, however, is not what is called irrelevant and therefore of no probative force. Rather it is what is called incompetent evidence, and is inadmissible only if objection is made to it. The reason for this rule is said to be that hearsay is not truly unreliable; indeed reasonable and prudent men even in their important affairs are quite accustomed to relying upon such evidence. Hearsay is excludable evidence only because it is felt that the party against whom it is introduced should have the right to cross-examine the original sources of this secondhand testimony. Hearsay under certain circumstances can also be removed from consideration by what is known as a motion to strike. In this case, however, no such motion was made.

pass before the school would be filled to capacity. Accordingly, to prevent such a modern building from being grossly underused and to relieve some of the crowding in Lincoln, the eastern boundary of Webster was extended to include the children living right across the street from Lincoln. As the Webster school filled up, these boundaries were gradually withdrawn until the boundary between Webster and Lincoln achieved its present location. Unfortunately for this explanation, the location of the boundary lines indicates that not only was an effort made to fill Webster—but to fill it with white students. Another explanation admits that the gerrymander took place in 1930 but states that the wrong was undone in 1934 when the Lincoln-Webster boundary was straightened. Those who take this view contradict Mrs. White's testimony and state that the area wrongly taken from Lincoln had not changed its racial character before it was returned to that zone.²² There are two answers to this argument. First, no evidence of any kind was introduced in court to indicate that Mrs. White was in any way inaccurate in her testimony; secondly, and more fundamentally, even though the white area was returned to the Lincoln zone, the board's transfer policy prevented the harm from being undone. Under this policy the white residents of the area could and did continue going to Webster.

On the other hand one cannot condemn the school board of the 1930's too severely for its acts. During this entire period school authorities were considerably less sensitive to racial problems than they are today, and the doctrine of "separate but equal" was implanted in the minds of the great majority of Americans.²³

In addition to testifying on the gerrymander issue, Mrs. White described a study she made in 1948 of the children who lived in the Lincoln area. She found that numerous white children who lived in the Lincoln zone were attending other elementary schools while all the Negro residents were attending Lincoln. It was this survey that was used as the basis of the appeals to the board to maintain a fixed neighborhood school policy and prohibit all transfers. Although Mrs. White never stated as much on the witness stand, the implication could be drawn from her testimony that transfers out

²² Though it was not brought out in court, there is evidence that the change, if any, in the racial composition of the Remington Sickles area (the area removed from Lincoln in 1930 and returned in 1934) was not great, and that area did not become primarily Negro until the 1940's.

²³ To be sure, in 1930 the school board had been reminded of its responsibilities by a letter from three Negro leaders. This letter, referring to the change in the Lincoln district lines, stated, "This is a long step in the direction of [Jim] Crow schools in New Rochelle . . . Jim Crow schools wherever found do not get the consideration white schools do. Less money is spent on them; they are not so well kept up, and the least efficient teachers are assigned to these schools." No answer was made by the board to this letter. The prophecy soon came true. The Lincoln school was allowed to deteriorate both physically and educationally.

of the Lincoln area were given to white children and denied to Negroes. Since the trial, however, many white residents have pointed out that there are other possible explanations for the situation Mrs. White uncovered. First, transfers might have been legally available to either side, but Negroes might have been talked out of transferring by school administrators who suggested that they might not be happy in an overwhelmingly white school. Second, although Negroes might not have been talked out of transferring, white children might have been actively encouraged to transfer. Third, transfers might have been open equally to all students regardless of race, but due to apathy Negroes may not have requested any transfers. Although the majority of New Rochelle residents appear to believe that the last of these possibilities is the case, this does not appear to be so. There are documented cases of Negro residents²⁴ of the Lincoln area who before 1949 asked that their children be permitted to transfer to other schools but were denied transfer by the Lincoln principal because they "lived in the Lincoln district." There is no record of a white pupil's having been denied transfer during this time.²⁵

No further evidence was given in court, however, to explain the facts revealed by Mrs. White's survey, except for the testimony toward the end of the trial of Sim Joe Smith, the assistant superintendent of schools. Mr. Smith, before the rigid transfer policy was instituted in 1949, had been in charge of approving all transfers, and he clearly knew more than anyone else what the facts were. Unfortunately, his testimony was so unhelpful in this regard that it gave rise to charges of evasion by the judge. Mr. Smith testified that he had jurisdiction over all transfers, but that he had absolutely no idea how many of the students transferring were Negro and how many were white since he did not classify people by race. Even had Mr. Smith been completely straightforward in all of his other answers (and a reading of the transcript makes it clear that he was not), he would have had great difficulty getting anyone in New Rochelle to believe that he pays no attention to race. In any event, no further light was shed upon the board's transfer policy before 1949.

After presenting Mrs. White's testimony on the gerrymandering and the transfer policy, Mr. Zuber called Nolan Fallahay to the stand. Mr. Fallahay, a professor of English at Iona College in New Rochelle and a member of the school board, had been one of the most vocal foes of the plan to rebuild Lincoln. He stated that since he had become a member of the school board in 1955, the racial overbalance in the Lincoln school area had been called to the board's attention

²⁴ *E.g.*, Mrs. Thornton Gray and Mrs. Paul Price.

²⁵ Actually the statement can be put more strongly. No Negro transfer was allowed and no white transfer was refused between 1934 and 1948.

again and again, but that the board had taken no action to remedy the situation. He had no doubts about the sincerity of his colleagues on the board of education, but felt that they had not been sufficiently active and decisive in their efforts to solve the Lincoln problem. He stated that in his opinion segregated education is almost inevitably inferior and defined segregation as "a large overbalance of one ethnic, racial, religious, or other type of group contained within a school." On cross-examination, however, Mr. Weiss asked him whether the parochial school met his definition of segregation, and whether he considered the education offered there inferior. Mr. Fallahay dodged the issue by stating that parochial school attendance was not compulsory. This, of course, is not a complete answer, since the State has at least some obligation to make certain that its citizens in nonpublic schools do not receive an inferior education. As testimony later in the case showed, Mr. Fallahay had made his definition of segregation too broad. Had he restricted his charge of inferior education to segregated racial groups of "high visibility," his definition would have been more defensible.

Mr. Zuber's next major witness at the hearing was Marylyn Pierce, the only Negro member of the board of education. She touched on a wide range of topics. One was the insufficiency of the Lincoln physical facilities as evidence of the inferior education offered the plaintiffs. Although a great deal of time was spent by both sides on this subject, it is hard to see how this was much of an issue, since everyone conceded that the Lincoln building was not up to New Rochelle standards. This, in fact, was why the board wished to replace the school. Actually, almost everybody who has examined the facilities states that the condition of the school is not nearly so bad as has been pictured, and certainly no worse than other schools in New Rochelle were at the time of their replacement. It is antiquated rather than dilapidated, and many New England towns might consider it palatial.

In addition, Mrs. Pierce charged that not just the gerrymandering of the Lincoln zone, but the very construction of the Webster school in 1930 was an act of discrimination toward the Negro residents of the Lincoln area. She stated, "I do believe and it is my firm conviction that if it were not for the fact that the Lincoln school area was increasingly becoming a Negro area [the school board] would have enlarged the Lincoln school to accommodate the Webster school just as [it has] in other school situations." This testimony, however, was not buttressed by any specific factual evidence and stood merely as the personal opinion of the witness.

Next, Mrs. Pierce went through the logical steps that formed the basis of Mr. Zuber's case. She believed that Lincoln school was segregated; that this racial segregation would be continued if the new

Lincoln school were built; and that this segregation had resulted and would result from the acts of the board of education. Lastly, Mrs. Pierce stated, "I have not once heard the board say, 'Let us meet. Let us set up a committee to study integration in New Rochelle and how these things can be implemented.'" She admitted, however, that the Lincoln problem had often been brought before the board and discussed, and that numerous studies of the problem had been made for the board.

Just after Mrs. Pierce's testimony was concluded, Mr. Weiss and Judge Kaufman engaged in a colloquy which should have convinced Mr. Weiss that, although the issue at this hearing on the preliminary injunction was relatively simple, the ultimate merits of the case involved some very complex problems. Mr. Weiss said:

Mustn't it be obvious at this time to the court, that what has happened here is this: that if there is a 94 percent colored school it flows from the fact that colored people have moved in there and we believe that a colored child has just as much right to go to a neighborhood school that is convenient for that child, as a white child has.

This view of the law would have been appropriate had the plaintiff been alleging that the Negro children were prevented from attending their neighborhood school. This, however, was not the case here. The question here was: Could the board of education compel the Lincoln children to attend that racially unbalanced school? Judge Kaufman's reply stated the issue in the broadest terms:

Let's assume that the district has become all colored . . . The question is whether, knowing that, there is an obligation on the part of the board to move in some direction to see that there is some dispersal of the children . . . whether the board may continue under the guise of a neighborhood school policy and maintain a status quo. That is the problem.

Judge Kaufman then showed a mastery of understatement by adding, "I suggest that in this area we are dealing with a comparatively new body of law." The issue as he phrased it was more than comparatively new; it was completely new, since no previous case had even suggested that a board of education might have a constitutional duty to abandon school zoning where, through no fault of the public authorities, an area had become primarily Negro. It is a difficult question whether *Brown v. Board of Education* applies to mere racial imbalance—sometimes called de facto segregation—that is, to a case in which a neighborhood school policy, without gerrymandering or without other misconduct of the school authorities, has led to a preponderantly Negro school. Some of the Supreme Court's language in *Brown* can apply to this type of segregation as well as to that before the Court, since this type of imbalance may also "generate a feeling of inferiority as to [the Negro children's] status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Thus, if one believes that the basis of the *Brown* decision was the Court's

finding that separate schools were unconstitutional simply because they bred a feeling of inferiority in the Negro, one must also believe that the neighborhood school policy, must also be constitutional if it breeds the same feeling of inferiority.

There are, however, problems with this analysis of *Brown*. First of all, it was obvious in 1954 that under the entire exploitive social system of the South, separate schools helped breed a feeling of inferiority in the Negro—and, to a large extent, school segregation was designed for just this purpose. Although there is a growing body of evidence to indicate that racial imbalance in itself is harmful to the Negro even in the setting of the North, it is less clear. If the Negro is entitled only to the equal protection of the law, he may be entitled to no more than the neighborhood school policy as applied to his neighborhood, provided the authorities do not allow the quality of education there to deteriorate. Moreover, it very well may be that no feeling of inferiority on the ground of race is caused by segregation not created deliberately by the State, because the Negro pupil attending a racially unbalanced school can see other Negroes who live in better balanced areas attending completely integrated schools. The student may then realize that it is not his race but merely his neighborhood which has determined his school.

There are other factors, too, that may cause a Negro child to feel inferior because of his race, factors which many educators feel are more important than racially unbalanced classrooms. One is the choice of textbooks. Even in integrated classes, Negroes may suffer through use of textbooks which show members of their race in menial positions only. Most textbooks do not even mention the existence of Negroes in the United States, and show pictures of all-white classrooms, all-white working forces, and all-white social gatherings only. Nor may any of the important figures studied in history, civics, science, or any other field be Negro. Admittedly, a large part of the blame for this situation is shared by textbook publishers, who must sell books in the South, and by middle-class white teachers who know nothing of the achievements of the Negro. On the other hand, this would not excuse boards of education from any constitutional duty to prevent feelings of inferiority.

It is, of course, possible that the entire "inferiority" theory has no constitutional dimension at all, and that the Supreme Court in its segregation decision was only buttressing its main argument with its findings concerning feelings of inferiority. Its main argument would simply be that racial classification by the State is a completely unreasonable means of dividing its citizens; that although for reasonable purposes citizens of different age, sex, educational background, and residence may be treated differently, in most situations, including

public education, race is not a permissible standard. As the Supreme Court said in *Hirabayashi v. United States*,²⁶ "Distinctions between citizens solely on the basis of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." This view of *Brown v. Board of Education* is supported by the Supreme Court's subsequent decisions outlawing segregation in parks, buses, and golf courses.²⁷

It is strange that during the entire discussion between Mr. Weiss and the court concerning the legality of segregation not caused by the board, no mention was made of the fact that the beginnings of an easier ground for decision of the motion for preliminary injunction (and for any final trial on the merits) was already in the record. If, as was indicated by Mrs. White's testimony, the school board had gerrymandered the Lincoln district, the problem of racial imbalance occurring through no fault of the board might not even be an issue in the case.

Mr. Zuber, who had taken no part in this discussion, then called his next witness, Dan W. Dodson, one of the Nation's leading experts in human relations and head of the team which had previously submitted to the board of education what is known as the Dodson report. Dr. Dodson testified that in 1959, at the request of the board of education, he had, together with a team of experts, undertaken a study of the racial imbalance in the Lincoln school. After making a complete study, he had proposed an interdependent set of recommendations. These included the rebuilding of Lincoln as a much larger school on the same site, the closing of the Washington school, and a major redistricting.

The most interesting fact about Dr. Dodson's report is that, despite his eminence and the high quality of his analysis of the problem, almost nobody in New Rochelle on any side of the Lincoln issue believes that his recommendation was a good one. Its great disadvantage was that the school proposed by the Dodson report would have opened with at least a 70 percent Negro enrollment.²⁸ As previously mentioned, New Rochelle had had an unfortunate experience with this type of racial balance in 1949, when by revoking all transfers it had hoped to cause racial integration at Lincoln. The great majority of the white children, however, rather than be outnumbered 2 to 1 by Negroes, chose to avoid entering the Lincoln school and either enrolled in parochial or other private schools, or moved out of

²⁶ 320 U.S. 81,100 (1943).

²⁷ *Muir v. Louisville Park Theatrical Ass'n.*, 347 U.S. 971 (1955), 1 *Race Rel. L. Rep.* 14 (1956); *Mayor v. Dawson*, 350 U.S. 877 (1955), 1 *Race Rel. L. Rep.* 15 (1956); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955), 1 *Race Rel. L. Rep.* 14 (1956); *Gayle v. Browder*, 352 U.S. 903 (1956), 1 *Race Rel. L. Rep.* 1023 (1956); *New Orleans City Park Improvement Ass'n. v. Detiege*, 358 U.S. 54 (1958).

²⁸ By 1962 the area it would have served has already become nearly 80 percent Negro.

the area. It is not important whether there is, in fact, a specific Negro preponderance beyond which white children will leave a school, since the overwhelming majority in New Rochelle believed that this was so, and would have acted accordingly. Admittedly, as Dr. Dodson stated in his report, "There is no ideal solution to the problem." Almost everyone in New Rochelle, however, felt that his recommendation was far short of ideal and involved far too great a risk of leaving New Rochelle with a newer, larger, and more expensive segregated school than it already had. Dr. Dodson now states that, if he had it to do over again, he would have recommended building a school in a sparsely settled area and busing large numbers of children to it from all parts of the city.

The cross-examination of Dr. Dodson, however, instead of concentrating on the defects of his solution, focused on the idea that nothing in the present plans precluded the school board from carrying out his recommendation by later adding to the size of the proposed new Lincoln school, and then shutting down Washington and rezoning. In this case the board's decision to rebuild on the site of Lincoln might be a step in the direction of carrying out Dr. Dodson's recommendation. During this line of argument, Judge Kaufman interrupted. "I'm sure that the position of the plaintiffs is that if the board intends to carry out the program and, if the Lincoln site is merely the first step, then there can't be any problem." Mr. Weiss then relied on the legalistic notion that "no public body can bind another, a new body;" that no one could be sure the board's plan might not prove to be the first step in implementing the Dodson proposal. It is difficult to see why Mr. Weiss chose this line of argument. Nobody in New Rochelle contemplated for a moment that the new Lincoln school would be the first step in implementing the Dodson proposal. First it would have been an expensive as well as illogical method; and secondly, nobody on the school board had favored the Dodson proposal to begin with.

Mr. Weiss also questioned Dr. Dodson as to whether rebuilding the Lincoln school to have a capacity of only 400 students could be a step toward integration, since it would distribute 100 Lincoln students to more racially balanced schools. Dr. Dodson's reply, that this depended upon which children were to be distributed, pointed out a curious failure in the board's planning. Some members of the board had assumed that the distribution would come from the overwhelmingly Negro Hartley Houses.²⁹ Others had assumed that the 100 students would be removed from the Lincoln school by the simple process of rezoning to send those on the fringes of the Lincoln area to nearby schools, even though this method might have reduced fur-

²⁹ See *supra*, note 12.

ther the small percentage of white children in Lincoln. In fact, the board had not really thought about this problem.

Dr. Dodson was followed on the witness stand by another educational expert, Theron A. Johnson, administrator of the Education Practices Act for the New York State Education Department and head of the department's Intercultural Relations Division. Mr. Johnson testified that in late 1956, at the request of a number of interested citizens, the school board had asked the State education department to send an expert to New Rochelle to advise it on the question of rebuilding Lincoln, then being debated by the board. Mr. Johnson was selected to make the investigation and, in the company of Dr. Harold Lott, a distinguished Negro educator, visited New Rochelle. After 2 days of investigation, they both met with the board and reported their preliminary findings, approving of the rebuilding of Lincoln. On his return to his office, Mr. Johnson wrote in his preliminary report:

There is at this time, no complete solution to the situation . . . In all but three of the elementary schools there is racial integration. No presently known techniques can now create complete integration of the Lincoln School district, one of these three, and still retain educational values. This is the regrettable but inescapable conclusion of our study.

There has been thoughtful concern and work by many community organizations, by interested citizens, by the Superintendent and by the Board of Education. This is to be commended.

The school board shortly thereafter proposed the rebuilding of Lincoln as part of their 1957 referendum. Then, in March, 1 week before the registration for the referendum, the board received Mr. Johnson's final report. He had, as he stated, "refined" his thinking. Now his report was sharply critical of the board's inability to remedy a segregated school, and suggested the postponement of the referendum for further study. The board president, Frederic W. Davidson, replied to this criticism by writing to Mr. Johnson's superior, the Commissioner of Education, charging that Mr. Johnson's report was unfair to the board. More specifically, Mr. Davidson charged that the suggestion of a delay in the referendum was irresponsible because it was made without consultation with the board, after all of the preparatory work for the referendum had been done, and at a time when New Rochelle badly needed the extra classroom space. Mr. Davidson went on to state that the request for further study:

. . . ignores the fact that this board has, in connection with developing its school building program, already spent upwards of a year in concentrated study of the Lincoln situation and its ramifications, in the course of which a number of special studies have been made.

It finally arrived at the same conclusion that Mr. Johnson did in his report to us last December . . .

Lastly, Mr. Davidson charged that copies of the report had been leaked in advance of its submission to the board to organizations opposing the rebuilding of Lincoln. The Commissioner of Education then officially withdrew the Johnson report.

In addition to his story concerning his report and the board's reaction to it, Mr. Johnson contributed some testimony shedding light on one of the crucial questions confronting the court. The board had argued both in court and during the referendum campaign that if Lincoln were a segregated school, so was Columbus with its preponderance of Italian-Americans, and Roosevelt, Ward, and Davis which were predominantly Jewish. The board maintained, therefore, that nothing was really very wrong in the Lincoln imbalance. Mr. Johnson, however, defined segregation only in terms of Negroes.³⁰ A school was segregated, he said, if it had a very high percentage of Negroes, say, more than 80 percent, and even more important, if it was commonly known within the community as a Negro school. Both of these definitions, of course, fitted Lincoln perfectly. Mr. Johnson went on to state that a characteristic of a segregated school is that "the achievement of youngsters is reflected in lowering motivation and lowering achievement." On cross-examination he elaborated on the question:

Mr. WEISS. This adverse effect that you mentioned, is that true only of Negroes?

Mr. JOHNSON. The research shows this to be true, yes, of Negroes only . . .

Mr. WEISS. If the incidence is only with respect to a Negro then there must be something inherent in a Negro.

Mr. JOHNSON. No, Mr. Weiss, that is not correct.

Mr. WEISS. Well, I would like you to elaborate on that.

Mr. JOHNSON. Yes, there are several factors that operate: [There are] schools in the Northern U.S. or in New York which tend to be designated as Negro schools. In past years the evidence has been fairly constant that facilities are lowered, teacher turnover is higher, etc. . . . Even when these factors are constant you have the operation of a psychological phenomenon that kids designated as second class or as inferior or low in status set out psychologically to prove this to be true and this is the result. And even when you take out the factor of sociostatus and economic status this phenomenon still operates and this is the crux of it . . . It is a psychological phenomenon we know that intelligence is not a function of race, there are plenty of studies to show that. The Negroes are not less intelligent than whites or more intelligent either. They are stupid, average and wise as the rest of us are, or like anyone else is. It is this placement of a person in a position which is truly and totally recognized as an inferior position. This is the history of the Negro in America.

Here, then, was evidence which would justify the board of education in being color conscious. If as a matter of psychological and educational fact, a "Negro" school—even with fine teachers and a good curriculum—has serious disadvantages not present in a predominantly Italian or Jewish school, the board might be justified in taking special steps to prevent the continuance of a "Negro" school and might even allow its students special privileges such as free transfer out of the attendance zone. This is not to say, of course, that a school board would have a constitutional duty to do this. Before venturing such a proposition of law, a court might wish a great deal more expert

³⁰ Subsequently, he modified this definition to include certain other minority groups of "high visibility"—Puerto Ricans in New York and Mexicans in the Southwest.

testimony and many carefully documented studies.³¹ In any event, in this case the plaintiffs were charging more than the intangible psychological effects of segregation; they were also charging inferior teaching and curriculum. For this reason, Mr. Zuber called as the last of the plaintiff's witnesses Dr. Herbert C. Clish, then the New Rochelle superintendent of schools.

In the long examination of Dr. Clish and from the many exhibits submitted in connection with his testimony, one fact stands out. Despite a great deal of effort, the plaintiffs were unable to show that at the time of the hearing, the Lincoln school was in any measurable way inferior to the remainder of the schools in New Rochelle.³² True, the average reading and arithmetic scores of the Lincoln children were the lowest in the city.³³ On the other hand, their preparation before entering school was the lowest, too.³⁴ Moreover, although many residents of New Rochelle state that before 1949, and even somewhat after, the Lincoln teaching staff and curriculum were the least adequate of any in the city, at the time of the litigation the Lincoln staff did not suffer from any greater turnover, lesser training, or other measurable inferiority.

In addition to the questions concerning the quality of education at the Lincoln school, Dr. Clish testified at some length on the efforts made to pass the 1960 referendum to rebuild Lincoln. First, Dr. Clish was questioned about the activities of two of his principals, Charles Spacht, of Mayflower, and Dr. Barbara Mason, of Roosevelt. Mr. Spacht had sent a letter to the parents in his school area urging the passage of the referendum on the ground that, "We are proud that Mayflower as now operated is a well-integrated school, 29 percent Negro. Do you wish this good integration to be changed?" Dr. Mason, at the time the only Negro school principal in the State of New York, had also come out in favor of the referendum on the ground that the Negroes in the Lincoln area did not have the socioeconomic background to compete with the students in the north end of town, that sending them to other central schools would disturb the integrated balances there, and that granting

. . . Lincoln School pupils' selection of periphery schools would result in a situation in which only Lincoln School pupils (Negro) would be attending schools other than those nearest their home . . . If attending a school which

³¹ James Bryant Conant, in *Slums and Suburbs* (McGraw-Hill, 1961), argues (pp. 30-31) that "The more one considers the matter, the more one is convinced that children should not be manipulated for the purpose of seating Negro children in white schools or vice versa . . . I think it would be far better for those who are agitating for the deliberate mixing of children to accept de facto segregated schools as a consequence of a present housing situation and to work for the improvement of slum schools whether Negro or white." See also App. E.

³² Many Negroes in New Rochelle state that nonetheless "there was something lacking in the education at Lincoln," and cite cases of remarkable improvement by students who went from Lincoln either to parochial schools or other elementary schools in New Rochelle.

³³ See app. B, E.

³⁴ See app. D.

serves a Negro neighborhood contributes to inferiority feelings of pupils, how much more would such a method of placement make these Negroes feel inferior.

Dr. Clish, although he had had full knowledge of these racial arguments, had made no effort to prevent their use by his subordinates and once even went so far as to state to a group of north end parents advocating free transfer for the Lincoln students:

. . . Well, if you are really that sincere, until there is some further action taken, if you want to send your children to Lincoln I will ask the board to allow me to send a like number of Lincoln children up to take their places.

The last major part of Dr. Clish's testimony concerned an advertisement³⁵ prepared with his aid by a committee for the passage of the 1960 Lincoln referendum. This advertisement listed all the elementary school PTA executive boards as favoring the reconstruction of the Lincoln school, despite the fact that the Trinity school PTA president had refused permission to mention that executive board's approval. The advertisement also stated that the Lincoln PTA wanted a new school, whereas no vote of the membership had been taken and only the executive committee of its PTA had come out in favor of the referendum. Lastly, the ad went on to state that if the referendum were turned down, the board of education would be able to and might finance the school by the more expensive means of 5-year bonds. The testimony of Dr. Clish was then concluded without cross-examination by the defendant's attorney, and the plaintiff rested his case for a preliminary injunction.

At this time the plaintiffs had presented the court with the following picture, which, although it might be contradicted by other testimony, seemed sufficient to make out a *prima facie* case for a temporary injunction. The Lincoln school was heavily Negro. In the past, in 1930, its attendance zone had been gerrymandered for the obvious purpose of keeping the Negroes in the school while removing white students. Until 1949, when the Lincoln school was 100 percent Negro, white pupils living in the Lincoln zone had been allowed to transfer to other schools. Although it is impossible to determine how much fault the school bore and how much was due to the Negroes' home environment, the performance of the students in the Lincoln school was lower on the average than that of students in any other school. Moreover, expert testimony indicated that an overwhelmingly Negro school was in itself injurious to the education of its students. The plaintiffs' case also showed that the board of education had been alerted to the evil of the racial imbalance in Lincoln, had commissioned numerous surveys and listened to a great deal of argument on

³⁵ See app. G.

ways of eliminating this overbalance, but had done essentially nothing. The board had proposed rebuilding the Lincoln school with a slightly smaller capacity, which might well have had the effect of making it an even more overwhelmingly Negro school and would certainly have done nothing to diminish the imbalance. Lastly, in its campaign to secure authorization to build this new school, it had allowed frankly racial arguments to be made, the thrust of which had indicated that the presence of Lincoln students, at least in some part because of their race, would not be beneficial in other schools.

Thus, the evidence presented by the plaintiffs raised at least a strong suspicion that they could show in a final trial on the merits—if they had not done so already—that the school board over the years had been indifferent to the educational needs of a racial minority, that at least in the past its actions had accentuated the racial imbalance in Lincoln, and that in recent years it had done nothing to improve the situation. The plaintiffs therefore argued that, unless the defendant school board could meet these charges, the preliminary injunction should be issued.

After the denial of Mr. Weiss' routine motion to dismiss the plaintiff's case, the defense began its case to show why the request for a preliminary injunction should be denied. The board's first witness was Kenneth Low, who, though no longer on the board, had been a member for 10 years and president at the time of the most recent decision to rebuild Lincoln. His original appointment to the board had been a result of his fine work in race relations as a member and the chairman of the Mayor's Interracial Committee and as the chairman of its successor, the Council for Unity. In the latter capacity he had taken the lead in persuading the 1949 board to prevent the transfer of white students out of the Lincoln school in the hope of achieving integration there. Mr. Low was also a member of the Urban League and the chairman of the Westchester County Council of the New York State Commission Against Discrimination.

Kenneth Low's testimony on the Lincoln matter was essentially this: When the board proposed in 1959 to rebuild the Lincoln school, it had picked the best of several unsatisfactory proposals. The whole board, as well as he himself, had been quite unhappy with the racial imbalance at Lincoln and had studied many means of remedying it. Unfortunately, it was a situation where no solution thought of was satisfactory and, finally, the board had chosen the present one. First, no other site was available in the Lincoln area that would have resulted in any lower percentage of Negro pupils than at present. Furthermore, no method of drawing the boundary lines around the present school would have helped in any way, since the whole area surrounding the Lincoln zone was predominantly Negro. The board—or at least

seven of its nine members—felt that closing Lincoln and sending the students to the surrounding schools which had vacant seats would have been practicable from the point of view of transportation, but would have had a most unfortunate effect: It would have so increased the Negro population of the Washington school and possibly of the Mayflower school, that, the white parents in those districts either would have moved out or registered their children in parochial or other private schools. The board felt that the experience of 1949 would be repeated on a larger scale and that rather than having one racially unbalanced school, the school board would have soon had two others.

Mr. Low testified that in his opinion there was a similar fault in the recommendation of the Dodson report that a larger school be built on the Lincoln site to accommodate the joint populations of the Lincoln and Washington schools. This school, Mr. Low said, would have been at least 70-percent Negro and would not have remained that well integrated for long. The community would thus have found that it had gone to trouble and expense to make things worse. Nor, Mr. Low felt, would busing Lincoln children to distant schools have been practical. The most important reason for this was the State law requiring any school board which provided transportation for some elementary school children³⁶ to provide or pay for similar transportation for all such children, and for all parochial and private school children as well. New Rochelle having a large parochial school population could not afford to transport its parochial school students. The city was then near its tax limit, and the board was already having to balance the demands for higher teachers' salaries against hiring needed guidance personnel, and so forth. Next, Mr. Low rejected the idea of permissive transfer for students in the Lincoln district for several reasons. First, permissive transfer plans are difficult to administer since they require up-to-date figures on the number of vacancies in each school, and complaints and difficulties invariably arise in ascertaining the number of seats available for the transferees. Moreover, he felt that if transfers were allowed out of the Lincoln district, the white children would be among the first to leave and a situation like that of 1949 would result, making the school's racial imbalance even worse than its present 94 percent. He said that in his opinion the school board had no moral or constitutional right to select one school and allow free transfer because of its heavy Negro concentration, while at the same time denying this right where large concentrations of Jewish or Italian children were involved. This, Mr. Low felt, was not being properly colorblind.

³⁶ Exclusive of certain handicapped children.

The last of the possible alternatives to rebuilding the Lincoln school was the construction of a k-3 school in the Lincoln area, with fourth-through sixth-graders being sent to nearby schools. This solution also had disadvantages. Not only did it fail to improve the racial imbalance of the Lincoln area pupils through the third grade, but it involved the danger that the fourth-, fifth-, and sixth-graders sent to the nearby schools might tip the racial balance there. Moreover, the past superintendent of schools, Donald J. Phillips, as well as Dr. Clish, had opposed the k-3 solution on the ground that such a school was not as sound educationally as a k-6 school.

Despite all this, Mr. Low said that he felt that the k-3 proposal was the best solution available and that he had advocated the adoption of this plan. He could understand, however, why the majority of the school board, in good faith, had favored replacing the Lincoln school as a k-6 school with its present 500-pupil capacity. It was at this time, Mr. Low said, that the compromise was suggested whereby the Lincoln school would be replaced by a school with a capacity of only 400. No one contended that the removal of 100 pupils would make Lincoln a less segregated school any more than the k-3 would. Rather, it was felt that at least the 100 pupils who would receive an integrated education might benefit. The plan was not completely thought out, however, and there was no decision as to exactly which of the Lincoln pupils would be sent to other schools.

Not only did all the alternatives to the board's plan have obvious disadvantages, Mr. Low went on, but there were positive reasons to rebuild the Lincoln school. First, the board was influenced in its conclusion by an alleged poll taken by the Lincoln school PTA which showed that 87 percent of the Lincoln parents wanted the new school. Second, although parts of the Lincoln zone contain well-maintained private homes, the area adjacent to the school can only be called a crime-ridden slum. The board hoped that this area would be redeveloped and that middle-income housing would be built there which might change its residential character. The State authorities, however, had ruled that they would not approve middle-income housing unless a modern school were erected nearby.

During Mr. Low's testimony he was questioned extensively by Judge Kaufman, who, in essence, took the view that there is no such thing as an insoluble problem.

Judge KAUFMAN. . . . What troubles me is, in effect you are saying you maintain the status quo because you simply can't find an answer to it, and it is hard for me to understand how conscientious members of the board can't find an answer to this, where the answers have been found in other communities?

Mr. Low. . . . we have done our best on this subject, and I assure you that I have been deeply concerned with the rights of minorities for many, many years, and I would not consciously do anything that would injure them, and I would do everything possible to help them. But I am not going to violate what I consider

to be basic constitutional principles, and the mere fact that this happens to be a badly racially imbalanced school is not due to any act of the Board of Education. It is a residential condition. And I may add that the Board of Education, before we took this action, supported in the State legislature the proposed bills for outlawing discrimination in residential patterns, in other words, the housing bills.

JUDGE KAUFMAN. . . . I understand the significance of your testimony, you are saying that you have wrestled with the problem; that you and other members of the board are fully conscious of it, and you are very sympathetic to it and you don't like to perpetuate this bad racial imbalance, as you call it. Yet, on the other hand, you say you could find no practical solution. The fact of the matter is, am I correct in saying that none has ever been tried, and it is really based on your judgment that you couldn't cure it by doing these things? . . . I think [the Dodson recommendation] would have been a step in the right direction. And we all agree here there are no ideal solutions, but we all agreed, I think, that we must make some start.

Mr. Low. Now, I consider that a start in the wrong direction.

On cross-examination, Mr. Zuber read into the record part of a letter written by Mr. Low in 1949, which said, "Every effort should be made, whether by redistricting or abandoning the school or by building a new school in a different location, to prevent the existence in New Rochelle of what is in effect a segregated school." In answer to Mr. Zuber's charge that he had changed his position completely, Mr. Low stated:

At that time I was hopeful that something could be done about this which upon long and careful study I found was not a reasonable solution to the problem. All of the proposals that I made in that letter were most carefully studied by our board.

In certain other areas of cross-examination, however, Mr. Low did not fare so well. He was questioned severely on the misleading and threatening tone of that part of the advertisement (app. G) which stated that the school board could rebuild the Lincoln school in a more expensive manner if the referendum were defeated; and on the problem of how middle-income housing would be put into the overwhelmingly Negro Lincoln area without its also becoming overwhelmingly Negro. Apparently the board had not thought through this second matter, because the rezoning designed to effect the removal of the 100 Lincoln pupils might detach the areas most suitable for integrated middle-income housing.

Although he may have failed to think through the board's proposals, Mr. Low refuted any charge of deliberate bias on his or the board's part not only by pointing to his own advocacy of the k-3 plan and to his personal record of membership and activity in groups against bias, but also by showing a number of concrete decisions made by the board of education which had had the effect of preventing racial imbalance in areas other than Lincoln. For instance, a consultant's report had suggested the building of an additional high school to serve New Rochelle's rapidly growing north end. He testified that this recommendation was rejected because white students would be syphoned

off to the northern high school making the southern heavily Negro. Another consultant's recommendation that a third junior high school should be built in the north end of the city was rejected for the same reason. The board felt that if the city had one southern, one central, and one northern junior high school, the central school would inevitably have a large preponderance of Negroes. In both of these cases, Mr. Low said, the recommendation would have been accepted but for the board's active desire to prevent a racially unbalanced school. Moreover, Mr. Low suggested that, while it was true that the board had been unable to solve the Lincoln problem, it had taken other action which at least indicated that it was not trying to avoid improving things. For instance, it had straightened out the Lincoln boundary line to send some 27 Negroes from Lincoln school into nearby Washington.

At the conclusion of Mr. Low's testimony, the defense presented a number of brief witnesses: Lee Kahan and Dr. Joseph Robitaille, past and present principals, respectively, of the Lincoln school; Dr. Barbara Mason, principal of the Roosevelt school; Dr. Joseph Halliwell, principal of the Webster school; Dr. Edward J. McCleary,³⁷ Superintendent of Schools of East Meadows, Long Island; and Sim Joe Smith, Assistant Superintendent of Schools in New Rochelle. These witnesses covered briefly and in no great detail a host of specific questions—teacher turnover in the Lincoln school, inferior education in the Lincoln school, the campaigning during the 1960 referendum, definitions and effects of segregation, and reasons for the neighborhood school policy.

Although none of this testimony was in any way conclusive, or even important, what is probably the most important single event of the entire litigation took place during this parade of witnesses. Julius Weiss stipulated with Paul Zuber that what had up to this point been merely the hearing on the motion for preliminary injunction should now be considered as the final trial on the merits. For a variety of reasons, Mr. Weiss' decision is difficult to comprehend. As Mr. Weiss had pointed out to Judge Kaufman before the hearing, the school board had by no means had adequate time to prepare its case. None of the usual pretrial methods of discovery, deposition, interrogatories, or pretrial conferences had been used to refine the issues and to ferret out expert testimony. None of the complex questions involving the present effect of the 1930 gerrymander or the pre-1949 transfer rule on

³⁷ It is difficult to determine why Dr. McCleary was called to the stand. His direct examination covered only about three pages in the record and was concerned with the standards he used in setting up neighborhood schools. On cross-examination he stated that the heaviest concentration of Negroes in any school in East Meadows, where he had served for the past 25 years, was less than 1 percent.

the Lincoln school had been investigated. The records of the school system, while replete with relevant data, were not in usable form. Again and again the hearing had been inconvenienced because the school staff, working overtime, had been unable to come up with information on time. An interval before the trial on the merits would have provided time to go into the questions raised about the quality of education at Lincoln, nonintegrated education in general, and the history of the Lincoln district. Moreover, this decision of counsel deprived the board of the full value of its crucial expert witness on the question of the effects of racial imbalance. This witness, Prof. Henry Garret, was not available at the time of the hearing to testify in person in court.³⁸

Most important of all, by agreeing to turn the hearing on the preliminary injunction into a trial on the merits of the case, the school board had forfeited its right to have a different judge make the decision on the merits. This decision was completely inconsistent with the subsequent charges by board members that Judge Kaufman's unfairness and bias against the board had been revealed from the very beginning of the hearing. Moreover, aside from any possible bias, it was clear from the judge's questioning of witnesses and handling of objections that he disagreed completely with Mr. Weiss's whole theory of the case, and was at least leaning against the school board on the decision. Mr. Weiss has since stated, "It was inconceivable to me that the judge could decide against us on this record."

Mr. Weiss' confidence was further indicated by his decision to submit the testimony of most of his major witnesses by stipulation and affidavit instead of through court appearance.³⁹ This decision was made despite Judge Kaufman's warning that he could not consider this evidence entitled to as much weight as that of witnesses appearing before him in person and subject to cross-examination. Thus, the testimony of Irving Zwiebelson, the chief psychologist of the New Rochelle school system, another of the board's expert witnesses on the effects of racial imbalance on Negro students, was presented in such a manner as to have the least possible impact.

It should be noted that Mr. Zuber's approval was required for the stipulation that the preliminary injunction hearing be considered the final trial on the merits. He consented for two reasons. First, because

³⁸ His testimony had to be submitted by affidavit, a far less satisfactory method.

³⁹ His stipulation that the testimony of the other majority board members would be the same as that of Mr. Low is defensible on the ground that in fact some of them, at least, would not have been as sympathetic witnesses as Mr. Low. On the other hand, their presence in the courtroom as spectators perhaps indicated to the judge that this was the reason for keeping them off the stand. Moreover, a certain amount of ill-feeling in the community was generated by the fact that although various members of the lower echelon of the school administration were called into court to testify, most of the real decision-makers escaped this ordeal.

the essence of his case was already in the record and the board had put in no real defense. Mr. Zuber was also aware that the delay of seeking a final trial would have prevented his clients from attending an integrated school for another year.⁴⁰

After all the evidence had been presented in what was now the final trial on the merits, both sides argued the case to the court. Mr. Zuber abandoned the relative simplicity of his previous argument. No longer did he argue merely that the Lincoln school was segregated because it was overwhelmingly Negro; that the school board deliberately required Negro students in the zone to go there; and therefore that the school board was guilty of deliberate segregation. Now Mr. Zuber examined the crucial question of intent, and attempted to draw from the evidence the inference that the preceding boards of education had deliberately made Lincoln school an all-Negro school, with the intention of confining as many Negroes as possible in that school, and that the present school board had, without reason or excuse, failed to do anything to remedy that segregation.

Mr. Weiss for the defendant put forth a number of reasons for deciding in favor of the board. The plaintiffs, he stated, had failed to prove the allegations of their complaint; second, the mere inferiority of one school as opposed to another does not raise a constitutional question; third, New York State law allows the commissioner of education to step in to cure any educational or other defect, and since the plaintiffs in this case had elected to seek their remedy before the commissioner, they should be bound to accept his decision. Last, Mr. Weiss argued that the issues in this case involved a question of policy—that is, the neighborhood school policy—and that, “Obviously courts may not review policy. Policies and review of policies is just the reverse of the judicial process. Judicial process judges an event when it is past; policy looks to the future.” In short, the major substance of Mr. Weiss’s closing argument involved the duty of the courts where an all-Negro school had come into existence through no fault of the board of education. He maintained that in this situation a school board had no duty to take action. Indeed, he protested that his expert testimony by affidavit indicated that an all-Negro school was not neces-

⁴⁰ It might also be asked why he approved the allowance of the defendant’s affidavits into evidence and thus deprived himself of the opportunity to bring out possibly damaging facts on cross-examination. There appear to be three answers to this. First, Mr. Zuber was quite sure at this time that he had already won the case, so long as his initial proof of gerrymandering had not been refuted in any way. Second, he realized that the very fact that the testimony by affidavit could not be tested by cross-examination would cause the judge to give it much less weight than testimony which had been subjected to this type of test. Third, Mr. Zuber was following a policy of being completely agreeable—whenever it was not too much to his disadvantage—and of speeding the proceedings along. These factors, while certainly not evidence in a case, tend to convince a judge of the reasonableness of one’s case and have the psychological effect of disposing him favorably to one’s cause. In all of the above reasoning it seems that Mr. Zuber was eminently correct.

sarily inferior in any way to an all-white one and that, therefore, so long as the school authorities had not deliberately caused the segregation, there was no violation of constitutional law. As for the evidence of gerrymandering, Mr. Weiss stated, "There is no claim here that we gerrymandered these districts."

The Decision

On January 24, 1961, after the briefs had been filed and approximately 7 weeks after the trial had ended, Judge Kaufman handed down his decision against the school board. It cannot be denied that he had attempted in every way to prevent the trial from reaching this stage. He stated in his opinion: ⁴¹

Litigation is an unsatisfactory way to resolve issues such as have been presented here. It is costly, time consuming—causing further delays in the implementation of constitutional rights—and further inflames the emotions of the partisans.

Practicing what he preached, the judge had on four or five occasions during the trial invited counsel for both sides into his chambers and tried to bring about a settlement. On each occasion he stated that this type of matter should not have to be resolved by the courts, that there were methods of compromise, and that if necessary he, personally, would act as a mediator. On each of these occasions his attempts were rebuffed by the school board, while Mr. Zuber, although not committing himself to any specific compromise, indicated that he was prepared to sit down and talk. In a litigation between two private parties, this persistence by a judge in attempting to arrange a settlement would be most unusual, and perhaps improper. Judge Kaufman, however, probably felt that a great deal more was at stake here than in the usual private suit, that community relations would be far better served by a negotiated settlement than if one side or the other won. The school board, on the other hand, spurned all of these offers. It appears that there were three major reasons for the school board's adamancy. First, some members believed that Judge Kaufman was not sufficiently impartial to act as a mediator (it is difficult on this premise to see why they felt better off with him as the judge); second, some felt so strongly the rectitude of their position that they wanted vindication and approval by a court. Finally, some were so angry with Mr. Zuber for his public conduct before the trial that this emotion alone would have prevented them from making any conciliatory gestures.

The judge did not merely content himself with attempting to bring about conciliation in his chambers. On a number of occasions in open court he had suggested specific settlements. When Kenneth Low testified that the 400-pupil school which the board had tentatively

⁴¹ 191 F. Supp. at 197, 6 *Race Rel. L. Rep.* at 104.

decided to build would have permitted the dispersal of 100 students, the judge futilely attempted to convince Mr. Weiss that a settlement might be worked out through an agreement to disperse those 100 students immediately. On another occasion, when Mr. Weiss suggested that the plan to rebuild the Lincoln school might be the first step toward the implementation of the Dodson proposal, the judge again tried to propose a settlement on this basis. In both of these cases his attempts were rebuffed by the defendants.

Although he had worried a great deal about the subtle and difficult questions presented by the plaintiffs' complaint, Judge Kaufman, on examining the transcript and the exhibits in the case, found that it was unnecessary for him to decide these issues. It was immaterial in this case exactly what the duty of a school board is to remedy a racial imbalance which has occurred through no fault of its own, for here the judge found that the school board had indeed been at fault.

In short, Judge Kaufman ruled that in 1930 the school board had gerrymandered the Lincoln district so as to withdraw a large portion of its white students, sending them to both the Webster and Mayflower schools; that between 1930 and 1934 the board had altered the boundaries of Lincoln so as to contain in the attendance area the ever-increasing Negro population; and that until 1949 the school board had assured that the Lincoln school would remain Negro by allowing white students to transfer out of the zone. After 1949, when transfers were forbidden, the school board had adhered to the status quo and had left unchanged the situation which it had created by its own wrong. Accordingly, the board had a duty to remedy the situation and to present a plan whereby this would be done.

In his opinion, Judge Kaufman failed to discuss the relationship between the wrong committed in 1930 (and possibly up to 1949) and the racial imbalance in the Lincoln school in 1960. A great many residents of New Rochelle have argued that the 1930 gerrymander could not have had any effect on the present day situation. Lincoln, they have asserted, would have become mostly Negro anyway. In fact, they state, the gerrymander and the transfer provisions had the effect of keeping the area partly white, since most white parents would have moved out earlier if they had had to send their children to Lincoln.⁴² On the other hand, Judge Kaufman's implicit conclusion can be defended on a number of grounds. First, it cannot be said with certainty that the Lincoln school would have been so overwhelmingly Negro had the board not committed its wrongs. Although the matter

⁴² It would seem that the fact that white children in the Lincoln area had to travel some distance to other schools could certainly be expected in the ordinary course of events to make that neighborhood less attractive to them and to aid somewhat in the creation of an all-Negro area.

was not explored in the trial, Mr. Daniel W. Boddie, a prominent Negro attorney in New Rochelle and a student in Lincoln from 1927 to 1933, states that the student body in Lincoln went from 25 to 75 percent Negro at the time of the gerrymander. "I didn't understand why at the time, but I did notice that most of my friends disappeared from Lincoln over the summer, and I didn't see them again in school until junior high." By the time Mr. Boddie left the Lincoln school, it was 85 percent Negro and the percentage was increasing rapidly. In 1934 the board itself referred to the Lincoln school as New Rochelle's Negro school. Even if the transfers out of the district had been allowed on a nondiscriminatory basis,⁴³ the school board by its own actions had created a racial imbalance in the school which could be expected to make white parents send their children to other schools.

In view of this, is it any wonder that when the transfers were prohibited in 1949, white parents, rather than send their children to the Negro school, either entered them in parochial or private schools or moved out of the district? Even if it is admitted that the Negro percentage of the Lincoln district would have risen without the help of the school board, it might not have risen so far so fast and might have stabilized into a much better mix than 94 percent Negro. Who can say that if the transition from white to Negro had not been accelerated by the school board, the gradual increase in the percentage of Negroes would not have given the white population a lesson in interracial understanding that would have prevented their flight?

Judge Kaufman might also have held against the board on a purely legal ground. It is a principle of law that a trustee who embezzles stocks or bonds cannot, in his defense to either criminal or civil actions, show that the securities would have become worthless anyway. Nor can a murderer plead that his victim was on the point of death. Here, where the school board clearly contributed to the segregation, it cannot be heard to argue that it would have happened anyway.

There is a middle ground between supporting Judge Kaufman's decision as a question of fact and supporting it as a question of law. The board simply failed to produce any evidence showing that its wrong was not a cause of the 1960 Negro concentration in Lincoln. It was certainly not too much to ask, where the board had committed a wrong aimed at the plaintiffs' race that the board come forward with some evidence that its action had not in fact resulted in any harm to the present plaintiffs. Where, as here, despite its burden of proof, the board failed to produce any evidence on the issue, the question had to be resolved against it.

Thus, Judge Kaufman found it unnecessary to decide whether school boards should consider race or whether they should be

⁴³ Which, as discussed above (p. 48), they were not.

colorblind. Here, where the school board ⁴⁴ had discriminated against members of a race, it had a right and indeed a duty to consider the factor of race if necessary to right the wrong it had previously done. Moreover, good faith efforts in this situation were not enough. The school board had an absolute duty to undo the harm that it had caused. Judge Kaufman did not in his opinion spell out just how this should be done. Rather, he left it to the school board to present a plan for "desegregation," which he might order into effect or modify, to right the wrong he had found.

Although not spelled out by the court, the above reasoning seems to support its judgment. Judge Kaufman, however, was not content to rely on one ground. In addition to holding that mere good faith on the part of the present board was not enough to right the previous wrong, he went further, and held that in fact the school board, even since 1949, had not been in good faith in its attempts to solve the Lincoln problem. Judge Kaufman pointed to many actions as indicative of a lack of good faith and as proof that the school board deliberately took no action to remedy the Lincoln situation, not because any action it might have taken would have been educationally unsound or administratively or financially infeasible, but because it desired to continue the segregation of the Lincoln school children.

As proof of bad faith, Judge Kaufman cited a number of facts. First, the school board did not do anything to improve the Lincoln situation. Although this is true, the testimony of Kenneth Low showed, and other testimony suggested, that not only was there "no ideal real solution," but that it appeared to the board that aside from the compromise that it had adopted there was no satisfactory solution. The board did not know what to do and made the decision to rebuild Lincoln almost in desperation.

Judge Kaufman also relied upon the reception accorded Theron Johnson's final report to show bad faith. After pointing out that the report was critical of the board, the judge stated: ⁴⁵

The board's response to this challenge was somewhat less than edifying. The board's president, Mr. Frederic Davidson, wrote immediately to the Commissioner of Education, asking that the report, which the board itself had initially requested, be recalled and repressed.

Thus, the judge's opinion would make it appear that the board was intent only on suppressing criticism. The board, however, had some reason for pique over Mr. Johnson's "refining" his thinking and escaping the "inescapable conclusion" of his previous study. The judge did not mention the charge of the report's having been leaked in

⁴⁴ Of course, as a factual matter, the present school board had committed no such wrong. Nonetheless, it is legally responsible for the acts of its predecessors.

⁴⁵ 191 F. Supp. at 188, 6 *Race Rel. L. Rep.* at 96.

advance to the board's opponents or the bad timing of Mr. Johnson's sudden suggestion to postpone the referendum.

The next indication of bad faith that the judge found was the board's rejection of the Dodson recommendation, again without referring to the testimony that in fact it was not a satisfactory solution.

The court also found support for its finding of deliberate prejudice by examining the board's 1960 referendum campaign, saying: "The board's activities in an attempt to gain public support for the proposal give strong indication of the absence of good faith in meeting its obligations."⁴⁶ The specific acts charged are, first that "it permitted the issue of segregation to be insinuated into the referendum campaign, to the extent that all other factors became obscured."⁴⁷ In light of the actual referendum campaign, this is not so clear. From the very inception of the Lincoln controversy the racial imbalance in Lincoln was an issue—an issue brought up much more often by foes of the board than by its supporters. Secondly, Judge Kaufman objected that "The 'status' fears of persons in the districts bordering Lincoln were fostered."⁴⁸ By this he meant that school principals made statements such as the following:⁴⁹

In several schools where a well-integrated situation exists, the proportion of Negro students is steadily increasing each year. Even in those Mayflower neighborhoods where housing integration does exist, the turnover of homes is almost invariably from white to Negro owners. In recent years, the proportion of Negro students at Mayflower has risen approximately two percent each year. Lincoln School rezoning would certainly hasten this process.

Judge Kaufman states of the school board's failure to discipline the principals for this kind of statement that ". . . this is not the conduct of a public body seeking in good faith to reach a legitimate solution to a racial problem."⁵⁰ The court makes no allowance for the possibility that the influx of Lincoln children would have upset the relatively stable Mayflower situation, nor for the fact that it is one thing to oppose the admission of Negroes because it would create integration, and a very different thing to oppose it because it would destroy integration already existing. Moreover, board members have since stated that no effort was made to censor principals because they believed that they were entitled to a measure of freedom of speech, especially when they had merely said things a great many other people had already pointed out and which everybody in the community already knew anyway.

As support of his finding that the school board's referendum campaign revealed a positive desire to segregate, Judge Kaufman devoted

⁴⁶ 191 F. Supp. at 190, 6 *Race Rel. L. Rep.* at 98.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ 191 F. Supp. at 191, n. 8, 6 *Race Rel. L. Rep.* at 98, n. 8.

⁵⁰ 191 F. Supp. at 191, 6 *Race Rel. L. Rep.* at 99.

careful attention to the advertisement.⁵¹ Beginning at the top, he found it improper to brand opponents of the referendum as extremists and propagandists. The judge then suggested that the board had used pressure to induce the PTA officials whose executive boards had supported the rebuilding of Lincoln to allow this fact to be printed; that it had been inaccurate in stating that the Lincoln PTA had endorsed the board's proposal whereas in actuality only the PTA executive board had;⁵² and that the school board had threatened taxpayers with "harsh financial consequences" by pointing out that the board could rebuild Lincoln using the more expensive means of 5-year bonds.

Many people in New Rochelle have since stated that, at worst, the ad shows that the board may have been overzealous in pushing its plan rather than that the plan was the result of bad faith. At best, the ad was considerably more fair and reasonable than a great part of the literature usually distributed on both sides of any heated election campaign.

Other evidence in the record which seems inconsistent with a finding of bad faith on the board's part is not mentioned in the opinion. The evidence as to the board's motives in other situations is not irrelevant to its motivation in the Lincoln case. After all, it is not likely that men who actively seek integration in one school will have completely different values and notions of public responsibility when they come to consider another. The testimony that the board had refused to build an admittedly needed second senior high school or third junior high⁵³ on the ground that this might cause segregation, and the fact that two-thirds of the Negro elementary school children in New Rochelle went to other, integrated schools both suggest that perhaps it was not a desire to foster segregation that motivated the board's decisions as to Lincoln.⁵⁴

The court's finding as to the school board's bad faith receives little support from most citizens in New Rochelle; many opposed to the school board's actions in the Lincoln case do not seem to believe that the school board was acting from improper motives. As Dan Dodson said later, "I believe that if the costs had been less, the school board would have made great sacrifices to achieve integration in the Lincoln

⁵¹ App. G.

⁵² This statement is inaccurate. The advertisement did not say that the Lincoln PTA had voted in favor of a new school, but that the Lincoln PTA wanted a new school, a fact reasonably inferred from a poll of parents purportedly taken by the PTA executive committee less than a year before.

⁵³ Nor was this simply nonaction, a refusal to build. The school board did build a junior high school farther north, but at the same time closed what would have been the central—and a racially unbalanced—school.

⁵⁴ Similar findings were held to prove the school board's good faith in *Henry v. Godsell*, 165 F. Supp. 87 (E.D. Mich. 1958), 3 *Race Rel. L. Rep.* 914 (1958).

school. . . . In this case, though, the costs were just too high for them." Most of the board's opponents in New Rochelle seem to agree. They accuse the board of unwillingness to face up to its responsibilities, of failure to meet the problem head on, of inability to take risks, and of pigheadedness, but not of deliberate bad faith and desire for segregation. The plaintiffs in the case, however, take a different view. They are completely uninterested in the legal niceties which may require a showing of bad faith to upset a school board's ruling. One said, "We don't care what their reason was; they wanted to deny our children a decent integrated education." Another argued, "What do we care about the Board's problems? For three hundred years the Negro has been kicked around in the United States, and we want our rights now."

Judge Kaufman's finding of bad faith as an alternative ground for his decision may have had serious consequences. This was the finding that got the publicity, and this was the finding which caused the community to fight to the end to clear its name.

Judge Kaufman's decision shocked New Rochelle. The majority of the board's supporters, until the moment the decision came down, had considered it inconceivable that the judge would decide against them. Almost immediately, the community was split by the next question: Should the decision be appealed? Strangely enough, despite the general feelings on both sides of the Lincoln question that Judge Kaufman had unfairly impugned the integrity of the leadership of New Rochelle, a good number of citizens opposed appealing. These included not only the groups which had fought the board of education before and during the trial, but certain former supporters of the board who felt that the revelations made during the trial had shown the majority to have been wrong. A petition to the board signed by 123 citizens opposed appeal on the grounds that:

1. It would entail unwarranted waste of the taxpayers' money.
2. It would further damage New Rochelle's reputation as a liberal and progressive community.
3. It would continue to divert the Board of Education's time and energies from its primary purpose, namely the educational needs of our children.

The board, however, believing that the decision would in all probability be reversed, voted 6 to 3 to appeal. It argued that this step was necessary, first, to clear the name of New Rochelle, and, second, to do a public service by providing school boards throughout the Nation with a rule of thumb for determining at what percentage a school became too heavily white or Negro.⁵⁵

⁵⁵ Any appellate decision affirming or reversing would have given no real guidance anyway; it would merely have ruled that 94 percent was or was not enough.

Whatever the merits of the first reason,⁵⁶ the second clearly does not hold water. Although the plaintiffs' complaint had asked for a decision that the mere existence of a racial concentration in a school greater than a certain percentage placed a constitutional duty on the board of education to take action, the judge had not followed the theory of the plaintiffs' complaint. Rather, he had merely held that, where the State authorities have used their powers to create an overwhelmingly Negro school, they have a duty to remedy this situation.

The next difficulty in the attempt to appeal Judge Kaufman's ruling was that the decision probably was not appealable at this point.⁵⁷ Mr. Weiss has since said that he had doubts about the finality of the January 24 decision, and appealed only to protect against the possibility that, on later appeal from a ruling on the board's plan, an appellate court might hold that the board should have appealed earlier. Accordingly, Mr. Weiss was not surprised when the court of appeals raised the question of finality, and then by a 2-1 majority decided that the appeal from Judge Kaufman's decision was premature⁵⁸ and that the board would have to wait to appeal Judge Kaufman's final order after a plan had been submitted.

⁵⁶ Specific findings of fact are seldom overturned on appellate review. The courts of appeal do not rule that a district court judge was right or wrong on a finding of fact. Rather, they give the lower court's finding great respect and reverse only if it is "clearly erroneous."

⁵⁷ In general, a district court decision must be "final" before it may be appealed. A final, and hence appealable, judgment is one which terminates the litigation on the merits, leaving at most only simple, mechanical questions to be decided. In this case a great deal more than simple, mechanical questions needed to be resolved: Judge Kaufman had yet to decide what to do to disestablish the pattern of segregation he had found in the Lincoln school. The purposes of the final judgment rule are twofold. First, the rule is designed to force the losing party to determine whether he has actually been legally hurt by the judge's ruling before he decides whether to appeal. (Mere injury to prestige is not enough.) Here, it was at least theoretically possible that when the school board's plan was submitted, Judge Kaufman would render such a Solomon-like decision that the board would have no objection to complying and hence might not wish to appeal. The second reason for the final judgment rule is to discourage piecemeal appeals. It is true that the requirement of finality would put the board to the trouble, possibly unnecessary, of formulating a plan for Judge Kaufman. On the other hand, this trouble would certainly be no more than commensurate with the difficulties the appellate court would have deciding the appeals piecemeal: first, when Judge Kaufman's present decision was appealed, and later, if that were affirmed, when the judge had decided on the remedy for the wrong he had previously found.

⁵⁸ 288 F. 2d 600 (2d Cir. 1961), 6 *Race Rel. L. Rep.* 418 (1961).

The Plan

After the court of appeals' decision was handed down, a committee of the board began work on the plan in earnest⁵⁹ and in due course, presented it to the full board which, over the vigorous dissent of a minority of three, approved it for submission to the court. The plan provided that:⁶⁰

Any pupil attending the Lincoln Elementary School, without regard to race, creed, color or national origin, shall be permitted to register and enroll in any elementary school in the New Rochelle Public School System, under the following conditions:

(1) There shall be available a seat to accommodate the child in the grade to which he seeks admission.

(2) Admission of out-of-district pupils shall be made only in conformity with the Board of Education's class size policy.

(3) Any pupil for whom such transfer is sought shall be recommended by his classroom teacher and principal as being able to perform in academically satisfactory fashion on the grade level to which he is assigned, with the recommendation and request being subject to the approval of the Superintendent of Schools.

(4) Permission granted for such transfer shall be on a year to year basis, with children actually living within the confines of the receiving school district having priority in admission to a given school and seats within the classrooms.

(5) Any parent requesting such a transfer shall give a written statement expressing his willingness to provide transportation at his own expense.

(6) The Board of Education reserves the right of flexibility in the administration of the transfer plan in keeping with the overall administration of the school system, since the Board cannot lawfully surrender its powers and duties conferred by the State Education Law.

(7) All requests for such transfers shall be received annually in the office of the Superintendent of Schools not later than 1 June, preceding the opening of school in September each year except in 1961, the final date being 15 June, 1961.

Before the plan was submitted to the court, a preamble was added which, in essence, argued the board's position on the general question of the neighborhood school policy as applied to an overwhelmingly Negro area. It pointed out that Washington, D.C., had 11 all-Negro schools, and blamed the existence of the Lincoln problem on housing patterns. This preamble failed to recognize that the court had already held that the school board, not merely the residential pattern, was responsible for the situation.

The plan imposed upon transferring Lincoln pupils several conditions which were not clearly defined. It would seem that the con-

⁵⁹ Julius Weiss advocated a plan which merely redrew the boundary lines around Lincoln, on the theory that this would restrict Judge Kaufman to solutions involving such changes in zone lines. The board, however, discarded this type of plan as not sufficiently respectful of the court.

⁶⁰ 195 F. Supp. at 234, 6 *Race Rel. L. Rep.* at 702.

ditions would be approved by a judge only if he had complete confidence in the school board and its officials. The findings with regard to good faith showed this confidence to be lacking.

School officials have since argued that each of the conditions attached to the transfer proposal was added to meet a legitimate need. The first two conditions were designed to prevent further overcrowding in some of the schools. Although plenty of seats were available for transferees in some schools without increasing class size beyond the 29-pupil maximum which the board felt was essential for proper education, available seats were not evenly distributed. Accordingly, the board's plan attached the condition that room for the transferring students be available in the receiving school.

School officials assert that the third condition, requiring three levels of approval before transfer, was included for educational reasons. Although the plaintiffs had argued vigorously that the Lincoln school was inferior to the other elementary schools in curriculum and in teaching, which the school board had denied,⁶¹ there is no doubt that the scholastic performance of many Lincoln students was not up to that found in certain other schools in the city. Thus, although there were many children in Lincoln who were capable of competing with students at, for instance, Roosevelt or Ward, there were also many students in Lincoln whose scholastic record was so far below the general level in north-end schools that their transfer there would, the school authorities felt, be a disaster. The board and the superintendent felt that indiscriminate transfer of Lincoln children into any north-end school, would completely disrupt education in the receiving school. The officials feared that, in addition, the transferees would be unable to compete or even to keep up, and would probably suffer diminished motivation because of this. Lastly, they felt that mixing the least advanced of the Lincoln children with those of a vastly higher educational, financial, and cultural background might actually confirm unhealthy racial stereotypes in the minds of the pupils in the receiving schools, rather than destroy them.

⁶¹ Actually, the school officials during and before the trial had been most careful to say that the curriculum in the Lincoln school was not inferior to that of any other school, *considering the abilities of the Lincoln children*. Many people found this qualification hard to grasp. Again and again Judge Kaufman asked the board members at the hearing on the desegregation plan whether there wasn't an inconsistency between setting up the requirement of approval for transfer and their previous position that the teaching and curriculum in the Lincoln School was as good as any in the city. Even the Department of Justice in its *amicus* brief on appeal stated, "Incidentally, in view of appellants' statements, in their applications for a stay, that Lincoln provides educational facilities on a par with all other New Rochelle schools, it is difficult to understand the necessity of such a provision." Actually, the board had been most careful not to assert that the student body at Lincoln was as well educated as any in the city, since this was clearly refuted by the plaintiffs' exhibits. See app. B, C, and D.

In this area, the board's exact purposes might have proven acceptable had they been stated precisely. The condition for approval that the transferee be "performing in an academically satisfactory fashion" was too vague. For example, it would have been difficult to complain that the board had placed an unreasonable condition on transfer if it had stipulated specific standards, such as a requirement that before a child could transfer, his reading or arithmetic level had to be within 3 years of the average level of his grade in the school into which he wished to transfer. In this case the board would probably still have been attacked⁶² for casting aspersions on the Lincoln children. It could have replied, however, that many Lincoln children might transfer to any school in the city; that no child would be denied transfer to a racially balanced school where the transferee fitted into the ability range of the class he would enter; and that the absence of this condition would throw an intolerable strain on the education of all pupils in the school.

Again, the fourth condition, limiting transfer to a year at a time and granting preference to children living in the zone, was attached to prevent any unexpected increase in the population of a particular school from swelling class size beyond the board's maximum. The board assumed, perhaps incorrectly, that it had the right to assure that zone residents would receive preference over transferees, and thought that this was not unfair for two reasons. The board believed, first, that a parent who had paid a large sum for his house because of its location in a "good" school area should have the right to have his children go to that school; and second, that so long as the transferees might go to another integrated school they had no complaint. Regardless of its objectives in this respect, the plan, by threatening a possible retransfer at the beginning of each school year, shows a complete insensitivity to the emotional needs of the Lincoln children. Moreover, it is such an obvious deterrent to transfer that it had almost no chance of being sustained by Judge Kaufman.

The fifth condition in the board's plan, regarding transportation, was designed to make certain that each parent understood that his children would not be transported at public expense. The board had heard of rumors in the Lincoln area that children would receive free transportation (and possibly, later, free lunch) if they transferred to other schools. The board wished to prevent unfounded hopes. The sixth condition was merely a general statement of the fact that to provide for unforeseen contingencies administration of the plan had to be flexible.

⁶² The minority members of the board attacked the board's plan as "replete with nasty implications" such as that "Negroes are generally below grade level, that the Lincoln school pupils are scholastically below respective classes in other schools and that there is a higher percentage of emotionally disturbed children at Lincoln."

The board explained the impreciseness of its plan in an accompanying memorandum which stated that: "The board places the utmost confidence in the integrity of its teachers, principals, and the superintendent of schools, and is satisfied that the plan will be fairly administered."

One may ask why the board's plan was submitted in such form, thus forfeiting any real chance of court approval. One answer often given in New Rochelle is that the board expected the case to be reversed on appeal, so that there was little reason for expending effort on the plan. Another is that the abortive appeal had prevented the start of work on the plan until there was very little time left. But probably the most important reason advanced was the feeling by the board that there was no use trying to satisfy the court.

Whatever the board's reason, the consequences of submitting such a plan were inevitable. It was probably too late for a compromise that might have been acceptable during the trial—the immediate dispersal, perhaps on a first-come-first-served basis, of 100 pupils to other schools. However, the k-3 plan, which from the board's point of view was probably the next best choice, was not foreclosed. Despite his finding against the board on the issue of their good faith, Judge Kaufman had extended the olive branch to them in his opinion, stating: "Men of good will, such as the individual members of the board submit they are, could have solved and still can solve the problem by exercising the judgment and understanding for which they presumably were chosen."⁶³ By refusing this overture, the board gave up its last chance for compromise.

At this stage in the litigation, Mr. Zuber was formally joined by Constance B. Motley and Thurgood Marshall, attorneys from the NAACP Legal Defense and Education Fund which had given him aid during the previous proceedings. In a brief filed by these three attorneys, the plaintiffs opposed the board's plan. They, however, were no more helpful to the court than the school board had been. Although they attacked the plan on a wide number of grounds, referring to it as void on its face, nowhere did they submit what they wished as an alternative. Worse than that, they objected to the wrong things. They objected to the fact that, "The plan expressly provides for the continuation of the Lincoln school."⁶⁴ As long as completely free transfers to other schools are allowed no court has yet intimated that there is any constitutional objection to allowing parents the option of sending their children to the most convenient school, even if it is overwhelmingly Negro.

⁶³ 191 F. Supp. at 197, 6 *Race Rel. L. Rep.* at 104.

⁶⁴ *Taylor v. Board of Education of New Rochelle, N.Y.*, Civ. No. 60-4098. Brief of Plaintiffs, filed May 9, 1961.

Secondly, the plaintiffs complained that: "The plan which has been submitted by the majority makes no provision for disestablishing the lines [which the court found had been drawn to coincide with the population movements] and for their . . . realignment."⁶⁵ This misses the point. The court did not find that the present boundaries of Lincoln had been drawn to confine Negroes there, and in fact, as everyone knew, no boundaries, however drawn around Lincoln, could have brought any substantial numbers of white pupils into the school. It is difficult to see why the plaintiffs' attorneys, knowing that no change in the boundary lines would have improved the situation, nonetheless demanded that one be made.

Next, the plaintiffs' brief turned to an examination of the conditions placed by the school board on transfer. It objected that the right of transfer was improperly made contingent upon a lack of overcrowding and upon an ability test not applicable to other transferees. The first of these objections is somewhat overstated. It is not completely accurate to say, as the plaintiffs did, that, "If a seat is not available . . . the child may not transfer. In short, overcrowding will be used as a justification for continuing to segregate an applicant."⁶⁶ Since there were plenty of schools which were integrated and not overcrowded, this objection does not seem to be well taken.

The plaintiffs' charge that the transfer policy "provides for the application of a criterion to the Lincoln transferees not applicable alike to other transferees in the school system similarly situated,"⁶⁷ seems even more overstated. It is true that the criteria applying to the Lincoln transferees were in no way spelled out, but to say that the plan envisaged different standards to be applied for Lincoln students than for other transferees is misleading. In fact, there were almost no students in other schools who would be permitted to transfer under the rigid rules which the board had previously laid down for the whole school system. Some of the criteria for transfer might be unfair, burdensome, or otherwise improper, and any such conditions might certainly be attacked for this reason. However, to protest the imposition of any criteria on the ground that they applied only to the Lincoln students is misleading in view of the fact that only Lincoln students would have the right to transfer.

A similar fallacy underlies the plaintiffs' last objection, that under the board's plan the parents of the Lincoln children would have the burden of paying for their own transportation. The plaintiffs' opposition to the board's plan states:⁶⁸ "Here again a hardship imposed on

⁶⁵ *Id.* at 4.

⁶⁶ *Id.* at 5.

⁶⁷ *Id.* at 6.

⁶⁸ *Id.* at 7-8.

Lincoln transferees which is not shared by other transferees or by other children who live a great distance from the north-end schools and whose transportation expense is borne by the board." This statement that transportation of other students was provided at public expense is simply not true. No students other than the handicapped were given this privilege.⁶⁹ Although it is true that simple economics would be some constraint on completely free transfer to distant schools, no court has held that transportation at public expense must be provided for pupils electing to attend distant schools. In this case because of State law previously mentioned such a requirement would have placed an enormous burden on the school board's finances.

The confusion over the board's plan was further compounded by the submission of a "minority plan" by the three members of the board who had voted against the board's plan. This proposal provided for the compulsory transfer of the fourth through sixth grades out of Lincoln to five other schools,⁷⁰ the permissive transfer, subject only to the board's class-size policy, of the kindergarten-through-third-grade children, and the complete abolition of the Lincoln school in 1964.

On May 10, 1961, Judge Kaufman held a hearing to determine what plan should be adopted to undo the constitutional violation previously found. In contrast to the previous proceeding in the Federal court, this hearing was conducted in an atmosphere of acrimony and bitterness. Mr. Weiss charged that Mr. Zuber had deliberately harassed the board by unnecessarily subpoenaing various witnesses to the court to testify concerning the plan, and that he had further violated the canons of legal ethics by attacking the school board in the public press.⁷¹ Judge Kaufman, on the other hand, accused both sides of "trying the case in the newspapers," attacked the board's supporters in New Rochelle for deliberately distorting his opinion, and then advised the board:

. . . that it would be in the definite interests of the people in New Rochelle if the board, instead of taking its time up with perfecting an appeal and hiring lawyers and expending more of the taxpayers' money, devoted their time to carrying out the will of the court. . . .

The hearing on the plan was productive of neither information nor agreement. Only five witnesses were called—all by Mr. Zuber. These were Merryle S. Rukeyser, the president of the board, and Charles G. Romaniello, chairman of the committee in charge of drawing up

⁶⁹ Perhaps plaintiffs' attorneys assumed that the private bus hired by parents in the Ward area to take their children to school was paid for at public expense.

⁷⁰ Webster, Mayflower, Columbus, Jefferson, and Roosevelt. The Washington school was not included because it was already 52 percent Negro, and the five remaining schools, because they were too far from Lincoln.

⁷¹ Mr. Zuber had been quoted as stating that "any lawyer who has the temerity to place this plan before a court should be disbarred."

the plan (both members of the board majority); Nolan Fallahay and Seth M. Glickenhauß (members of the minority); and Dr. Herbert C. Clish, Superintendent of Schools. Their testimony revealed only that relations between the plaintiffs and the defendants, between the majority and the minority of the board, and between the board and the court had so deteriorated that it was impossible to expect any cooperation or even communication.

Most revealing in this respect is Mr. Fallahay's testimony that since the court's original opinion of January 24th, there had been "a complete freezing of knowledge" from the minority board members. Until that time "every instance in every case that the Lincoln School was discussed . . . even though I may have been a minority, I always received the information in advance and I was always treated in a gentlemanly fashion." This, he testified was no longer true.

Two days after this hearing, Judge Kaufman filed a request with the Attorney General of the United States asking that the Department of Justice intervene in the case as a friend of the court to help formulate a plan. Although this procedure is unusual, there had been three precedents for the judge's action—two in Louisiana, and one, Little Rock, in Arkansas. These cases, however, had not dealt with the formulation of any plans but rather with the enforcement of orders already entered.

About 2 weeks later, the Department of Justice submitted a 16-page brief which, although declining to recommend any precise desegregation plan, stated that experience in several border cities, including Washington and Baltimore, indicated that some sort of free transfer arrangement would be preferable. The brief attacked the board's plan as "defective in a number of respects," and singled out the condition requiring transferees to obtain three levels of approval, stating that:⁷²

Any one of the three persons whose concurrence must be sought may determine, by means and upon criteria not made clear in the plan, that a child is academically unsuited for transfer and thus block the request for transfer to another school.

On May 31st, 2 weeks after receiving the Department of Justice brief, Judge Kaufman handed down his final order on the desegregation of Lincoln school. In essence the judge adopted the free transfer idea suggested by the board and by the Department of Justice, without most of the board's conditions. Thus, Judge Kaufman decreed a completely free transfer for all Lincoln students, subject only to there being enough room in the receiving schools. The mechanics of the judge's plan involved the board's distributing to all

⁷² *Taylor v. Board of Education of the City School District of New Rochelle, N.Y.*, Civ No. 60-4098. Brief of the United States as *amicus curiae*, filed May 24, 1961, p. 5.

prospective Lincoln students at the end of every school year a list of the other elementary schools in the city of New Rochelle, specifying the approximate number of vacancies by grade in each. From this list the student could select at least four schools, in preferential order, and had to be granted a transfer to one of them if space was available. The court's plan also provided that: "The board is not to impose any standard of academic achievement or emotional adjustment as a requirement for transfers,"⁷³ and that, "Each pupil shall be retained in the school to which he has transferred until the completion of his elementary education, unless he becomes a resident of another school district . . .,"⁷⁴ thus canceling two conditions in the board's plan to which the greatest objection had been taken. The judge, it should be noted, agreed with the board on two major points. He did not enjoin the continued operation of the Lincoln school,⁷⁵ and he did not require the board to furnish transportation or pay transportation expenses for the Lincoln transferees. Judge Kaufman provided in his order that he would retain jurisdiction over the case to assure compliance with his decree and to attend to any unforeseen contingencies.

As soon as Judge Kaufman handed down this decision, the school board moved on two fronts. At the same time as it moved to comply with his order by collecting statistics on the number of vacancies that would be available in the fall in the 11 elementary schools other than Lincoln, it also began work on a request to the court of appeals to stay Judge Kaufman's order pending appellate review of his decision.

On June 14th, the statistics on projected enrollment in the "receiving schools" were sent out to the Lincoln parents, and immediately a great outcry was raised by the opponents of the board. During the trial Dr. Clish had testified that there were then 940 vacancies in other schools and Judge Kaufman had assumed that this would be so the next fall. The board's count was only 385, less than enough to accommodate all Lincoln pupils. Two schools, Davis and Jefferson had no vacancies at all and six others had none in at least two grades.

The next day Mr. Zuber announced that he had advised the Lincoln school parents to disregard the school board's seat availability statistics, and to demand transfer on the basis of the 940-seat figure which had previously been given in court. Mr. Zuber announced that he was returning to Judge Kaufman so that the "court can take steps" if the school board had "openly and flagrantly defied the order."

⁷³ 195 F. Supp. at 241, 6 *Race Rel. L. Rep.* at 708.

⁷⁴ *Ibid.*

⁷⁵ Nor did Judge Kaufman enjoin the construction of the new Lincoln school. Actually the plaintiffs had not asked for this injunction in their complaint. They had requested the injunction only if the board was permitted to follow its neighborhood school policy with respect to the Lincoln school.

Five days later Mr. Zuber filed a complaint with Judge Kaufman attacking the legal basis of the board's statistics and the use of projected enrollments instead of actual classroom figures. During the hearing on the complaint Judge Kaufman stated to Mr. Weiss: "I will not stand for six people constituting a super-Supreme Court for judging findings . . . I have had difficulty getting across to them that they must accept the ruling of the court." The judge asked, "Did it ever occur to you [the school authorities] . . . that an explanation was due the court when more than 500 seats disappeared?" He then ordered the board to submit an affidavit showing the calculations and figures underlying its estimate of vacancies. In response to this order, the board submitted a 48-page study of enrollment trends which had been completed after the trial and an 8-page affidavit by the superintendent of schools, Dr. Clish, explaining how this study applied to the specific figures he had sent out. Several weeks later, though no opinion was filed, the school board's position on the number of vacancies was upheld by the court.

The Appeal

Meanwhile, the school board had been proceeding with its appeal. First it attempted unsuccessfully to obtain an order from the Court of Appeals for the Second Circuit staying Judge Kaufman's order pending the final disposition of the appeal. Then, in mid-June, over the objections of Judge Charles E. Clark, who wished to hear the case that week, the appellate argument was set for the week of July 17. At this point the school board minority filed a motion with the court of appeals to have the appeal dismissed on the ground that the resolution of the school board authorizing appeal applied only to the first, premature appeal and that the present appeal was therefore taken without authority.⁷⁶

On July 19, 1961, the case was argued before a panel of three judges of the Court of Appeals for the Second Circuit.⁷⁷ Julius Weiss argued the case for the board, and Mrs. Constance B. Motley, an appellate specialist who had previously joined Mr. Zuber, handled the appeal for the plaintiffs. Mr. Weiss in his argument asked for reversal on a number of grounds—that the court below had not defined gerrymandering; that no evidence had been offered by the plaintiffs showing the actual number of white and Negro residents in the Lincoln area; and that a conclusion of gerrymandering could not rest solely on the grounds that the Lincoln school was 94-percent Negro in 1960. When asked specifically about the 1930 boundary changes, Mr. Weiss characterized Mrs. White's testimony as "pure gossip" and stated that the board of education maps and exhibits showing all the changes which had been made in the school zones gave perfectly legitimate reasons for each redistricting.

On August 2, 1961, 15 days after the case was argued, the appellate court handed down its opinion affirming the district court by a 2-to-1 vote.⁷⁸ Judges Charles E. Clark and J. Joseph Smith formed the majority for affirmance; Judge Leonard P. Moore voted to reverse the lower court. The majority opinion, written by Judge Clark, was

⁷⁶ The court, however, ruled against the intervening board minority and held that the appeal was properly before it.

⁷⁷ Briefs were filed not only for the parties in the case, but for Seth M. Glickenhau, Nolan M. Fallahay, and Marylyn W. Pierce, applicants for intervention; for the United States as *amicus curiae*, for affirmance; for the American Jewish Committee, American Jewish Congress, Anti-Defamation League of B'nai B'rith, Catholic Interracial Council of New Rochelle, and the Urban League of Westchester County, *amici curiae*, for affirmance; and for the New York State School Boards Association as *amicus curiae*, for reversal.

⁷⁸ 294 F. 2d 36 (2d Cir. 1961), 6 *Race Rel. L. Rep.* 708 (1961).

short. Although it did not discuss the evidence, it stated that the testimony supported the finding that the "defendant school board had deliberately created and maintained Lincoln School as a racially segregated school,"⁷⁹ and that the⁸⁰

. . . acceleration of segregation up to 1949 and its action since then amounting only to a perpetuation and freezing in of this condition negate the argument that the present situation in Lincoln School is only the chance or inevitable result of applying a neighborhood school policy to a community where residential patterns show a racial imbalance.

Rather, the majority concluded, the record showed that "race was made the basis for school districting, with the purpose and effect of producing a substantially segregated school."⁸¹ The court went on to find that the "94 percent Negro enrollment at the Lincoln School . . . approximates closely the harmful conditions condemned in the *Brown* case"⁸² and that "since these conditions were the result of the deliberate conduct of the board the plaintiffs and those similarly situated are entitled to some form of relief."⁸³ As for the relief, the majority stated: "The plan which the court eventually adopted is one noteworthy for its moderation . . . we think this plan an eminently fair means of grappling with the situation."⁸⁴

The majority opinion did not discuss the relationship of the gerrymander in 1930 and the transfer policy up to 1949 to the situation in 1960. Nor did it consider the factual foundation for the finding of segregationist motive on the part of the present board, except to lay great stress on its failure to follow the Dodson recommendation.⁸⁴

The dissent by Judge Moore considered the issues in more detail. As a prelude, he said:⁸⁵

. . . Closely connected with our heritage are such concepts as individual freedom, democratic elective processes, States' rights and equal protection of our laws for all. Too easy is it to march behind a banner bearing such slogans. History records that the populace, singing and cheering, once marched behind a certain gigantic horse of wood. It seemed harmless enough at the time. History has a way of repeating itself. Would that my Cassandra-like pessimism might prove to be ill-founded.

As to the discrepancy between the allegations in the plaintiffs' complaint and the theory of the lower court's decisions, he observed:⁸⁶

Despite a modern tendency to regard pleadings as old-fashioned—and hence of little value—only by such allegations can the issues be ascertained and defendants advised of the charges against them (parenthetically, also a constitutional right).

⁷⁹ 294 F. 2d at 38, 6 *Race Rel. L. Rep.* at 709.

⁸⁰ 294 F. 2d at 39, 6 *Race Rel. L. Rep.* at 710.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ 294 F. 2d at 40, 6 *Race Rel. L. Rep.* at 711.

⁸⁶ 294 F. 2d at 41, 6 *Race Rel. L. Rep.* at 711.

As noted previously, the board had not taken advantage of the various pretrial methods open to it to find out exactly what was or might be an issue in the case. Furthermore, since the board had consented to have the hearing on the injunction considered to be the trial on the merits after all plaintiffs' evidence had been presented, it was not in the dark as to the possible issues in the case.

Judge Moore next attacked the testimony as to gerrymandering:⁸⁷

The proof as to both purpose and effect is fatally defective. No facts were produced to show the racial composition of Lincoln district either before or after the supposed "gerrymandering." In fact, the only testimony relevant to the issue of "gerrymandering" was that of a Mrs. Bertha White, who stated that the redistricting corresponded to Negro population changes. Mrs. White had no first hand knowledge of the situation in 1930; nor did she supply facts and figures as to the racial balance existing at the periods when the lines were changed. Her conclusions were based exclusively on conversations "with children who went to school in 1929 and 1930, who had younger brothers and sisters who went to the school."

In condemning this testimony as hearsay, however, Judge Moore did not point out that it had come into the record without either an objection or a motion to strike by the defendants, and, therefore, was properly considered by the trial judge. Nor would the absence of specific facts and figures as to the Negro population of the area appear to be fatal, since there was evidence that the percentage of Negroes in the Lincoln school increased considerably with the 1930 gerrymander and that this was the result intended by the board.

Next the dissent hit at a more vulnerable point. Judge Moore argued that, regardless of any wrong committed by the school board in 1930—⁸⁸

. . . the evidence demonstrates to an almost mathematical certainty that the present "racial imbalance" in the Lincoln School could not have resulted from this alleged "gerrymandering." Had the boundary lines between Lincoln and Webster not been so drawn in 1930 "that, in one section, they were extended to a point directly across the street from the Lincoln School," but instead had been drawn so that the Lincoln School was in the center of its district, the racial balance would have been no different today because the present district lines are now drawn as plaintiffs presumably claim they should have been drawn in 1930. . . . The conclusion is thus inescapable that the population movement over the years has completely vitiated the effects of any supposed gerrymandering in the 1930's.

It seems to be an overstatement to say that the evidence demonstrates anything about the causes of the Lincoln imbalance "to an almost mathematical certainty." Rather, as previously pointed out, the record contained little evidence on the issue. The question would seem to be whether Judge Kaufman would have been unreasonable in assuming that once the plaintiffs had shown an earlier unconstitutional wrong aimed at their race, it then became the duty of the defend-

⁸⁷ 294 F. 2d at 45, 6 *Race Rel. L. Rep.* at 715.

⁸⁸ *Ibid.*

ants to show that in fact their wrong had not been harmful to those of the plaintiff's generation.

As to the second ground for the lower court's decision—the board's desire after 1949 to maintain Lincoln as a segregated school—Judge Moore assumed that Judge Kaufman had been factually correct and argued that, even so, no constitutional question was involved:⁸⁹

The trial court has held in effect that when racial imbalance not attributable to unconstitutional State action is present in a public school, the State or its agencies, although not being required to change the situation, cannot refuse to act if the refusal is motivated by purposeful desire to maintain the condition. In short, the court has extended the Constitution to the point where motives for State non-action are now relevant. But does not the mere statement of this rule, stripped of its semantic gloss, carry its own refutation?

This argument, which distinguishes between action in deciding to rebuild Lincoln and inaction in continuing it as a neighborhood school, is a broad one. In some situations a failure to take action to correct an inequity which has developed without the fault of the State might, if done with a discriminatory purpose, violate the equal-protection clause of the Constitution. Nonetheless, each year the board tells students that they must register at a particular school, and the mere fact that it gives the same instruction year after year cannot be said to be nonaction. An analogy may be drawn to State legislative districts which have, because of population changes, become grossly unrepresentative. The State in such a case has been held to have a positive duty to revise its districts.⁹⁰

Lastly, Judge Moore took up the question of the court's remedy for the constitutional violation it found. After a sly dig at Judge Kaufman for his obvious irritation with the board for "continuing their attitude of arrogance" by their assertion of their constitutional right to claim that "no constitutional rights have been violated," Judge Moore took Judge Kaufman to task for reinstating the same plan that was abandoned by the board in 1949 which he had held was partially responsible for the imbalance in Lincoln. There is one major difference, however, between Judge Kaufman's order and the transfer provision withdrawn in 1949. It is very clear that the present plan will be administered in a way which does not discourage or prevent Negroes from transferring.

Finally, Judge Moore argued that the district court order was invalid because it discriminated in favor of the residents of a heavily Negro area and against Jewish or Italian children who might wish to transfer out of their ethnically unbalanced schools. Judge Moore questioned, "How can a permissive transfer policy be granted only to 1 out of 12 districts . . . why should not the Jewish or Italian child

⁸⁹ 294 F. 2d at 47, 6 *Race Rel. L. Rep.* at 716.

⁹⁰ *Baker v. Carr*, 369 U.S. 186 (1962).

be given equal privileges to transfer?"⁹¹ This question has several answers. First, only the Lincoln zone was at issue in the suit. If the Italian or Jewish children wish to complain of segregation, they can bring suit themselves, and obtain appropriate relief. Until that time, there is nothing wrong with aiding the children who have a right to aid and want it. Second, under the findings of the court, only the Lincoln children were wronged by the board's gerrymander which helped to turn their school into a "Negro" school. Therefore, only the children forced to attend this school should have a right to transfer out. Lastly, there was expert testimony to the effect that, because of the history of Negroes as a race, their high visibility, and their position in a white culture, an all-Negro or overwhelmingly Negro school was different from one attended by most other minorities.⁹²

The day after the court of appeals handed down its decision, the board moved to carry its fight further. President Merryle S. Rukeyser stated, "There are novel constitutional questions involved" which "should be passed on by the Nation's highest court." Mr. Rukeyser stated further that "the 'box score' on the Lincoln case now stands 3 to 3." State Commissioner of Education James E. Allen, Jr., New Rochelle Acting City Judge Robert J. Burton,⁹³ and Court of Appeals Judge Leonard P. Moore had found no segregation in New Rochelle, while District Judge Irving R. Kaufman and Court of Appeals Judges J. Joseph Smith and Charles E. Clark had found the Lincoln school segregated.⁹⁴

Mr. Rukeyser called a meeting of the school board for the next day to vote on whether to apply for review in the U.S. Supreme Court. At this meeting the board, with three members absent, voted 5 to 1 in favor of seeking review in the Supreme Court. The negative vote was cast by Mrs. Pauline Flippin, who had replaced Mrs. Pierce as the only Negro on the school board. In pursuance of the school board's plan to seek further review, counsel for the board again moved in the court of appeals for a stay of Judge Kaufman's order putting the transfer plan into effect. This motion was denied the same day by the court of appeals, and the board lawyers then moved for a stay from the Supreme Court. Shortly thereafter, their request was denied by Justice William Brennan in a brief opinion⁹⁵ which stressed

⁹¹ 294 F. 2d at 50, 6 *Race Rel. L. Rep.* at 718.

⁹² This last ground was not directly at issue in the *New Rochelle* case, and it is not necessary to consider it here. When it does arise there will presumably have been a great deal more study of the issue to aid in its determination.

⁹³ Judge Burton, in ruling against New Rochelle in the prosecution of the plaintiffs' parents on the charge of loitering near a school, had in an *obiter dictum* opined that the Lincoln school was not "segregated."

⁹⁴ This is very much like a baseball player's claiming that his team had won more than half the innings, as if it were not really too important that their final score was less than that of their opponents'.

⁹⁵ 82 Sup. Ct. 10 (1961).

the fact that it was not at all clear that the Supreme Court would grant review in this case, where both the district court and the majority of the court of appeals had agreed on the facts.

Meanwhile, the Lincoln parents and the New Rochelle authorities were moving to implement Judge Kaufman's order. After a series of mass meetings in which they were urged to enjoy the fruits of the victory that had been won and to do the right thing for their children, parents of 267 Lincoln children submitted transfer applications to the superintendent of schools. These applications were immediately time stamped and dated and were placed in order by the date and hour they were received at the superintendent's office. After the deadline for transfer applications, the first choices were assigned in order of their submission; then the second, third, and fourth choices were similarly filled. Those transferees who either had not listed four schools as choices, or had found all their choices preempted by students who had applied earlier, were telephoned at their homes by the superintendent of schools and given a list of schools where seats were still available.

The superintendent of schools also wrote the head of each religious organization in New Rochelle asking that cooperation with the school board be urged to provide for the proper acceptance and adjustment of the transferring pupils; he also held meetings with each of the elementary school principals and with the custodial staffs to assure a smooth reception to the transferees.

This and other careful, quiet work paid off when on September 7, the opening day of school, the Lincoln transferees, ranging from kindergarten through sixth grade, appeared and were absorbed uneventfully into the city's 11 other elementary schools. The Roosevelt school, which had had no American Negroes,⁹⁶ received 80 Lincoln transferees. The Mayflower school, which was already 30-percent Negro, received 63. Even the Washington school, which had been 52-percent Negro, received 14 Lincoln transferees, despite the NAACP's urging that no Lincoln students transfer there. Some minor difficulties developed. One of the 12 original plaintiffs charged that she had not received transfer assignment for either of her 2 children,⁹⁷ and the local NAACP president accused the school board of deliberately having split up families by sending one child to one school and a brother or sister to another,⁹⁸ and of overpublicizing the

⁹⁶ The children of the Liberian and the Ghanaian delegates to the U.N., however, had attended the Roosevelt school.

⁹⁷ School authorities claimed that either she failed to file a transfer application or it was lost in the mails.

⁹⁸ Although the school board was able to refute this by showing the completely mechanical method of assignment, the Negro leadership of New Rochelle is unconvinced. They assert first that the number of split families was too great for it to have been pure coincidence—one family had 8 children assigned to 5 schools; secondly, that the board should have worked out a plan to avoid splitting families.

request of eight pupils to transfer back to Lincoln. In all of these cases, however, the disputes were settled amicably.

After the court's order had been carried out uneventfully, the further legal battles came as an anticlimax. On October 26, 1961, the school board filed its petition for certiorari in the United States Supreme Court. This petition raised two questions: "Is this truly a segregation case . . . ?" and "Has the petitioner [the school board] been accorded due process?" In arguing their first question the attorneys for the school board again appeared to have misconceived the scope of Judge Kaufman's ruling, stating,⁹⁹ "The decree denies the application of the neighborhood school policy to one district for no reason other than that it is heavily populated by Negroes."

The petition then discussed at some length the legal questions involved in an attack upon the neighborhood school policy and the racial imbalance that it may cause. The word "gerrymander" was not mentioned. As to the second ground, the school board claimed it had been denied "due process," because it ". . . was never apprised of, nor given the opportunity to meet the charge that a racially segregated school was created years ago."¹⁰⁰

The brief in opposition to the granting of Supreme Court review discussed the lower court's factual findings in detail and relied primarily on the principle that: "This Court has consistently ruled that a petition for writ of certiorari will not be granted merely to review the evidence or inferences drawn therefrom, or to permit this Court to review facts found by two lower Federal courts."¹⁰¹ The brief did not even reply to the board's second point. It is well settled, however, that a variance in a civil case between the pleading and the proof does not, in general, raise a constitutional question. Moreover, here the board had not only heard all of the plaintiffs' evidence before consenting to having the hearing on the injunction considered to be the trial on the merits, but made no motion to reopen the case for the addition of further evidence, after Judge Kaufman's ruling.

On Monday, December 11, the Supreme Court handed down a brief order denying certiorari in the case.¹⁰² Some board supporters in New Rochelle have argued that denial was a recognition by the Court that if it had granted certiorari to the school board and reviewed the case, it would have had to overturn the lower courts' rulings. The great majority of the community, however, merely looked upon the event as the last step in a bitter and unpleasant legal battle.

⁹⁹ School Board of the City of New Rochelle, *Petition for a Writ of Certiorari* No. 518, filed Oct. 26, 1961.

¹⁰⁰ *Id.* at 8.

¹⁰¹ Brief in Opposition to Petition for Writ of Certiorari, filed Nov. 17, 1961, p. 9.

¹⁰² 368 U.S. 940 (1961).

Conclusion

It has been a full school year since the desegregation plan was put into effect, and it is appropriate to ask,¹⁰³ How did it work? First of all, many of the problems which had been predicted did not materialize. There was no administrative chaos. Lincoln did not become more racially imbalanced; rather, since most of the white children chose not to transfer, the percentage of Negroes in Lincoln dropped from 94 to 88. Moreover, although New Rochelle is extremely school conscious—over half of the ads to sell houses specify school district—the presence of Lincoln children in the other schools does not appear to have had any effect on nearby real estate values. Nor were transferring Lincoln students greeted with hostility or treated as those who had unfairly won a special privilege; on the contrary they were received warmly, and every effort was made by both teachers and students to bring them into the life of their new schools.

It is too early to estimate the full effects of the free-transfer provision on more subtle issues, such as the educational development of New Rochelle's children, both Negro and white. Nonetheless, a number of observations can be made. Some Lincoln children transferring to schools nearby were stimulated by their new environment. There were those who had always been reluctant to go to the Lincoln school, but who, once admitted to Webster or Mayflower, changed their attitude toward school completely. They experienced an increase in motivation and interest which was reflected in their school work. Other students showed improvement in attitude and discipline, but showed no gain in academic performance. A number of teachers have observed, however, that there is often a timelag before an improvement in attitude affects school work.

In the schools serving socioeconomic groups far higher than Lincoln's, however, the success of the transfer plan is by no means clear. The problems in the Roosevelt school, which received the largest numbers of transferees, are a subject of dispute in New Rochelle. Much of the argument centers on the personality and policies of Dr. Barbara Mason, the principal of Roosevelt school. The sup-

¹⁰³ Many people have asked other questions which also deserve answer. "What was accomplished in New Rochelle that could not have been accomplished without bitterness, disruption of the community, and harm to children?" Other people have questioned, "Where was the elected leadership of New Rochelle, or most of the religious leaders of all faiths, during the debacle?"

porters of Dr. Mason contend that the following comparisons aside from race are a measure of the problems encountered. The average income of the Roosevelt families was approximately \$25,000, while that of the transferees was about \$4,000. In the great majority of the Roosevelt families both parents were college educated, while high school graduates were rare among the parents of the Lincoln children. The Roosevelt children came from stable homes where divorce was rare, while some 50 percent of the transferees had no male parent living at home. Lastly, while the median IQ of the Roosevelt children was approximately 125, that of their classmates from Lincoln was below 100.

The Negro leadership of New Rochelle takes issue with these comparisons. They admit that there is a difference between the Roosevelt and the Lincoln children, but say that this difference has been grossly magnified. The Lincoln children may be deprived, they admit, but the children are not *that* deprived. They charge that in the previous comparison the income of the Roosevelt parents has been overestimated by one-third and that of the Lincoln parents has been underestimated by one-fourth. They assert that the majority of Lincoln parents are high school graduates, and while these critics are vague on the percentage of fatherless children, they assert that it is nowhere near 50 percent. Lastly, they point out that IQ tests are known to discriminate against lower income children by reflecting cultural environment as much as ability.

Although the cause and size are in dispute, the existence of a gap between the performance of the Roosevelt and Lincoln pupils is clear. This gap could not be closed in 1 year. During the trial, Dr. Mason had been quoted as saying that, although there were Negro children in New Rochelle capable of holding their own at Roosevelt in general they were not from the Lincoln area. Nonetheless, the teachers in Roosevelt exerted themselves to close the gap. They often gave up their lunch hours and stayed after school to provide special help for the Lincoln children and went to great trouble to meet with parents.¹⁰⁴ Yet often this was not enough, and some of the transferees, instead of being stimulated by the educational aspirations of the Roosevelt children, seemed to give up trying at all. In one grade, the average tested achievement of the transferees did not rise during the school year, despite the essentially private tutoring many of them had received from their teachers.

Probably the most unfortunate aspect of the Lincoln influx at Roosevelt has been its creation of racial stereotypes in the minds of

¹⁰⁴ Teachers often found it difficult to contact parents who did not have telephones. In some cases parents failed to appear for as many as four consecutive appointments.

Roosevelt children. The record for the year shows that in a number of classes, no white child performed as poorly as the best of the Negro children did, and 89 percent of the Lincoln children finished the year in the lowest quarter of their respective classes. Dr. Mason's supporters say that the most unfortunate result of the poor showing of Lincoln transferees in Roosevelt is the creation of racial stereotypes in the minds of Roosevelt pupils. They claim that white children from a liberal background who had had no contact with Negroes before but whose home and school life taught ideals of brotherhood and the equality of man were thrown together with children of a far lower socioeconomic and cultural level who happened to be Negroes. One teacher said, "Some of the Roosevelt children actually understand that this is a cultural and not a racial difference, but all they see is that the Negro children are not as bright, clean, honest, or well behaved as they."

The Negro leadership of New Rochelle, while unable to disagree with the statistical data on the performance of the transferees at Roosevelt, takes issue with almost all of the other statements by the supporters of Dr. Mason. They charge that a major reason for the poor performance of the Negro children at Roosevelt was that by a subtle combination of slights and patronizing behavior Dr. Mason made them feel unwelcome. It is difficult to resolve this type of controversy since the evidence is ambiguous. It may be noted, however, that in the Ward school where the problems of assimilating the transferees were conceded to have been well handled by the principal, Lee Kahan, the academic performance of the Lincoln transferees does not appear to have been significantly better than that of the transferees in Roosevelt.

Both sides to the Roosevelt controversy agree, however, that the picture of disaster at Roosevelt does not tell the whole story. In general, students who had been behavior problems at Lincoln improved in deportment at Roosevelt,¹⁰⁵ and teachers report that the motivation of many transferees seemed higher. One transferee finished in the upper half of her class, and in a number of individual cases the special efforts of the teaching staff produced notable improvement. Moreover, considering the time and effort spent by the teachers on the transferees, little, if any, harm seems to have been done to the educational progress of the Roosevelt children. Even though teachers had less time for them, they progressed as rapidly as in previous years.

¹⁰⁵ This apparently was due to a number of effects, not the least of which was the feeling that, having been placed in an integrated atmosphere, they had to live up as best they could to what was expected of them. Moreover, children who were discipline problems before were distributed throughout the school.

A great many other problems still face New Rochelle. First, and dwarfing all others, is the question of what should be done with the Lincoln school. Many of the opponents of the school board have alleged that, to embarrass the Lincoln transferees, the board has poured in unprecedented amounts of money and effort into Lincoln to improve the education of those who stayed there. It is true that education at Lincoln has continued its steady improvement. But according to Dr. Joseph P. Robitaille, the principal of Lincoln, no special efforts were made this year. He said:

The Lincoln school has been receiving a little bit more help each year, and this trend continued last year. We were helped by a slightly lower class size, but no exceptionally large amount of aid was provided the school, even on a per-pupil basis. It's strange that people should argue that education in Lincoln was too good. We've done our best, and it would seem pretty foolish to ask that we do less than that.

Nonetheless, the parents who kept their children at Lincoln have not taken the easy way out. They have been called Uncle Toms and Aunt Jemimas for allowing their children to remain at Lincoln. Now they seem passionately attached to the school. On the other hand, with the much smaller student body the fixed costs per pupil in Lincoln have gone up. Moreover, the school is getting older, so that in the near future the board will have to decide whether to replace it or close it down and transfer the pupils to other schools.

The Negro leadership of New Rochelle demands that the school be abandoned; they call it a symbol of segregation and claim that even though its patrons may not realize it, Lincoln is a segregated school, providing an inferior education which should not be tolerated in New Rochelle. On the other hand Lincoln school parents argue that they should not be denied a neighborhood school because of their race; that this would be a violation of their constitutional rights.

The next major problem connected with the Lincoln dispute involves a threatened racial imbalance at two nearby schools, Washington and Mayflower. As appendix F shows, with the exception of Roosevelt, Mayflower received the largest percentage of Lincoln transferees. Mayflower was 41.7-percent Negro during the first year of the transfer, and additional transfers from Lincoln are expected to raise the percentage in September 1962.¹⁰⁶ The Mayflower problem is further complicated by the uneven age distribution of Negroes in the school. Were each class 41-percent Negro, there probably would be little pressure for a white egress. Unfortunately, many classes, especially in the lower grades, will have a majority of Negroes next year. The departure of white children from such classes for private schools will not be counter-

¹⁰⁶ Preliminary figures suggest that the percentage rise will be less than anticipated.

balanced by any influx of white children into classes where their race is in the majority, and hence the overall percentage of Negroes at Mayflower will tend to become greater. This trend will soon be aggravated further by the expansion of the parochial school across the street from Mayflower. At least some white children wishing to escape Mayflower probably will attend this school, even though the class size there will be approximately twice that in Mayflower.

Although the racial imbalance in the Washington school, which has 54-percent Negroes, is worse than in Mayflower, its prospects for the future seem brighter. Washington has lived with its large percentage of Negroes for some time, and its white families, having had an opportunity to adjust to the growing number of Negroes in the community, do not seem inclined to leave. Moreover, the Lincoln parents responded to the urging of their leadership that too many transferees might result in Washington's becoming a segregated school, and showed restraint by avoiding transfer to Washington despite its convenience. Nonetheless, many observers have expressed the fear that in 10 years New Rochelle may have at least two schools as racially imbalanced as Lincoln is now. And, of course, this time interval might be reduced if the Lincoln school is closed and its present pupils distributed.

On the other hand, most New Rochelle residents seem to find the present racial balance in Washington and Mayflower acceptable; their worries are directed to the future. The example of successfully integrated, stable schools elsewhere in the United States suggests there is no reason to assume that Mayflower and Washington cannot achieve this state. The white parents of children there may decide that the high percentage of Negroes in the schools has not harmed their children's development, and in many ways has helped it. The example of the white children who remained at Lincoln may cause enough of a pause in any flight from Mayflower and Washington to allow the white children to benefit from the increasing educational effort that is being expended upon the Negro. Moreover, in the future the Negro community can be expected to use great restraint in requesting transfer to Mayflower and Washington and even in purchasing homes in those districts.

One other problem concerns New Rochelle more than its importance deserves. The private busing of the Lincoln children is expensive. There are those who argue that the Lincoln parents, by making sacrifices for their children's education, will appreciate its importance and encourage their children to do their best at school. Nonetheless, the transportation expense has placed a financial strain on those least able to afford it. Although contributions have been solicited in the community at large and about \$15,000 has been raised, the cost of busing is

a continuing financial burden on parents and others. Fortunately, New York State law has been changed so that it will no longer be prohibitively expensive for the school board to bus children at public expense. After 2 years, the State will pay 90 percent of the cost. Although the local school budget would have to carry more of the cost during the first 2 years,¹⁰⁷ and State law still requires that parochial and other private school children receive the same transportation as public school children, busing the Lincoln children at public expense will no longer be financially prohibitive.

A further area of battle unrelated to Lincoln is beginning to appear. One of New Rochelle's two junior high schools practices a rigid ability grouping which has left few, if any, Negroes in the fastest classes, and a preponderance in the slowest. Negro leaders have branded this type of grouping a method of segregating Negro children and of perpetuating the unfair treatment they have received in the elementary schools. The battlelines on this issue have not yet been clearly drawn, but unless some settlement is reached in the near future the tranquility of New Rochelle may be disturbed again.

Despite all the problems, most residents of New Rochelle are hopeful. However, they talk little in public about these school issues. Everyone seems to feel that these troubles can be handled quietly without generating more unfavorable publicity for the city.

The great majority of school board members who actively took sides in the Lincoln dispute are no longer serving, and most of the bitter antagonists on both sides have withdrawn from all controversy. Moreover, New Rochelle now has a new superintendent of schools, Dr. David G. Salten, a vigorous, nationally respected educator who enjoys the confidence of all factions. Dr. Salten, fortunately, has had 5 years¹⁰⁸ of experience with experiments in elementary school reorganization. He is not committed to the traditional k-6 neighborhood school, which has come under increasing attack from some educators as being expensive, inefficient, and productive of segregation. It appears that New Rochelle's hope for the future may lie in community acceptance of Dr. Salten's educational ideas and leadership.

New Rochelle, like other cities, will continue to have school problems. But most people in New Rochelle have confidence that solutions and compromises can be found. "The most important thing," they all say, "is to stay out of court."

¹⁰⁷ During which the State will provide 30 percent and 60 percent, respectively, of the funds.

¹⁰⁸ Under a Ford Foundation grant.

APPENDIX A

New Rochelle Public School Enrollment—Nov. 14, 1961

School	Total	Number nonwhite students	Percent nonwhite
New Rochelle High.....	2, 230	264	11. 84
Albert Leonard Junior High.....	1, 623	308	18. 98
Isaac E. Young Junior High.....	1, 096	116	10. 58
Total secondary.....	4, 949	688	13. 90
Henry Barnard Elementary.....	626	118	18. 85
Columbus Elementary.....	307	54	17. 59
George M. Davis, Jr. Elementary.....	934	3	. 32
Jefferson Elementary.....	608	45	7. 40
Lincoln Elementary.....	483	454	94. 00
Mayflower Elementary.....	478	146	30. 54
Roosevelt Elementary.....	561	9	1. 60
Stephenson Elementary.....	398	105	26. 38
Trinity Elementary.....	900	51	5. 67
Ward Elementary.....	793	2	. 25
Washington Elementary.....	246	129	52. 44
Daniel Webster Elementary.....	398	118	29. 65
Total elementary.....	6, 732	1, 234	18. 33
Total.....	11, 681	1, 922	16. 45

APPENDIX B

New Rochelle Elementary Schools Median Reading Comprehension and Vocabulary Scores—5th and 6th Grades

School	Grade 5		Grade 6	
	Vocabulary	Comprehension	Vocabulary	Comprehension
Roosevelt.....	7.4	6.8	8.7	7.6
Ward.....	7.4	5.8	8.3	7.7
Davis.....	6.7	6.4	8.5	8.0
Webster.....	6.0	5.9	7.7	7.2
Mayflower.....	5.9	5.7	7.3	7.3
Barnard.....	5.9	5.6	7.6	7.5
Trinity.....	5.9	5.6	7.6	7.2
Jefferson.....	5.3	5.5	7.6	7.4
Stephenson.....	5.2	4.9	7.3	6.9
Columbus.....	5.0	4.8	6.0	5.9
Washington.....	4.9	4.7	6.1	6.1
Lincoln.....	4.6	4.3	5.9	6.1

APPENDIX C

*New Rochelle Elementary Schools Mean IQ Scores—Grades 3 and 6,
School Year 1959-60*

[Tests: California Mental Maturity '57 8 Form; Grade 3—Primary; Grade 6—Elementary]

School	Mean IQ		School	Mean IQ	
	Grade 3	Grade 6		Grade 3	Grade 6
Barnard.....	107.2	115.0	Roosevelt.....	114.7	121.0
Columbus.....	104.8	90.8	Stephenson.....	104.5	105.2
Davis.....	127.1	120.2	Trinity.....	117.9	109.2
Jefferson.....	114.7	112.3	Ward.....	112.9	115.0
Lincoln.....	100.7	92.8	Washington.....	93.8	92.2
Mayflower.....	112.1	100.7	Webster.....	114.6	108.9

APPENDIX D

New Rochelle Elementary Schools Reading Readiness Test Results

[Lee Clark Reading Readiness Test; Class of 1967 H.S. (present grade 6) (grade 5 in 1959-60)]

School	School mean grade equivalent	School	School mean grade equivalent
Trinity School.....	1.5	Roosevelt School.....	1.3
Henry Barnard School.....	1.4	Stephenson School.....	1.2
Columbus School.....	1.4	Daniel Webster School.....	1.2
Geo. M. Davis, Jr., School..	1.4	Washington School.....	.7
Mayflower School.....	1.4	Lincoln School.....	.5
Jefferson School.....	1.3		

(Taken when these children were in kindergarten)

APPENDIX E

New Rochelle Elementary Schools Mean Grade Equivalent Achievement Test Scores, Negro Pupils in Grades 3 and 6—1959-60 School Year

[Tests Used: Grade 3—California Achievement, Form W; Grade 6—Iowa Achievement, Form 1]

Percent Negroes in School	Vocabulary		Reading comprehension		Concepts	Problem solving
	Grade 3	Grade 6	Grade 3	Grade 6	Grade 6	Grade 6
18.85 Barnard.....	3.3	5.9	3.1	6.0	6.1	6.2
17.59 Columbus.....	3.4	5.0	3.3	5.3	5.6	5.8
7.40 Jefferson.....	3.8	5.5	3.5	5.5	6.0	5.5
30.54 Mayflower.....	3.9	7.2	3.7	7.0	7.1	6.8
24.33 Stephenson.....	2.5	5.8	2.5	5.8	6.2	6.0
5.67 Trinity*.....	4.0	6.4	3.1	6.4	7.7	7.1
52.44 Washington.....	2.9	5.6	2.6	6.1	6.0	5.9
29.65 Webster.....	3.7	6.3	3.3	6.1	6.9	6.6
Total mean averages.....	3.4	6.0	3.1	6.0	6.4	6.2
Lincoln.....	3.0	5.9	3.4	6.1	5.9	5.7

*Results of small sample.

APPENDIX F

New Rochelle Elementary Schools Percentage of Negro Pupils Enrolled Before and After Transfer From Lincoln School

	Before transfers (February 1961)	After transfers (November 1961)		Before transfers (February 1961)	After transfers (November 1961)
Barnard.....	19. 1	24. 2	Roosevelt.....	1. 6	12. 8
Columbus.....	19. 1	19. 7	Stephenson.....	26. 6	25. 1
Davis.....	0. 3	0. 8	Trinity.....	5. 2	7. 2
Jefferson.....	7. 3	10. 7	Ward.....	0. 2	2. 8
Lincoln.....	93. 7	88. 6	Washington.....	50. 2	54. 0
Mayflower.....	32. 1	41. 7	Webster.....	29. 7	35. 7

APPENDIX G

[Advertisement]

STOP This Malicious NONSENSE

THERE IS NO RACIAL SEGREGATION IN THE PUBLIC SCHOOLS OF NEW ROCHELLE!

Every elementary school child attends the school of the district in which he lives.

Every junior high school student attends one of the two City-wide junior high schools and every senior high school student attends New Rochelle High School.

63% of the Negro children in the elementary schools attend schools other than Lincoln.

The Lincoln School PTA and parents of the children at Lincoln School want a new school for their neighborhood to replace the obsolete existing

school, just as new neighborhood schools have been built in other school districts.

The Lincoln parents deserve a new school and the Board of Education, after long study, plans to build it for them.

If the financing for the cost of this new school with 30-year bonds is not authorized at the May 24th Referendum, the Board of Education has the power to build it with 5-year bonds without Referendum. This would substantially increase the tax rate to pay for such short term financing.

DON'T BE MISLED BY EXTREMISTS AND PROPAGANDISTS. Support the decision of the Board of Education and VOTE "YES" ON MAY 24th

The following P.T.A. Executive Boards Voted to Support the Board of Education's Proposal to Construct a New K-6 School on the Present Lincoln School Site:

New Rochelle High School
Isaac E. Young Jr. High School
Henry Barnard School
Columbus School
Davis School
Jefferson School
Lincoln School

Mayflower School
Roosevelt School
Stephenson School
Trinity School
Washington School
Ward School
Webster School

. . . also, the following Civic Organizations have endorsed a new K-6 school on the present Lincoln School site.

Columbian Civic League
New Rochelle Realty Board

New Rochelle Citizens for Public Education
Federation of Women's Leagues of
America, Inc.

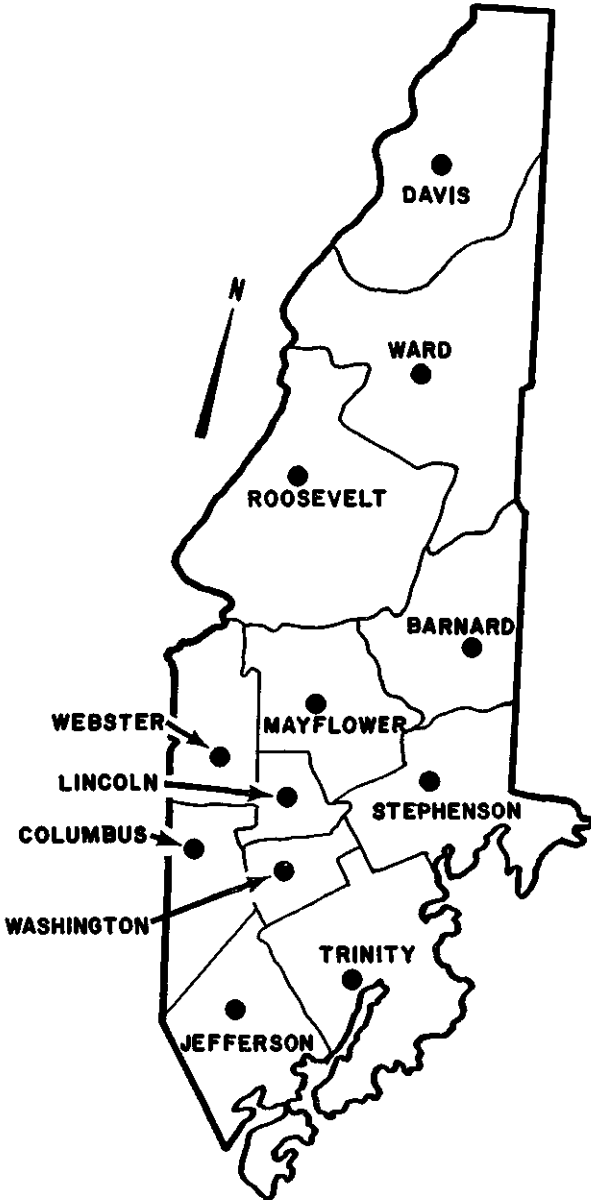
NEW ROCHELLE CITIZENS FOR A NEW LINCOLN SCHOOL

Henry Margulies, Chairman, Advertising Committee, 92 Liberty Avenue, New Rochelle

APPENDIX H

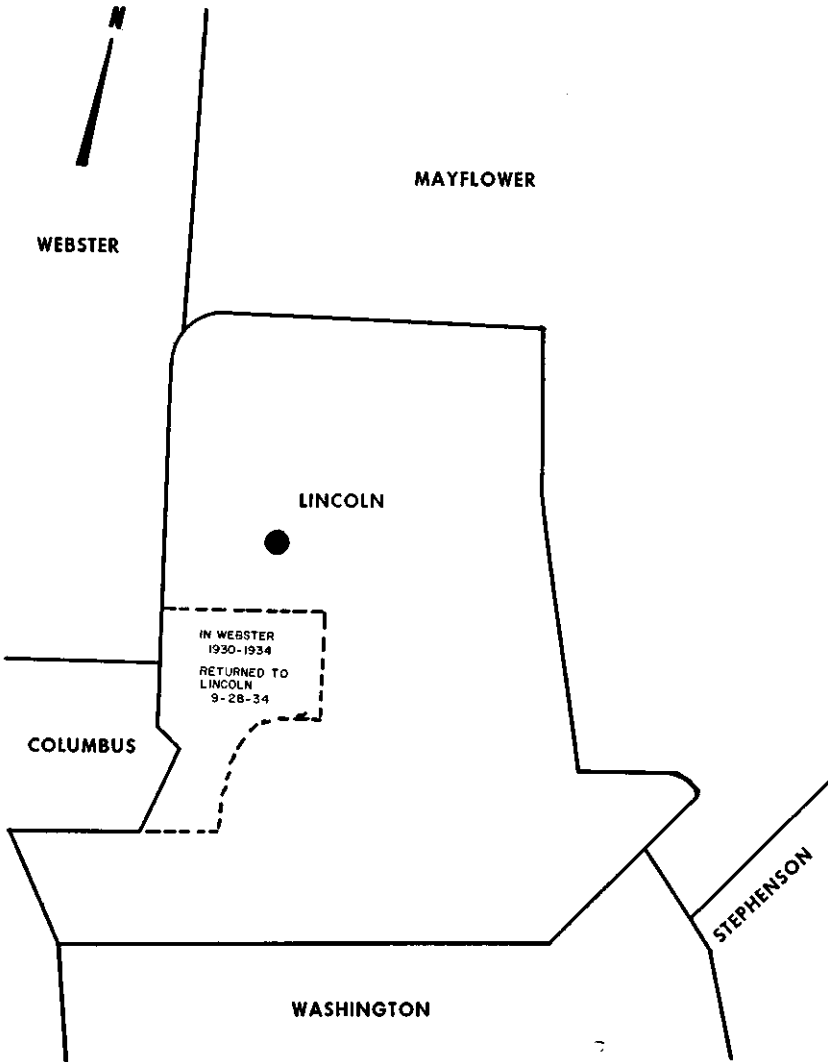
City of New Rochelle, New York

Elementary School Boundaries



APPENDIX I

Lincoln School Boundaries



CIVIL RIGHTS U.S.A.
Public Schools
Cities in the North and West
1962

PHILADELPHIA

By ALBERT P. BLAUSTEIN



A Report To
THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

In collecting material for this report the author personally interviewed the top administrators of the School District of Philadelphia, two members of the board of public education, legal counsel for the board, NAACP officials and their attorneys, the head of the city's Commission on Human Relations and representatives of several private organizations having a particular interest in civil rights and educational matters. Their observations, comments, and position on the subjects included in this report have been faithfully recorded.

The author wishes to acknowledge his indebtedness to all of the many Philadelphians whose cooperation made this report possible; but particular thanks go to Dr. Allen H. Wetter, superintendent of schools, and his staff who made the special surveys reported herein.

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Part 3. Philadelphia

Introduction

This is the story about Philadelphia's poor and underprivileged—its teeming 600,000 Negro population—and the segregation they experience in the educational system of the Nation's fourth largest city. Judicial proceedings are now underway to determine whether Negroes are in fact being deprived of "educational liberties" in the city which is regarded as the Nation's cradle of liberty. Counsel in these proceedings are in complete disagreement as to the responsibilities of the city's school district in regard to these "liberties."

There is substantial segregation in the Philadelphia public schools. White children attend "white schools"; Negro children likewise attend schools of predominantly Negro enrollment. This fact does not reflect the concerted intent and policy of the school authorities, it is true. Yet the fact remains that nearly 30 percent of Philadelphia's 214 public elementary schools have Negro populations of 1 percent or less, and another 25 percent have Negro populations of 97 percent or more. Further, it is, by and large, true that white teachers teach in the "white schools" and Negro teachers teach in the "Negro schools."

Thus, Philadelphia does have a large degree of segregation in public education. And with this segregation have come the inequalities found in most segregated educational systems. There is no disagreement about this. The superintendent of schools is the first to admit that Philadelphia's Negro schools have lower standards than the city's white schools. He goes further. He concedes that racial balance in school enrollments, in and of itself, is a desirable educational factor, and he speaks for Philadelphia's educational hierarchy in agreeing with Negro leaders that the current situation is deplorable.

What, if anything, can or should be done about this situation? Here, issue is joined. The school authorities hold themselves blameless for existing segregation and insist that their present policies are legally, educationally, and morally proper—that they are doing all they can or should do. They take the position that the school district

is and must be "colorblind." Negro leaders take the contrary position that the school district should be "color conscious" and move forward to integrate both students and teachers.

This basic issue is awaiting trial in the U.S. District Court, sitting in Pennsylvania's Eastern District in Philadelphia. But the pending suit of *Chisolm v. Board of Public Education*, Civil Action No. 29706, involves more than this issue. It also involves charges that the board and its school superintendents "have conspired, are now conspiring, and will continue to conspire" to discriminate against Negroes solely because they are Negroes. Specifically, paragraph 12(b) of the complaint makes these allegations: "assigning [Negro students] to racially segregated public schools . . . on the basis and classification of their race and color, and changing school boundary lines in a manner to create, continue, and intensify racial segregation . . . and by controlling transfers from school to school . . . in a manner to create, continue, and intensify racial segregation, and by assigning teachers . . . on the basis of the teachers' race and color and the race and color" of the plaintiffs and the members of the class that they represent.

Suit was filed in April 1961. It is expected to go to trial sometime in the fall of 1962. The interim period has been devoted to preparation for trial—a very complicated task in view of the immensity and complexity of the Philadelphia School District and the nature and causes of the existing segregation.

In order to understand the segregation-integration picture in the Philadelphia public schools, many factors must be considered. It is necessary first to consider the scope of the problems involved. Secondly, it is essential to examine the power structure in the school district and what those in authority have and have not done relative to the issues. This must be followed by detailed discussion of the major specific problem areas: (1) school attendance area boundary lines; (2) student transfers; and (3) teacher assignments, transfers, and promotions. There are those who think that Philadelphia is not living up to its democratic traditions in the present administration of its public schools. But it is not a city with the traditions and attitudes in racial matters of the Deep South. Understanding can bring about at least partial solutions in Philadelphia.

Scope of the School Segregation Problem

PROBLEM AREAS: DISPUTED AND NOT DISPUTED

All knowledgeable people interviewed in Philadelphia agree that segregation problems exist in the schools—and that they are serious.

The most obvious problem area is that of the respective quality of the city's "white schools" and "Negro schools." The problem is well summarized by Philadelphia's own Commission on Human Relations, an official city agency which devotes itself to discrimination matters.¹ Here are the words of the commission:²

The belief has been expressed that many of the schools attended primarily by Negro children are handicapped by old buildings, poor equipment, and less qualified teachers. There is an impression that these schools have been stigmatized by labels indicating lower average ability and achievement.

This seems to be true. Most of the "Negro schools" tend to be older and less well equipped. And the city superintendent of schools, Dr. Wetter, freely admits that educational standards are lower in schools with predominantly Negro student bodies. "Most of our 'problem schools' are those with the largest Negro populations," adds Dr. Wetter.

But this is not really a problem in issue. All of the city's schools, with some exceptions,³ have the same courses of study for each grade.

¹"To assure equal participation in city government by all citizens without distinction based on race, color, religion or national origin, the people of Philadelphia in the Home Rule Charter of 1952 established the Commission on Human Relations." Commission leaflet, "The People Grow, Too," undated, c. 1962, p. 2. "Under the terms of the Charter, the Commission took over the functions of the former Fair Employment Practice Commission which had been established by act of City Council in March, 1948." Commission on Human Relations, *Annual Report*, 1960, p. 9.

²Commission on Human Relations pamphlet, "A Statement of Concern For Public Education in Philadelphia," May 17, 1960, p. 12.

³"Philadelphia does not have a 'track system' as do some other cities. The only instance in which the term 'track' is used in Philadelphia is in college preparatory mathematics, grades 7 through 12. In this one case it is used to denote a plan whereby gifted children may move so rapidly in Track Z that they are able to complete two more courses in advanced mathematics than do students in Track X. Both tracks denote collegebound children of good or superior ability. . . .

"The Continuous Progress Primary, or Ungraded Primary, introduced in September, 1961, provides opportunity for each child to move through the work of the first three years at his own pace. Progress in reading is the basic consideration, although success in

It is, of course, true that the work level in a given grade may be higher in one school (white) than another school (Negro). Yet there is general agreement that the school authorities are doing all that they can to close this gap.⁴ "Much credit must be given to the superintendents for their work in improving predominantly Negro schools," says the director of the Urban League in Philadelphia. The only *real* solution to this problem, according to NAACP leaders,⁵ is the integration of both students and teachers.

The second major problem area is that of interracial relations, both in the schools and because of the schools. As far as the schools themselves are concerned, Philadelphia has pioneered in intergroup inservice education for teachers. Philadelphia has also participated in an "Open Mindedness Study," which resulted in a publication⁶ designed to guide teachers in developing good human-relations attitudes and practices. Currently, a childhood relations seminar is being carried on in cooperation with the Philadelphia Fellowship Commission. This is a study group consisting of representative teachers, principals, and parents throughout the city who are seeking answers to the question: "How can a school help its young people to know and work with others of the many racial, religious, and ethnic groups they meet as they move through the school system and live in the heterogeneous community of Philadelphia?" And, since 1957, there has been an actively functioning schools' committee for human relations under the school system's associate superintendent in charge of school-community relations.

It has been contended by some Negro leaders (and by some civil rights spokesmen, as well) that these efforts are too little and too late. However, these groups provide at least the nucleus for future activity and progress in this area.

Much more difficult to explain is the current civic furor *about* the public schools. For there have been more and more public outcries directed against the board of public education and its superintendents,

arithmetic is also important. Each child is carefully tested and placed at his own level in these two subjects. . . .

"At the secondary level, each child, with the exception of those in classes for the mentally retarded, may elect any course he chooses. In the light of his previous record, he may be advised against electing such difficult courses as the 'Academic,' or 'Commercial A,' but the right of choice is his, and no child is denied the course of his own selection. Efforts are made to provide occupational courses and simplified courses for those who cannot cope with the regular work, but no child is required to take these courses. The choice is up to him and his parents." Special memorandum prepared for this study by Associate Superintendent Helen C. Bailey, May 1962.

⁴New, modern schools are being built in predominantly Negro neighborhoods as well as in white neighborhoods. And efforts are being made to recruit more adequately prepared Negro teachers for the Philadelphia Public School District.

⁵Not all Negro leaders agree, however. Floyd L. Logan, president of the Educational Equality League, says that the school system is entirely to blame for the fact that so many Negroes graduate with the words "modified program" on their diplomas.

⁶"Toward the Open Mind," Curriculum Office, Philadelphia Public Schools, 1951.

apparently as an outgrowth of segregation. These outcries are certainly not a direct result of current school practices. They have been building up over a considerable period of time. But they were crystallized by the filing of the legal action in *Chisholm v. Board of Public Education*.

The very existence of the pending suit—even without a judicial decision or any idea of what the court's decision will be—has created its own series of interracial problems in the schools. Superintendent Wetter takes the position that the suit has intensified the segregation-integration dilemma. He claims that it has forestalled negotiation and compromise, and has made it more difficult to take positive action to aid the culturally deprived (largely Negro) schoolchild. He has said over and over again that he wants to do "the right thing," but that he is being thwarted by various public pressures engendered by the suit. He admits to "complete frustration."

Throwing up his hands in the midst of one segregation discussion, the very restrained, soft-spoken Dr. Wetter blurted out: "I don't care what the Federal court decides, provided it decides something definite and decides it fast." "Right now I don't know what to do," says Dr. Wetter, "and I can't get help from the NAACP on specific action to be taken."

The NAACP, as would be expected, disagrees as to the effect of the pending suit and the public pressures resulting from the suit. Its chief spokesman is A. Leon Higginbotham, Jr., an able Philadelphia attorney. Mr. Higginbotham is president of the Philadelphia Chapter of the NAACP and chief counsel for the plaintiffs in *Chisholm v. Board of Public Education*. It is his position that Philadelphia has "do-nothing" people in charge of its public schools who react "only when there are public pressures." "Until now," Mr. Higginbotham says, "the pressures have all come from the other direction, mainly from white people with political connections. The superintendents acted accordingly. It is only because of the suit that anything at all is now being done about segregation."

Further implications of the pending litigation and present public pressures will be discussed in connection with the specific problem areas. These are classified under three headings:

1. Student segregation-integration—including questions relating to school area boundary lines, gerrymandering, site selection for new schools, neighborhood patterns, and housing.
2. Student transfers—including questions relating to transfer policies, administration of transfer policies, busing, and the relationship between transfers and student segregation-integration.
3. Teachers—including questions relating to standards, employment, assignment, transfer, and promotion.

But in order to explore the full scope of the school segregation problem in Philadelphia it is necessary to consider the basic issue between the Negro representatives and the school district.

THE BASIC ISSUE

The basic issue in Philadelphia (as in many northern and western school districts which were not organized on a racially separate basis in accordance with State law) is whether or not the school authorities have an affirmative duty to take steps to alleviate racial imbalance in the composition of school populations where that imbalance was not caused by their past actions.

The chief attorney for the plaintiffs says:

The position of the board is that it does not consider race at all in the operation of the school system, either in setting boundaries or in administrative practices. This is not enough. The board cannot be colorblind. It is the affirmative responsibility of the board to work toward integration. Every choice which may arise in making decisions about school matters must be made in such a way as to accomplish results leading to the integration goal.

The official position of the school authorities is summarized in the third defense of their answer in *Chisholm v. Board of Public Education*:

26. Defendant avers that to make "boundaries of schools for the purpose of creating and perpetuating positive racial integration patterns" would result in assignment of pupils based solely on race or color. On the contrary, the defendant avers that the School District of Philadelphia and the defendants in this action have the duty to ignore the race and color of both pupils and teachers in establishing boundaries and making assignments. Defendants in this action have the further duty to maintain a public school system without discrimination, which duty the defendants are performing.

The school district's attorney presents this argument: If there was no segregation objective in the original setting of school boundary lines, such boundary lines cannot be criticized today, legally or otherwise. Even conceding that there is segregation, and even admitting the possibility that existing boundary lines may be a factor in maintaining segregation, such factors create no obligation on the part of the school board to make changes. In the absence of segregation motives in setting boundaries, the school district has not done anything wrong. Thus, according to his reasoning, the NAACP does not have a case. "The school district," he contends, "will lose the *Chisholm* case only if the court decides that there is a positive duty to integrate, regardless of any other educational considerations."

Present school policies, all admit, have done little to alter existing segregation or thwart growing segregation. Is it then the duty of school authorities to reexamine present school boundary lines, and all

policies and practices, to determine whether they are now fostering segregation—and to do something about it if they are? Do they labor under an obligation to do so? Attorneys for the school district deny this. Attorneys for the NAACP insist that such an obligation constitutes the very minimum of the school district's educational responsibilities.

Superintendent Wetter takes a broader view than his attorneys. He concedes that if present policies and practices were creating more segregation they would be at least morally wrong. But he denies that they have such an effect. He says that he "can see no way in which practices consistent with sound education can be adopted which will prevent segregation."

THE PROBLEMS IN CONTEXT

Despite all of the recommendations which have been made and which are being pressed forcefully, it seems questionable whether anything can be done to change or halt the segregation pattern in the Philadelphia schools very much or for very long. Perhaps the overall problem is too big.

Philadelphia's population, according to the 1960 census, was 2,002,512. Of this number, the nonwhite population was 535,033, or 26.71 percent. The city's school population, however, is quite different. The following statistics show the dimensions of the problem:

Public and Catholic Parochial School Enrollment

Types of schools	Public schools ¹			Catholic schools, ² Total ³
	Total	Negro	Percent Negro	
Elementary.....	151, 157	79, 600	53	115, 307
Junior high.....	47, 191	22, 846	48	-----
Senior high.....	37, 068	12, 726	34	32, 449
Technical high.....	4, 877	2, 198	45	-----
Special and commercial.....				1, 305
Total.....	⁴ 240, 293	117, 370	49	149, 061

¹ Figures, compiled by the Division of Educational Research, School District of Philadelphia, July 3, 1961 (as of June 1961).

² Figures compiled by the diocesan superintendent of schools, Archdiocese of Philadelphia, Sept. 1, 1961.

³ There are no statistics on the number of Negroes in the parochial schools and no guess on the part of the diocesan superintendent of schools as to the percentage. It is generally estimated at between 3 and 4 percent. There are only 1,000 non-Catholics among the 149,061 children in the Catholic parochial schools.

⁴ Does not include 217 home school pupils.

Thus, while the total percentage of nonwhites in Philadelphia is only 26.71 percent, the proportion of Negroes in the public schools is 49 percent, or nearly twice as high. And of the nearly 390,000 schoolchildren in the city, more than 38 percent are in the Catholic parochial schools.

The figures appear to suggest that there are approximately 120,000 Negro pupils who could possibly attend school with 120,000 white children. But the geographic distribution of pupils changes the picture. Nearly a quarter of the public schoolchildren live in two of Philadelphia's eight school administrative districts where the Negro school population is less than 3 percent. And these districts are in the extreme northeastern part of the city, for the most part too far away for practical busing of children, to say nothing of accomplishing desegregation by changing school attendance area boundary lines. Further, the city has other "all white" areas as well. Nine schools in district 5 and seven schools in district 6 have less than 1 percent Negro populations. As a practical matter, the 120,000 Negroes in the school system could be integrated with no more than 50,000 to 60,000 white children. "There can be no real school integration because of distances and neighborhoods," says Mr. Freeman, of the Urban League.

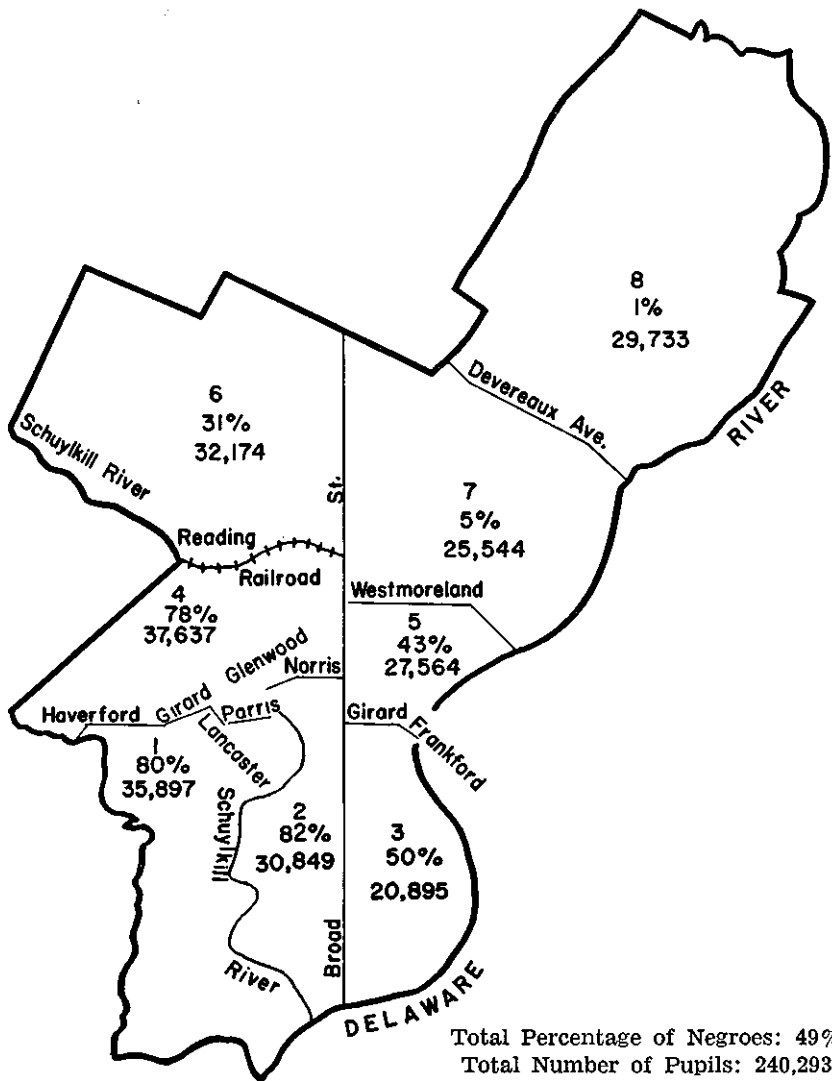
The percentage of Negroes in the Philadelphia public school system is shown by districts in map 1 at page 119.

These are not, however, the only statistics indicating the difficulty of achieving a desirable racial balance in Philadelphia by administrative action. The nonwhite population of the city has been growing at a much faster rate than its white population. While the white population was declining 13.3 percent during the decade 1950-60, the number of nonwhites increased 41.2 percent. In addition, the Negro population continues to climb. The annual migration rate alone is now 6,400, down from an annual average of 8,900 in the past decade, but still substantial. Further, the city's Negro population is generally younger than its white population, having proportionately more children of school age than do the whites. In 1960, 39 percent of the Negro population was 17 years of age or younger.⁷

What makes the future look still more difficult is the continued white migration from South and Central Philadelphia to the Northeast and the suburbs. This is particularly true for the Protestants and Jews. Generally speaking, the whites who have remained in South and Central Philadelphia are Catholics, and 80 to 85 percent of all Catholic children are in the parochial schools. During the past 9 years, public school enrollment increased 15 percent while parochial and private school enrollments together increased 33 percent. If this trend con-

⁷ The 1960 census gives the following median ages: White males, 34.1 years, female, 37.5; nonwhite males, 26.8; female, 28.1.

PHILADELPHIA PUBLIC SCHOOLS SCHOOL DISTRICTS



Total Percentage of Negroes: 49%
Total Number of Pupils: 240,293

PERCENTAGE OF NEGRO PUPILS BY DISTRICT
AND TOTAL NUMBER OF PUPILS (WHITE and NEGRO)
JUNE, 1961

tinues, there will be no whites for the Negro schoolchildren to integrate with. It is true that some white people are moving back into the city, but most of this population consists of couples without children.

The existence of this problem is well recognized. Declares George Schermer, executive director of the Commission on Human Relations:

Over a period of years it will make little difference what the board of public education does about such things as boundaries and transfers. There will inevitably be more segregation in the schools unless action is taken in other areas, particularly housing.

NAACP attorneys agree. "Because of population patterns, the segregation problem will undoubtedly get a great deal worse," one says. And it is because of these patterns that he admits that "as a practical matter, integration can only be achieved on the borders of the Negro ghetto." The other also recognizes that "integration in depth is impossible" and that changing neighborhoods would quickly make any boundary lines drawn by court order obsolete. For these reasons he contends that it is especially important for the board of public education to become race conscious in all its actions.

Power Structure in the Schools

THE BOARD OF PUBLIC EDUCATION

Coterminous with the city and county of Philadelphia, the School District of Philadelphia is under the administrative control of a 15-member board of public education. Its two principal professional officers, both of whom report directly to the board, are (1) the superintendent of schools, who heads the department of instruction, and (2) the secretary and business manager, who heads the department of business.

Method of selection

If a school board is fortunate enough to have the right personnel, it certainly should not make any difference how that personnel was chosen. It is argued, however, that Philadelphia's particular and peculiar method of appointing its personnel inevitably leads to the kind of a board which is unaware of school problems. Thus, "there has been a growing expression of community concern in Philadelphia over the present method of selecting school board members."⁸

The 15 members of the board of public education are appointed by the 21-member board of judges of the city's 7 courts of common pleas. The board is thus officially divorced from the city administration. The members "serve for overlapping [staggered] 6-year terms; five members are appointed every 2 years. Members receive no compensation; they may serve unlimited successive terms and, in practice, are reappointed for as long as they choose to serve."⁹

This method of selection is certainly not common. School board members are appointed by the mayor in New York, Chicago, Balti-

⁸ Greater Philadelphia Movement, "A Citizens Study of Public Education in Philadelphia", pt. A, p. 22 (hereinafter cited as GPM).

⁹ GPM 9, 12. "In each school district of the first class [only Philadelphia] or of the first class A [only Pittsburgh], the board shall be known as the 'Board of Public Education,' and shall consist of fifteen (15) school directors, whose term of office shall be six (6) years. The terms of five of the members shall expire on the second Monday of November of each odd numbered year, as now provided by law. The judges of the courts of common pleas of the county in which such school district is situated shall, in October of every odd numbered year, appoint five (5) members for terms of six (6) years. Their term of office shall begin on the second Monday of November next following their appointment." Purdon's Pa. Stat., Tit. 24, 3-302.

more, and San Francisco; and they are chosen in nonpartisan elections in Los Angeles, Detroit, Cleveland, St. Louis, and Boston. Both Washington, D.C., and Pittsburgh, however, likewise have school boards named by judges.¹⁰ (All other Pennsylvania school districts elect their boards.)

Attempts are being made to change this selection method. The citizens committee on public education, with the support of a group of "informed persons in the community," has formally proposed the creation of a "board of education panel" to nominate candidates for possible board membership. Three nominations would be made for each vacancy, with the names being submitted to the board of judges for appointment. If none of the nominees were acceptable to the judges, the panel would then prepare a new list. This proposal has been rejected by the judges as an improper (and possibly illegal) delegation of their statutory responsibility.¹¹ And the Greater Philadelphia Movement (GPM), a civic watchdog group, had made these recommendations:¹²

The School Code of Pennsylvania should be amended to provide for an independent nominating panel which would submit to the appointing authority the names of three persons for each board position in Philadelphia. It should be the right of the appointing authority to reject the list and request three additional nominations. The panel provision should apply whether or not the appointing authority is changed.

The School Code of Pennsylvania should also be amended to provide that in Philadelphia, the mayor shall appoint all members to the Philadelphia Board of Public Education from the list of names submitted by the nominating panel described above.

Similar recommendations have been made by other community leaders.¹³

¹⁰ In New York and Chicago, the mayor is assisted by a nominating committee, and in San Francisco the mayor's appointments must be approved by the voters. "Prior to the year 1867, control of the Philadelphia public school system was vested largely in local municipal officials. They appointed 42 school directors. In 1867, this control passed over to the judges of Philadelphia courts. The Pennsylvania School Code adopted by the legislature in 1911 provided, as to Philadelphia, that: (1) the membership of the board of education was to be 15, (2) the term of office was increased from 3 to 6 years, (3) the judges of the common pleas court were to select the board members, (4) the School District of Philadelphia was separated from the city of Philadelphia, and (5) the district was given fiscal independence within the limits set by the legislature." GPM 22.

¹¹ Exchange of correspondence between Jane S. Freedman, chairman, Citizens Committee on Public Education, and Judge Edward J. Griffiths, secretary, Board of Judges, Courts of Common Pleas of Philadelphia, Mar. 1 and 10, 1961.

¹² GPM 5, 32-34.

¹³ See statement of William A. Schnader, then president-elect of the Pennsylvania Bar Association, in address to Bench and Bar Conference of the Philadelphia Bar Association, September 1961. "Schnader Discusses Obligations of the Bench and Bar," *The Legal Intelligencer*, Sept. 12, 1961, p. 1. The presidents of five Philadelphia universities and colleges sent a letter to Judge Edward J. Griffiths, secretary, Board of Judges, Courts of Common Pleas of Philadelphia, on Sept. 15, 1961, offering help in making school board appointments and criticizing the present method of selection. See GPM 23-24. Both the Philadelphia Federation of Teachers, Local 3 (AFL-CIO), and the Philadelphia Teachers Association have come out in favor of the GPM recommendations. *Philadelphia Inquirer*, May 24, 1962, p. 1. Several judges, including Chief Justice John C. Bell, Jr., of the Pennsylvania Supreme Court, and Judge Charles A. Waters, of Common Pleas Court 3, likewise support the GPM view. *Philadelphia Inquirer*, May 23, 1962, p. 1.

But what is wrong with the present selection method—more precisely, what is wrong which has a bearing on the segregation problem? The GPM provides a partial, restrained answer:¹⁴

It is held by some observers that the present method of selecting board of public education members encourages the isolation of the board from extensive contacts with citizens' groups in the community. Some critics suggest that this, in turn, results in a certain "inwardness" and hostility throughout the system to even mild public criticism. Such aloofness has resulted in the board being dubbed from time to time Philadelphia's "House of Lords."

William H. Wilcox, executive director of the GPM, makes these statements by way of supplementation: "We are attacking the shortcomings of method and procedure, and not people. We must recognize certain weaknesses in the present board and realize that one of the reasons for such weaknesses is the fact that we have a bad law." Again: "We are trying to get a better climate for aggressive leadership. We want a law which will take the board out of isolation and bring it into the mainstream of public problems." Again: "School segregation is a major problem and it requires more citizen interest and concern on the part of the board than has previously been shown."

"The board is a removed aristocracy, twice removed from popular control," says Mr. Schermer. "Its members sit on Olympus, insulated by a board of judges, and insensitive to the popular demands of the school public. They are no more than token representatives of an inert power structure which chooses to be blind to the segregation problem."

The board at work

From the Greater Philadelphia Movement comes this apt summary of the board at work:¹⁵

The Board of Public Education has two major standing committees: The Committee on Education and the Committee on Business. These are committees of the whole since each committee consists of fifteen members. Each committee, however, has its own chairman.

The board usually meets twice each month—once for meetings of the two committees of the whole, and once as a board. Special meetings may be called by the president, or by written request of any committee of the board, or by written request of any three members of the board. . . .

The Pennsylvania School Code requires that the Board of Public Education hold public meetings. Executive sessions should be reserved for matters involving personnel problems or matters that require secrecy, i.e., land taking, etc.

The afternoon meetings of the Board of Public Education in Philadelphia are formal and brief, and attendance by the public is limited. Decisions are reached in executive session; discussions of programs rarely take place in public view although wide differences of opinion exist among board members on some issues. The printed minutes of the board's meetings contain routine administrative details. In one recent instance where controversy occurred in a public meeting

¹⁴ GPM 24.

¹⁵ GPM 12, 42-43.

of the board, all reference to the dispute was expunged from the published minutes. . . .

The annual half-day budget hearing of the Philadelphia Board of Public Education is limited largely to representatives of special groups: public attendance cannot be extensive because the room in which the hearing is held is too small for any large number of people. In recent years, some persons have been unable to attend these public hearings because of overcrowding, even though the budget hearings are mandated by statute. Further, the members of the Board of Public Education have the unusual practice of never asking questions at the annual public hearing on the budget.

The board speaks on segregation

One of the statutory duties of the board of public education is "to define the general policies of the school system."¹⁶ And it has made a policy statement on discrimination. There is also a 14-page board of public education booklet entitled "For Every Child—The Story of Integration in the Philadelphia Public Schools."

Both have been severely criticized. And even where the documents themselves have been praised, they have been dismissed as "mere talk." One board member said:

The board operates in a completely ineffective manner and doesn't carry out the responsibilities with which it is charged. . . . The board has never discussed the integration problem and has never had a discussion on the problem of school boundaries. We of the board have seen the complaint in the [*Chisholm*] case but have never had a discussion about it. We have no idea of what the NAACP desires to achieve.

The policy statement on discrimination, adopted on July 8, 1959, was the result of the efforts of the Educational Equality League¹⁷ and its president, Floyd L. Logan. For all practical purposes, the league is Mr. Logan and Mr. Logan is the league. For more than 30 years, Mr. Logan has been carrying on a virtually one-man battle against racial discrimination in the schools. Recognized as one of the city's Negro leaders, he has carried on this fight on his own time and frequently with his own funds. He is a former governmental employee, now retired. Mr. Logan's efforts in connection with school districting and teacher discrimination will be discussed under those headings.

Here is Mr. Logan's own story on the policy statement:¹⁸

Our most momentous appearance before the Philadelphia Board of Public Education, which was our fourth, was on February 10, 1959, when we presented

¹⁶ Purdon's Pa. Stat., tit. 24, 21-2103.

¹⁷ The purposes of the Educational Equality League are:

"1. To obtain and safeguard equal educational opportunities for all peoples regardless of race, color, religion, or national origin in the State of Pennsylvania and particularly in the city of Philadelphia.

"2. To bring about interracial integration of pupils, teachers, and other personnel of State and local public school districts."

¹⁸ From "History Highlights," Educational Equality League, 1932-60, 28th anniversary edition.

a policy procedures petition, jointly supported by organizations representing many thousands of Philadelphians, for full interracial integration of pupils and teachers in local public schools. Even though the policy resolution drafted by E. Washington Rhodes, newest board member which was adopted, did not spell out the policy procedures we had sought, it did constitute the first written policy ever adopted by the board, barring racial discrimination in all phases of public school administration locally.

Indeed, the statement did not spell out the policy sought. The league had asked, among other things, "that redistricting in fringe and other areas shall be carried out to the extent of effecting maximum interracial pupil integration."

Here is the policy statement adopted :

WHEREAS the Board of Public Education seeks to provide the best education possible for all children; and

WHEREAS the Educational Equality League and other organizations have requested the adoption of written policies for full interracial integration of pupils and teachers :

Be it resolved, That the official policy of The Board of Public Education, School District of Philadelphia, continues to be that there shall be no discrimination because of race, color, religion or national origin in the placement, instruction and guidance of pupils; the employment, assignment, training and promotion of personnel; the provision and maintenance of physical facilities, supplies and equipment; the development and implementation of the curriculum including the activities program; and in all other matters relating to the administration and supervision of the public schools and all policies related thereto; and,

Be it further resolved, That notice of this resolution be given to all personnel.

It is an overstatement to describe "For Every Child" as "The Story of Integration in the Public Schools." It claims that "the record of progress of the Philadelphia public schools in the integration movement is among the best, if not the best, of those of the great cities in the Nation."¹⁹ But it presents no evidence to support this statement and, even if true, it may still leave something to be desired. The most significant statements—and the ones which result in the most criticism—concern teachers and will be discussed under that heading.

The pamphlet was written by Superintendent Wetter and released in October 1960 as a board of public education publication. Dr. Wetter freely admits that it does not contain the whole story of the segregation problem. "It was not," he points out, "a planned, coordinated, long-term effort. It was hurriedly written to present a cursory reflection of the current situation." For this reason, it is regrettable that various officials repeatedly refer to the very existence of the pamphlet as an indication of official awareness and progress in integration.

In the final analysis, one suspects that Philadelphia's board of public education is trying to avoid the problem. In the words of Mr. Schermer, "It is trying to squeeze by." "No one wants to hurt the feelings

¹⁹ "For Every Child—The Story of Integration in the Philadelphia Public Schools," Board of Public Education, Philadelphia, October 1960, p. 2.

of anyone else," says Mr. Schermer, "and the best way to accomplish this is by not raising controversial issues." Everyone in the system seems to be hoping that the segregation issue will not come to a head while he is in office.

THE SUPERINTENDENTS

Heading the department of instruction is Superintendent of Schools Wetter, directly assisted by 5 associate superintendents, 9 district superintendents, and 17 special division directors. Dr. Wetter and his five associate superintendents make up the board of superintendents. Eight of the district superintendents serve as administrative directors of the schools in one of Philadelphia's eight geographically designated school districts. (These areas are shown on map 1, page 119.) The ninth is an auxiliary superintendent. The 17 directors are division heads, in charge of such departments as art education, educational research, examinations, libraries, medical services, radio and television education, school extension, and 10 others.

Only 1 of these 32 is a Negro: Robert L. Poindexter, district superintendent of district 4.

Supervision and direction of the school system are the responsibility of the superintendent of schools. Theoretically, the other leaders of the Philadelphia school hierarchy serve him only as advisers, and, of course, as chiefs of their own departments.

The GPM report says: ²⁰

However, GPM finds that the Board of Superintendents of the Philadelphia Public Schools has accumulated over the years more than an advisory function. It is a policy board. It manages many school affairs. Problems are referred to the board rather than individual administrators for decision. Minutes of the board's meetings are prepared and circulated to administration officials and abstracts are sent to the Board of Public Education. Although the superintendent regards this board as entirely advisory [GPM's] field investigations suggest that the board performs a management and policy making role.

This is one of the major reasons why GPM concludes that, "The basic organization of the administrative structure needs a complete survey and an evaluation."²¹

Superintendent Wetter is a sincere, dedicated educator. He is the kind of man who recently refused a substantial pay increase (which would have equated his salary with that of the superintendent of schools in Pittsburgh) because the teachers in Pittsburgh have a higher salary scale than those in Philadelphia, and he wants the teachers of his system taken care of first. A veteran of 45 years in

²⁰ GPM 52.

²¹ GPM 54.

the Philadelphia school system, Dr. Wetter knows his business. But Dr. Wetter admits that the various segregation problems which now confront him are baffling. What should he do and what can he do? Negro and civil liberties groups demand positive steps to achieve integration. It is also demanded that he integrate teaching staffs. Is this something he is required to do? Is this something he would be permitted to do? Is this something feasible when the teachers want assignment preferences and transfer rights, and he now has more than 700 vacancies in a teaching staff of less than 9,000?

Of course, there are things which a superintendent of schools can and must do to raise the educational levels of culturally deprived children. Many things are being done, but Dr. Wetter is criticized for not doing more. But he is understandably in a period of hiatus. If the Federal court finds for the plaintiffs, it will presumably tell him what action to take, and he knows enough about running a school system to carry out whatever decree is handed down. It is no wonder that he looks forward to the day of decision—no matter what the decision may be.

THE SECRETARY-BUSINESS MANAGER

The secretary-business manager appears to be the real boss of the Philadelphia school system. His great power is derived from the much-criticized Pennsylvania law²² creating a dual system of administrative control, a system in which the secretary-business manager has independent authority and is not responsible to the superintendent. The secretary's duties also include in "charge of all personnel other than in the department of instruction."²³ "In addition to the formal duties, the incumbent business manager has become the board's lobbyist with the [Pennsylvania] General Assembly when additional school taxes are being sought."²⁴

Independent budgetary authority, coupled with authority to represent the board in dealing with politicians, inevitably gives the secretary-business manager a great deal of influence in any determinations dealing with the segregation issue.

²² Among the duties of the secretary are the following:

"(5) He shall have general supervision of all of the business affairs of the school district, subject to the instruction and direction of the board of school directors; . . .

"(8) He shall perform such other duties pertaining to the business of the district as are required by this act or as the board of school directors may direct; . . ." Purdon's Pa. Stat., tit. 24, 4-433.

²³ "By-Laws and Rules of the Board of Public Education," 1956, with typed amendments.

²⁴ GPM 46.

GPM comments: ²⁵

It is difficult, if not impossible, to separate educational matters from business affairs, because any educational program will, of necessity, have broad financial implications. Disagreement on principles between the superintendent and the secretary inevitably results in delays, changes not approved by the superintendent, or postponement of a project. In short, the superintendent must justify this request for funds not only to the Board of Public Education but must often first secure the approval of his associate.

As a result of all of this, Mr. Blackburn of the Citizens Committee on Public Education speaks for most observers in expressing the view that the board and its superintendents can only move as fast as the secretary-business manager wants to move in achieving integration. It is the business manager who makes the decisions on buildings and funds. If boundary lines are changed to achieve integration, pupils will have to be reassigned from one building to another and this may mean building alterations. Children cannot be transferred from one school to another without decisions on monies for bus transportation.

²⁵ GPM 49. As a followup to its study, GPM has made the following recommendations: "Necessary changes should be made in the School Code and the Board of Public Education By-Laws and Rules to make the superintendent the chief executive officer of the Board. The next Business Manager should then be given the rank of associate superintendent in charge of business affairs." GPM 51.

Student Segregation-Integration: Boundaries

GERRYMANDERING

Feelings rather than facts govern most of the responses to questions about gerrymandering in Philadelphia. In view of the existence of segregation in the schools and in view of the position of the school authorities that they have no responsibility for it, there is a widespread impression that school area boundary lines *must* have been gerrymandered. Informed opinion, however, rejects the contention that segregation has been achieved by the maneuvering of boundary lines to achieve that end. "The situation is such that we have leaned over backward to avoid even an appearance of gerrymandering," says one board member. Even more persuasive, perhaps, is the position of civil liberties spokesmen who would like to have evidence of actual gerrymandering to bolster their arguments that the school system needs a complete overhaul.

"We cannot charge the board with actual gerrymandering," says Mr. Blackburn, of the citizens committee. "There is no real gerrymandering," says Mr. Freeman, of the Urban League. "School populations are based on housing patterns and not gerrymandering," says Jules Cohen, executive director of the Jewish Community Relations Council of Philadelphia. "There is no gerrymandering because there is no deliberate plan in Philadelphia, either way, to promote segregation or integration," concludes Mr. Schermer, of the Commission on Human Relations.

Miss Celia Pincus, president of the Philadelphia Federation of Teachers, was the only person interviewed who could give any specific examples of alleged gerrymandering. And the instances she cited took place in 1928 and 1941.

Superintendent Wetter answers the gerrymandering charges this way: Philadelphia has not had widespread redistricting at any time, and modifications of school area boundaries have been negligible during the past 10 years. Boundary lines were shifted only when new schools were built or existing schools became over- or under-populated. When these circumstances occurred, the school authorities made changes in accordance with the basic belief that the best schools are neighborhood schools. Population—sheer numbers, regardless of

race—is the prime consideration in setting boundaries. Also considered are the factors of walking distance to the schools and traffic hazards. As far as the segregation issue is concerned, it must be noted that most of the disputed boundary lines were drawn at a time when all of the children involved were white. Further, boundary lines were not touched in cases where there were enough requests for transfers to take care of overcrowding, on the one hand, and filling up empty classrooms, on the other. This policy has encouraged integration rather than segregation. For example, the Logan Elementary School is in a virtually all-white neighborhood in which the existing population is growing older. It does not attract younger white people with children of school age. The result has been open spaces in the school which are being filled in ever-increasing numbers by Negroes desiring to transfer to a non-Negro school.

Although this may be an adequate defense to the general charge of actively gerrymandering boundary lines to achieve segregation, it does not answer other charges made of inaction and lack of foresight.

(1) No attempt has ever been made to reconsider the educational validity of existing boundary lines. Nor have studies ever been undertaken in Philadelphia to determine the relationship between its school boundary lines and segregation. (The Educational Equality League has been requesting such a study for many years.)

“Unnecessary,” according to Superintendent Wetter and Associate Superintendent David A. Horowitz, in charge of school-community relations. They both say that they know that boundary studies and changes will do nothing to affect the segregation pattern.

“We have at no time been shown how we can redistrict to achieve integration,” says Dr. Wetter.

(2) Even accepting as fact that boundary lines were drawn at a time when the neighborhoods involved had no Negro school children, the school authorities may be guilty of not taking into account the nature of changing population patterns. This would have enabled the school authorities to make appropriate predictions as to the future racial composition of those neighborhoods, and might have helped to avoid the segregation which now exists.

(3) No consideration has even been given to the possibility (or probability) that existing boundary lines may be perpetuating school segregation.

Just as housing patterns affect the racial composition of schools, so does the racial composition of schools affect subsequent housing patterns, which, in turn, affect the subsequent racial composition of schools, in an unending circle. And boundary lines have a significant influence on requests for student transfers. School authorities assert that they have no responsibility to consider the question of whether present boundary lines may be perpetuating segregation.

(4) The issue of segregation—present or future—has not been considered by either the board or its superintendents in planning the new school building program. (This will be discussed at greater length below.)

(5) Even accepting as fact that there has been no gerrymandering to achieve segregation, certain acts by the school authorities in certain specific situations have verged on gerrymandering. (These situations will likewise be discussed below.)

Despite the fact that most informed observers deny the existence of gerrymandering, such an allegation is made in the complaint in the *Chisholm* case. Chief Attorney Higginbotham thinks he can substantiate this charge in two ways:

First, he draws an analogy between the *Chisholm* suit and the typical antitrust case. In both types of cases, he argues, it may be difficult to establish specific acts of conspiracy, but if the situation exists which is indicative of a conspiracy, such a conspiracy may be inferred. Second, he says that he can, in fact, establish specific instances of gerrymandering. He will not reveal those specific instances because he fears that such a disclosure might hurt his case.

In every discussion of the boundary problem, however, there is recurrent reference to three “centers of dispute”—three areas in which the school authorities took action which is at least open to criticism. These “centers of dispute” involve (1) the Emlen School, (2) the Pennell School, and (3) the City Center School.

CENTERS OF DISPUTE

Of particular significance are the boundary questions involving the Emlen Elementary School area, for it was one of the Emlen disputes which precipitated *Chisholm v. Board of Public Education*. All of the minor plaintiffs in the *Chisholm* case attend that school.

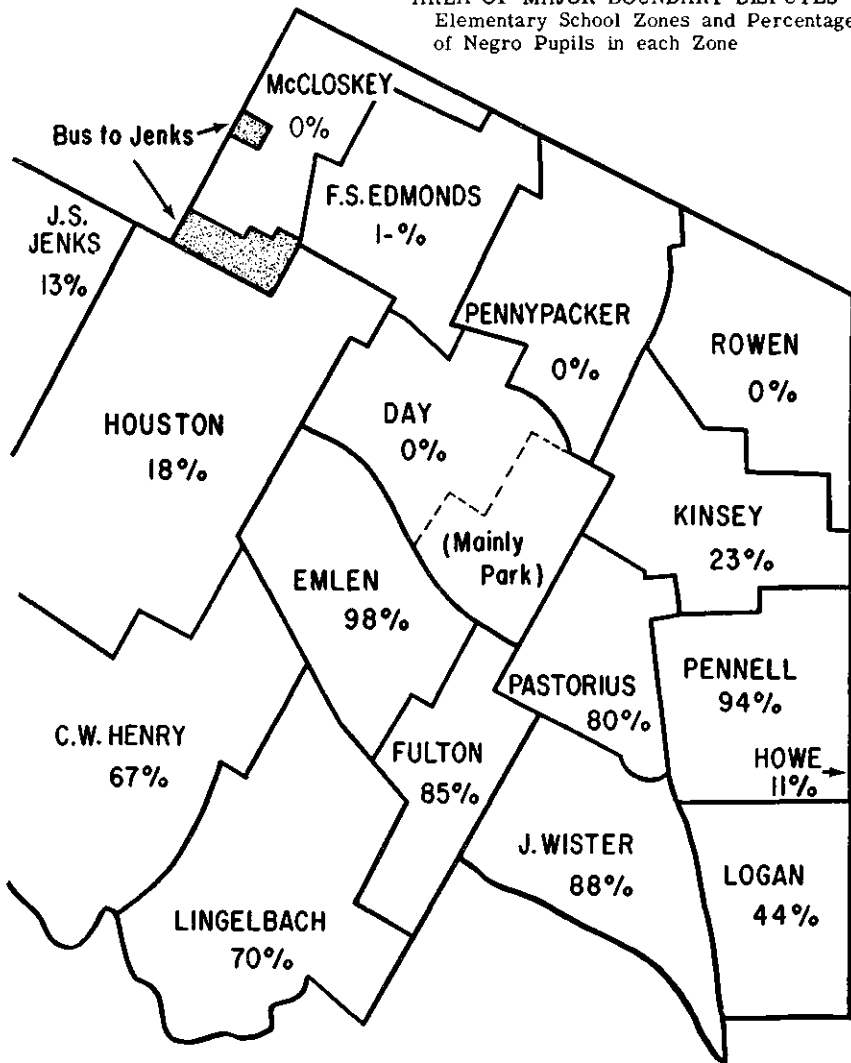
Both the Emlen and Pennell schools are in district 6, in the northwestern section of Philadelphia. Map 2 (p. 132), showing the elementary school areas in the northern part of district 6, is helpful in analyzing these two “centers of dispute.” The City Center School is in district 2. (See map 1, p. 119.)

Emlen school disputes

Emlen is virtually an all-Negro school. Figures compiled by the school district as of June 1961 showed only 28 white pupils in a student population of 1,496. Emlen was built in 1925.

NORTHWESTERN SECTION OF PHILADELPHIA and NORTHERN PART OF DISTRICT 6 JUNE 1961

AREA OF MAJOR BOUNDARY DISPUTES
Elementary School Zones and Percentage
of Negro Pupils in each Zone



MAP 2

Day is an all-white school. Built in 1952, it has never had a Negro student on its rolls. The area served by the Day school lies directly northeast of the area served by the Emlen school. The two areas share a common boundary line. Boundary dispute was inevitable in view of the racial composition of the two schools. How do the school authorities justify the dividing line?

Thrust

When the Day school was built in 1952, the Emlen school was likewise predominantly white.

The line between Emlen and Day is a logical one: the tracks of the Reading Railroad.

"We cannot permit the lives of little children to be endangered crossing railroad tracks to and from school" (Dr. Wetter).

When the Day school was opened in 1952, the important underpass at Upsal Street, in the middle of the boundary line, had not as yet been built.

The Emlen-Day line was not drawn in order to achieve racial segregation in the respective schools.

There is, however, one thrust which may be impossible to parry. As a practical matter, it may not be feasible now to change the Emlen-Day line. This is because of the particular location of each of the school buildings, and because the eastern portion of the Day area is a public park. As a result of these factors, any new boundary line between Emlen and Day would mean that many pupils would have to walk long distances to school when another school was much closer to their homes.

Parry

By 1952, Philadelphia's changing neighborhood pattern was obvious. The large-scale movement of Negroes into the Emlen area had already begun.

There are railroad tracks all over Philadelphia, totally ignored in other school districting.

There is no danger. There are four underpasses along the boundary lines—four city streets where the tracks run high above the surface. It is safer to walk under the tracks than to cross the streets where the underpasses are located.

The Upsal underpass was built by the railroad in 1954. The absence of that underpass has not been an excuse for a long time.

Nonetheless, segregation exists today in both the Emlen and Day schools. And the present boundary line may well be perpetuating that racial segregation.

Dr. Wetter says that he is not personally opposed to changing the Emlen-Day line. Obviously, he will if ordered to do so by the courts or by the board of public education. But, in the absence of such an order, he will not even try to figure out how best the boundary line might be redrawn. It seems probable that if any plans were made to alter the present boundary a public uproar in the Day area would result. Few superintendents move voluntarily in the face of such a prospect.

The second Emlen boundary dispute—the one which precipitated the *Chisholm* case—involves several school areas and involves a great deal more than boundaries.

Henry school, located southwest of Emlen, became overcrowded in the early 1950's. It was then a predominantly white school. The most practical solution at that time was to send the seventh and eighth grades elsewhere. The children might have gone to Roosevelt Junior High. That school, however, located near the Emlen school, was and is predominantly Negro—and white parents objected. They complained that the educational standards at Roosevelt were too low. Pressures were brought to bear and these two upper elementary grades at Henry were sent to the Houston school. The Houston area is north of Henry and west of Emlen. Houston parents had previously won a campaign to keep their own seventh and eighth grades so that their children would likewise not have to go to Roosevelt Junior High. However, there was still room for the Henry seventh- and eighth-grade pupils.

Lingelbach school, east of Henry and south of Emlen, was opened in 1955. This reduced the Henry area and resulted in empty classrooms at the Henry school. By this time the Emlen school was getting more and more overcrowded. A triangle of land was shifted from the Emlen district to the Henry district. There was still extra room. The parents of the Henry pupils (white) became fearful that more Emlen pupils (Negro) would be sent to Henry's empty classrooms. They thus brought pressure to get the seventh and eighth grades back from Houston so that Henry would be crowded again. They succeeded. (They also requested that boundaries be changed so that the triangle of land would again be a part of the Emlen area. This was not done.)

The Emlen school population, virtually all Negro, continued to grow. The Henry and Houston parents objected to any boundary changes which would bring more Emlen-area children to their schools. It was not that they were anti-Negro, they claimed, but that they wanted the Negro populations of their schools to be "proportionate." Besides, those schools were crowded, too, although not as crowded as Emlen. The solution adopted by the Philadelphia School District was to add six prefabricated, mobile classrooms to Emlen.

During the course of construction, in early 1961, the NAACP and the Educational Equality League registered their objections. They pointed out that such a step would further perpetuate segregation at Emlen. Construction continued, however, and litigation followed.

This is the story, as told by Mr. Schermer. The school authorities concur. This is not, however, the whole story. The rest of the story is one of more pressures—plus influence, indifference, and money.

To begin with, some school board members live in the area and, according to Dr. Wetter, they “gave in to local pressures.” One board member says he favored adding classrooms because he was told that the only alternative was busing children 7 miles. (“That costs too much, and I’m a banker,” he said.) He also says that he never checked on the 7-mile figure, and that the validity of that figure was never explained, questioned, or discussed. The cost of the six classrooms is roughly the same as 3 years of busing, according to the superintendent.

And here is the most significant statement on the decision to expand the Emlen school by the addition of prefabricated, mobile classrooms. The superintendent concedes that present attitudes as to “fairness” would dictate some other solution to the problem.

Another Emlen boundary dispute is now in the making. The NAACP and a local civic organization have proposed boundary shifts which would add to the Negro population of both the Houston and Jenks schools. The Home and School Association (Philadelphia version of the PTA) of those schools are opposing such changes.

If Emlen school continues to get overcrowded, busing may be the only solution. Dr. Wetter says that he would be willing to bus Emlen children to the Rowen and Pennypacker schools, which are all white and which have classroom spaces, if absolutely necessary. But he contends that the system is doing enough busing, and that he is not going to do any more just to achieve integration.

Pennell school disputes

The Pennell school, as of June 1961, was 94-percent Negro; Pastorius, west of Pennell, was 80-percent Negro; Kinsey, to the immediate north, was 23-percent Negro; Logan, to the south, was 44-percent Negro; and Howe, to the east in district 7, was 11-percent Negro. (See map 2, p. 132.) The percentage of Negroes increased in all five schools during the school year 1961-62. There are only 38 white children left in the Pennell school out of a pupil population of more than 1,100—and Pennell school is the one that is becoming more and more overcrowded.

Where are the Negro children in the Pennell area to go? There are strong pressures to change boundaries which will put them in the Pastorius school, which will soon be more than 90-percent Negro anyway. This may well happen. The present Pastorius school building was erected in 1891, and the board plans to replace it on the same site in 1964. The new structure will undoubtedly have enough classroom space to serve a greater area than it now serves. Those favoring integration are naturally opposing any such movement of Pennell children to Pastorius. Three civic groups have demanded that Dr. Wetter act to prevent this from happening.

Part of the eastern portion of the Pennell area is designated as an optional zone. Children in that zone can attend either Pennell school or Howe school in district 7. According to their spokesman, 68 white children who live there were Pennell pupils at the beginning of the school year. Then, these organizations say, the superintendent's office sent a letter to parents in the zone "reminding" them of the option. While the option has existed for some time, it is claimed that the letter "placed the stamp of approval" on transfers to the Howe school and resulted in the request for such transfer. The children of the organizations' spokesman are now the only white residents of the zone attending Pennell. She seeks a boundary change eliminating the option area. She is also trying to get more Negroes to transfer from the overcrowded Pennell school to Howe, as well as trying to get some of the white pupils back to Pennell.

The Pennell-Kinsey boundary line to the north and the Pennell-Logan boundary line to the south are likewise subjects of dispute. Part of the Kinsey controversy was settled in September 1961 with a decision on the part of the school authorities which led to increased integration. The boundary line was altered, shifting two squares from the Pennell area to the Kinsey area. The Kinsey school immediately changed from 23-percent Negro to approximately one-third Negro. The shift did not, of course, relieve the segregation in the Pennell school, merely the overcrowding.

Whether this boundary change was the result of pressures is a matter of debate. The district superintendent claims that the determination was based solely on space considerations and that there was no attention paid either to local demands or to the question of the educational desirability of integration.

Thus far there have been fewer outcries about the Pennell-Logan line. This may be because of the large number of students living in the Pennell zone who have transferred to the Logan school. As of June 1961, the Logan school had 758 pupils, 333 of whom were Negroes. As of April 1962, there were 519 pupils at Logan who lived in other school areas, 168 whites and 351 Negroes.

City Center school dispute

Plans are now underway for a new school in Philadelphia's Center City area—a response to the city's massive urban renewal program and the current flight from the suburbs; and also a response to the demands of the influential Center City residents who, in Dr. Wetter's words, "want their own school."

Negro leaders oppose these plans. For nearby are the Arthur and Durham schools, both 99 percent or more Negro, and both having ample space for a large number of Center City children. Attendances at these schools, declares Mr. Logan, "could be easily accomplished through redistricting and through educationally promoting interracial pupil integration."

When substantial numbers of whites began returning to Center City in the late 1940's, they generally opposed sending their children to either the Arthur or Durham schools. The solution was to transport many of these children by special bus to the then all-white Edgar Allan Poe school. That could not fully solve the problem, however. In 1954, the City Center school was opened in rented quarters at the Center City YWCA. There are now some 300 pupils at that school, more than 70 percent of whom are white. In May 1960, the board voted to condemn an office building and parking lot in the area and renovate the first floor of the building for classrooms for pupils not accommodated at the YWCA. In 1969, at the time its lease expires at the YWCA, the board expects to have its new City Center school built on the former parking lot.

But the year 1969 is still a long time away and the battle continues.

NEW SCHOOLS: SITE SELECTION

Because of the particular location of certain schools in the areas which they serve, it is often impossible (or at least educationally undesirable) to alter school zone boundaries once the buildings are put in use. The Emlen-Day dispute illustrates this point. Because of rapidly changing neighborhood patterns, it is often impossible to halt a trend toward segregation no matter how boundaries are shifted. This is particularly true in view of the fact that 36 percent of all public school children in Philadelphia change their residences every year. The Pennell boundary disputes illustrate this point.

As a result, the best time to do anything about school segregation is in conjunction with building programs. Some desegregation could be achieved if its desirability were considered as a factor in planning the building of new schools and the enlarging of existing schools.

Contracts were awarded in 1962 for the building of six new Philadelphia schools at a cost of \$11,283,709. And the proposed building program for 1962 through 1964 will cost an estimated \$38,855,000.

The secretary-business manager of the school system, who is in charge of all school construction, says that he has nothing to do with the location of new schools. He claims that he just builds them where Dr. Wetter tells him to. It seems doubtful that this is an entirely accurate statement. Comparative land cost must be an important factor in determining school locations, and the secretary's skilled judgment must influence the purchase of building sites. Further, it is planned to build many new schools on the sites of present, inadequate schools which will be torn down. The school district, as represented by its business manager, has an important stake in those properties. Any decision to build in different locations would necessitate the selling of these sites and the purchase of others. Certainly, the business manager would, in such case, have to make preliminary determinations as to the financial feasibility of such procedure.

Superintendent Wetter states flatly that the segregation issue was no factor at all in the making of his recommendations for new schools. Conceding that integration is, in some measure, desirable in education, he feels that it is of only minimal importance in school planning. The main consideration, he says, is population, and the second consideration is one of cost. He also admits that he is not immune to "pressures." "Everyone wants new schools," he says, "and all requests must be considered."

Dr. Wetter, however, does not disregard the fact that school construction will greatly influence segregation patterns. And he is well aware of the fact that positive action to achieve segregation is unconstitutional. In view of these facts, he concedes that it would not be improper or unfair if he were required to prepare a "justification" of the building program he has recommended—a "justification" showing the educational validity of location choices which may perpetuate segregation.

While the board has never considered the segregation problem in connection with building programs, some members believe that it should. "There is no reason why we shouldn't be satisfied that we aren't purposely segregating students before we give the go-ahead on new schools," one member says.

Meanwhile, Superintendent Wetter has announced that first priority in the proposed building program is for the replacement of the Huey school, destroyed by fire in February 1962. Huey school was at that time 95-percent Negro. Children from that school are now at the nearby Wolf school (74-percent Negro) and the all-Negro Wilson school. Another boundary dispute is in the making.

HOUSING AND SCHOOLS

In a school system dedicated to the philosophy that neighborhood schools are the best schools, housing patterns are of extreme importance in the segregation-integration picture.

"Our job is to put the schools where the people are, regardless of race," says one board member. "We can't do anything else. It doesn't matter whether the neighborhood has white or Negro children, or both." The board member believed to be most aware of racial matters questions the educational advantages of integration as compared with the advantages of neighborhood schools. "I want to be shown," she declares.

Great development and redevelopment projects are now underway in Philadelphia, and all of them will inevitably create additional school boundary problems. What makes the situation particularly bad is the lack of coordination between the school system and the various housing agencies. "We have no direct working relationships with the schools," complains William L. Rafsky, city development coordinator. "Representatives of the school district do sit in on planning commission meetings and there are some other areas of cooperation, but all is ad hoc and informal." Only in urban renewal programs and in the city's new subdivisions must school locations be approved by the Philadelphia City Planning Commission.

Dean Jefferson B. Fordham, of the University of Pennsylvania Law School, in an address to the American Society of Planning Officials, had this to say:²⁶

[U]p to this time we have fallen far short of the ideal as to human equality. It will not do to perpetuate existing conditions and practices of inequality through the projection of a plan for the physical development of a community. It will be seen, moreover, that with respect to equality of opportunity, a master plan cannot be neutral. A plan will either promote equality in housing, for example, or the converse. There is no genuine neutrality."

Philadelphia's city housing agencies are not neutral. They are not only committed to nondiscrimination but are also actively working for integration.

The mammoth "Comprehensive Plan for the City of Philadelphia," prepared by the City Planning Commission in 1960, contains this statement, at page 26:

A basic objective of the plan is a healthy balance of families resident in the city: nonwhite and white; high, low and middle income; professional, craftsman, and laborer. Therefore, the plan must provide a range of kinds of

²⁶ Fordham, Jefferson B., "Planning for the Realization of Human Values," a keynote address before the American Society of Planning Officials, the National Planning Conference, Miami Beach, May 23, 1960, p. 6.

residential land in sufficient volume to permit different kinds of households reasonable choice in their place of residence.

And all "redevelopers" working in conjunction with the city are required to enter into an agreement with the redevelopment authority enforcing the nondiscrimination principle. Paragraph 6 of that agreement reads as follows:

The REDEVELOPER agrees not to assign any individual to any particular location within the Project Area because of race, color, creed or national origin, nor to aid in any way the assignment of any such individual because of the above reasons. Information as to the race, creed or color or national origin of any lessee or owner, or prospective lessee or purchaser shall not be solicited, nor recorded, and such information shall not, under any circumstances, be made available to any one other than the AUTHORITY or its agent.

The GPM has made specific reference to Philadelphia's housing agencies in its public education study. GPM suggests that:²⁷

It would be advisable if the present liaison between the City Planning Commission and the Board of Public Education were strengthened to coordinate the comprehensive and capital planning of the school district and the city of Philadelphia . . . [For] public policy with respect to the location, replacement and type of public school facilities will have a tremendous effect on the pattern and type of residential and other growth within the city of Philadelphia.

Thus the recommendation that "individual school facility plans should be subject to review for comment by the city planning commission before final approval by the board of public education."²⁸

The above comments merely suggest the relationship between housing and school segregation in Philadelphia. A complete study of the Philadelphia housing situation is beyond the scope of this report.

PAROCHIAL AND PRIVATE SCHOOLS

Parochial school locations and enrollments—and in some instances the locations and enrollments of private schools as well—have a great influence on public school area boundary lines. In setting the Pastorius area boundaries, for example, consideration had to be given to the existence of a nearby Catholic school with a student body of 1,400.

Because there are so many Catholic parochial schools in the city (147), and because their pupil enrollment is so high (149,061), there is frequently little relationship between the racial composition of a given public school and the racial composition of the neighborhood it serves. The Emlen school area, for example, does have a number of white children, but most of them attend one of three nearby parochial

²⁷ GPM 40.

²⁸ GPM 41.

schools which have a combined enrollment of more than 2,000. And there is only a negligible number of Negroes in the parochial schools. Few Negroes are Catholic and there are only 1,000 non-Catholics in the entire system which includes almost 150,000 pupils.

But it is not true, as some have claimed, that the existence of parochial and private schools affects the segregation pattern in the public schools. It is not true, for example, that Catholic children transfer from the public schools to the parochial schools when Negro children enter the public schools, thus creating more segregation.

Public school integration does not increase parochial school enrollments. "We have always had between 80 and 85 percent of Philadelphia's Catholic children in the Catholic schools," says Rev. Edward T. Hughes, diocesan superintendent of schools. Parochial school enrollment in Philadelphia was 120,237 in 1954; 135,154 in 1958; and 149,061 in 1961—figures which reflect the proportionate growth of the city's Catholic population, according to Rev. Edward Hughes.

Nor has there been an increase in the pupil populations of the Catholic schools in the "centers of dispute." Here are the figures for the three schools in or near the Emlen area:

Year	Immaculate Conception Church (Emlen-Pastorius)	Church of the Little Flower (Emlen-Houston)	St. Madeleine Church (Emlen-Houston-Henry)
1954.....	1, 565	442	360
1958.....	1, 468	401	332
1961.....	1, 400	342	348

Similar enrollment figures can be given for the Friends schools: Germantown Friends School: 693 in 1954, 713 in 1961; William Penn Charter School: 647 in 1959, 660 in 1961; Friends Central School: 570 in 1959, 530 in 1961; Friends Select School (in Center City): 395 in 1955, 450 in 1961.

Of course, there are a few private schools whose enrollments have been affected by changing neighborhood patterns. But these are small and few in number. And, certainly, they have little influence on the public school segregation pattern.

Student Segregation—Integration: Transfers

GENERAL

Has Philadelphia's so-called open schools policy permitting pupils to transfer virtually at will from school to school helped cause existing segregation? And the other side of the coin: Can existing segregation be ended through the device of student transfers—either voluntary or compulsory?

The policy itself, more than a quarter of a century old, is restated in current terms in an official publication:²⁹

[A] parent may request the assignment of his child, regardless of what his race or creed may be, to any public school having appropriate grades or courses, provided that the school after enrolling the children of its community has adequate accommodations for pupils from outside.

The first criticism directed against the present transfer system, vis-a-vis both segregation and integration, is that "freedom of choice of schools is meaningless if there are few open schools."³⁰ Obviously, segregation is maintained and integration thwarted where a Negro pupil cannot transfer from a "Negro school" to a "white school" because the latter has no space. "It's a policy of giving with one hand and taking away with the other," an NAACP attorney says.

The second criticism is that the school system does not furnish the necessary bus transportation to make the "open schools" policy a practical reality. Obviously, segregation is maintained and integration thwarted where a Negro pupil cannot transfer to an integrated school because he cannot afford the bus fare to get there. Action concerning this aspect of the transfer situation is not in prospect. The superintendent says: "If a child goes to a school other than the assigned school in his area, it is his parent's responsibility to take care of the transportation. The system cannot furnish buses."

²⁹ "For Every Child," at p. 2.

³⁰ Lavell, Martha, "Specific Criticisms of 'For Every Child'," memorandum of research analyst to executive director, Commission on Human Relations, Feb. 1, 1962.

The third criticism is that the policy is being administered on a discriminatory basis. Obviously, segregation is maintained and integration thwarted where (1) white children *are* permitted to transfer from integrated schools to "white schools," and (2) Negro children are not permitted to transfer from "Negro schools" to either integrated schools or "white schools." The executive director of the Commission on Human Relations declares that—

... schools are not going to get caught by the determined parents who want their kids transferred. But there are pressures placed on Negro parents to discourage transfers to "white schools." This is true although it is very difficult to prove that principals actually discriminate. And there is certainly not enough being done to dispel the feeling on the part of the Negro community that it is difficult to transfer."

The request in the *Chisholm* case specifically asks that the school district be enjoined from "controlling transfers from school to school."

But the major criticism of the transfer system is the very fact that there is still school segregation in Philadelphia in spite of transfers. It is alleged that transfers are creating segregated schools; this is a matter of debate. Figures showing the enrollment of out-of-boundary pupils by race are given below at pages 149-50. However, even if transfers are not creating segregation, it is patent that the "open schools" policy is not accomplishing much desegregation. For, of Philadelphia's 214 elementary schools, 61 still have Negro enrollments of 1 percent or less, and 52 still have Negro enrollments of 97 percent or more.

An open system of transfers was judicially ordered because of deliberate segregation in one elementary school in New Rochelle, N.Y.³¹ Agreement on an open system of transfers led to a dismissal by consent of the case charging school segregation in Newark, N.J.³² And both the decision and the agreement limited the transfer right by the availability of classroom space and further required that transferring students furnish their own transportation. For 25 years Philadelphia has had the transfer system which New Rochelle was ordered to adopt and which Newark, under pressure, has agreed to put into effect. Superintendent Wetter emphasizes this point; it is one of Philadelphia's major defenses to the charge of fostering school segregation. Yet the mere fact that the system exists does not necessarily mean that it is being administered in a way which lessens school segregation.

³¹ *Taylor v. Board of Education of New Rochelle*, 195 F. Supp. 231 (S.D.N.Y. 1961), 6 *Race Rel. L. Rep.* 700 (1961), *aff'd.*, 294 F. 2d 36 (2d Cir. 1961), 6 *Race Rel. L. Rep.* 708 (1961), *cert. denied*, 368 U.S. 940 (1961).

³² *Beal v. Board of Education*, Civ. No.—, D.N.J., order signed Mar. 19, 1962.

POLICY AND PROCEDURE

The "open schools" policy exists; it was not forced on the school district; it was adopted long before there was a segregation problem in the Philadelphia schools. But this does not mean that the school district favors the "open schools" transfer system or, for that matter, any system of transfers at all.

Pupils residing within the zone of a given school are, of course, given an enrollment preference over those seeking transfers to it. Further, according to Dr. Wetter, all children are encouraged to attend the schools in their own neighborhoods. He is concerned about the amount of time pupils spend on buses which might otherwise be spent in study, extracurricular activities or play.

If a parent desires to transfer his child from one school to another, he is required to fill out a pupil transfer request form. (This form, of course, contains no racial designations.) The form is then submitted to the principal of the school which the child is presently attending. "All that the principal does is to transmit the form to his district superintendent," says Dr. Wetter. "The district superintendents make all of the decisions on transfers."

The last statement is extremely important, for it is charged that the principals exercise a considerable influence on the entire transfer procedure—and do so on the basis of race.

Details concerning transfer policies and procedures are the same for all schools—with the exception of two high schools for high-IQ students, the High School of Agriculture and Horticulture and three vocational-technical schools. These details are set forth in identical language in admissions memoranda prepared for the junior and senior high schools.³³ (There is no similar memorandum for elementary schools but the same procedure is followed.) The pertinent language is as follows:

4. Admission to all schools:

A. Pupils living within the boundary lines.—Pupils living within the neighborhood boundary lines of a school or who move within such boundary lines are admitted to that school routinely without any special application or procedure.

B. For beginning of new term.—(1) "*Open*" schools. If the word "open" appears near the school's name, that school is open to all eligible pupils at the time schools are selected in April and November for the next term, *no matter where the pupil resides*. Pupils may be admitted to such schools at the beginning of each new term, without special application or procedure, if the selection has been properly made in the "present" school during the previous April or November.

(2) "*Waiting list*" schools. The words "waiting list" beside a school's name indicate the school is not "open" but that an application for admission may be

³³ School District of Philadelphia, Department of Superintendence, "Memorandum in Regard to Admission to Junior High Schools" and "Memorandum in Regard to Admission to Senior High Schools," both Nov. 1, 1960.

filed in the "present" school any time on or after February 1 or September 8 for the succeeding term. Such applications should bear the date received in the "present" school and should be forwarded to the "present" school's district superintendent's office.

Waiting lists of such applicants will be kept in the district office of the schools requested. Any vacancies will be offered to those on the waiting list in order of listing by date application was received in present school. All pupils whose special applications have not been approved at the time selection records are completed must select a school to which they are certain to be admitted. That is the school they must attend. In the event no such school has been selected, assignment is to be made to the school indicated by the pupil's legal residence.

(3) "Closed" schools. The word "closed" beside a school's name indicates that conditions have made that school "closed" to all pupils except those living within its boundaries. For such schools, applications should not be filed. No waiting lists are kept.

(Note: Circumstances may change the classification of a school. Greatly increased pupilage may change a school from "open" to "waiting list" or from "waiting list" to "closed." Notice of any such change will be sent by the associate superintendent in charge.)

(4) *Transfers*. Once having been assigned routinely to a neighborhood school or admitted through choice to an "open" school or a "waiting list" school, a pupil is to continue in that school *for a full term* before application for transfer to another school is to be considered unless there is a change of address or an emergency arises.

C. Application for admission and transfer to take effect during school term.—Written application for such admission must be filed in the "present" school. This applies to *all schools*.

ADMINISTRATION OF THE "OPEN SCHOOLS" TRANSFER SYSTEM

NAACP attorneys charge that the school district has been guilty of a substantial number and variety of discriminatory acts and practices in the administration of the transfer system. And it is charged that these acts and practices have created, fostered, and maintained segregation, as well as having prevented integration. They refuse, however, to furnish any evidence to substantiate these charges, giving as their reason the trial strategy they have adopted for handling the *Chisholm* case. The school authorities, of course, deny that the NAACP has any such data, or that such data exists.

NAACP attorneys readily admit that they have had a great deal of difficulty in finding specific examples of discriminatory acts. They also say that, in certain instances, they have been given specific examples, but that the people involved are afraid to testify. Other Negro leaders and civil liberties spokesmen concur, but all insist that this type of racial discrimination is widespread.

In the more than 10-year history of the Commission on Human Relations, for example, only one parent has ever registered a complaint of this type, and that complaint was unjustified. A Negro mother from the Emlen school area had sought to enroll her child in the Houston kindergarten. Investigation showed, however, that (1) the kin-

ergarten class was already filled; (2) the application was submitted after the due date; and (3) even though the class was filled and the application was late, the child was put on the waiting list.

Alleged discriminatory practices with regard to transfers may be classified as follows:

(1) Negroes "encouraged" to transfer to create segregated "Negro schools."

(2) Whites "encouraged" to transfer to create segregated "Negro schools."

(3) Whites "encouraged" to transfer to create segregated "white schools."

(4) Negroes "discouraged" from transferring to perpetuate segregated "white schools."

Transfers of Negroes "encouraged" to create segregated "Negro schools"

The racial composition of Roosevelt Junior High School, now 90 percent or more Negro, is cited by an NAACP attorney as an example of this policy in action. He charges that Negroes in the seventh and eighth grades at the Henry and Houston schools were "encouraged" to transfer to Roosevelt. He also charges that graduates of the Emlen school, which only goes up to the sixth grade, were likewise "encouraged" to attend Roosevelt, rather than the seventh and eighth grades elsewhere. The result, he says, is a predominantly Negro Roosevelt Junior High and a proportionately higher percentage of white children in the upper grades at Henry and Houston. Dr. Wetter calls this "sheer nonsense," declaring that nothing like this was ever in the minds of the school authorities.

The situation about transfers from the South Philadelphia High School (17-percent Negro) to the West Philadelphia High School (97-percent Negro) is more subtle. In neither of these schools does the percentage of Negroes reflect the racial composition of the neighborhoods served. Why then do Negroes transfer to the West Philadelphia school?

Mr. Schermer, of the Commission on Human Relations, says it is because the South Philadelphia school is "unfriendly" to the Negro. Mr. Blackburn, executive director of the Citizens Committee on Public Education, says that the existing situation has resulted in West Philadelphia being considered "the hip school in the Negro community." But whatever the reason, a large number of Negro students are attending a segregated school because they made it that way through transfers. And it is contended by Mr. Logan, of the Educational

Equality League, and others that this is one of the situations in which the *very existence* of the present transfer policy "encourages" the creation of "Negro schools."

The superintendents have finally taken some action in regard to this problem, action which will lead to at least some measure of integration. Beginning in September 1962, no pupils living east of the Schuylkill River will be permitted to transfer to the West Philadelphia High School. This will automatically increase the percentage of Negroes at the South Philadelphia High School from 17 percent to approximately 30 percent. The NAACP says it will also reduce the percentage of Negroes at West Philadelphia from 97 to 70 percent. Although gratified that such a step has been taken, the NAACP questions the motives of the school authorities. One of its attorneys says that this was done entirely in response to the "pressure" from the University of Pennsylvania to have a "better school" in the university area, West Philadelphia. The district superintendent in charge of community relations says that classroom space was the sole consideration.

Transfers of whites "encouraged" to create segregated "Negro schools"

Charges of this type are made in connection with such situations as the option controversy involving the Pennell and Howe Elementary Schools. This is discussed above under the heading of "Centers of Dispute" in the section of this report devoted to boundary problems.

Transfers of whites "encouraged" to create segregated "white schools"

One alleged example of such activity is the transfer back and forth of the seventh and eighth grades of the Henry school, discussed above under the heading of "Centers of Dispute."

Negro leaders claim that it is common practice to "encourage" the transfer of white pupils from other areas to fill up the classrooms of "all-white schools." They say that the white pupils are "encouraged" to make their applications early so that, on a first-come, first-served basis, their requests will be approved in preference to the applications of Negro children. While this is not the reason for such transfers, it is interesting to note that five white children residing in the Enlen area have been transferred to the Day and Pennypacker schools, neither of which has any Negro pupils, residents or transferees.

It is also charged that the percentage of Negro pupils in the J. S. Jenks Elementary School (13 percent) is kept low by the busing-in of white children. (See map 2, p. 132.) For it is claimed that the

percentage of Negroes in the Jenks area is higher than the proportion of Negroes in the school. An NAACP attorney says that this was done in response to local pressures, and that such action is particularly improper in that the school district is furnishing the transportation, something which is not being done for other transferees. The district superintendent insists that the busing is completely proper. He explains it this way: The blocks where these children live should be geographically part of the McCloskey school area. The all-white McCloskey school, however, is already filled to overcapacity and so is the nearby all-white F. S. Edmonds school. On the other hand, the J. S. Jenks school has adequate classroom space. Further, these blocks adjoin a major road so that the bus trip is short in time as well as in miles.

Transfers of Negroes "discouraged" to perpetuate segregated "white schools"

This is the most common charge and the one most difficult to substantiate. It is certainly not something readily apparent from an examination of school records, boundaries, etc. It is not manifested in what the superintendents have done but in what the principals have allegedly said.

It is a widely held belief that it is more difficult for a Negro child to obtain a transfer than it is for a white child. This charge is made again and again by representatives of civil liberties groups and citizens' groups, as well as by spokesmen for the Negro community. Blame is placed directly on the principals of the schools from which the Negro pupils desire to transfer.

Scoffing at the idea that principals are merely "agents of transmittal" to forward transfer requests to their district superintendents, a NAACP spokesman claims that they really control the situation. Mr. Schermer agrees. He asserts further that the principals actually make the decisions although there is wide variation in practice based upon types of principals and the nature of local pressures. Some principals use subtle persuasion to discourage transfers, the NAACP claims.

The associate superintendent is vehement in denial. "A principal would be severely disciplined if he attempted to persuade a Negro not to transfer," he says. A district superintendent admits that persuasion of this type is possible, "but not in my office and not in my district if I can help it." Superintendent Wetter says this: "I don't know why any principal would ever discourage Negro transfers. We certainly would not mind having Negro pupils go to Day school, for

example, although no Negro child has ever requested a transfer there. And we do send children to Houston, Jenks, and Logan who live outside those areas." Subtle persuasion is obviously no part of school policy.

But Superintendent Wetter also says this: "We don't check on the persuasion problem in transfers. We don't know how. If we received a complaint, we would act, but there have been no complaints." This is the major charge against the administration of the transfer system, according to civil rights and Negro leaders. An NAACP attorney puts it this way: "It is the lack of pertinent supervision which causes the situation. By not supervising, the principals have free reign."

Whether or not the transfer system is being administered on a non-discriminatory basis can be answered in part by statistics—statistics showing the number of students by race who are attending schools other than those of their residential zones.

When statistics were first requested on the number of out-of-boundary pupils in the school district, the associate superintendent gave the figure of 5,000, approximately 2 percent of Philadelphia's public school population. He also expressed the view that there were more Negro transferees than white, although he said that this could not be substantiated since there are no indications of race on student records. The NAACP spokesman did not doubt the validity of the 5,000 figure, but he questioned the statement that Negro transferees were in the majority.

A special survey on the actual number and race of out-of-boundary students was then prepared for the purposes of this report. Because of the absence of any racial data on student records, the survey had to be conducted on a class-to-class basis throughout the city—and more than 7,000 members of the department of instruction participated in preparing the data.³⁴ The statistics speak for themselves. And here are the figures,³⁵ as of April 2, 1962:

*Survey of Out-of-Boundary Pupils, School District of Philadelphia
Number of Transferees*

Negro	-----	10, 633
White	-----	4, 676
Total	-----	15, 309

³⁴ Because the statistics were being compiled on the basis of race, a number of Negro teachers refused to cooperate. When the objective of the survey was explained, most withdrew their objections. But in a few instances the principals had to obtain the statistics themselves.

³⁵ Not included in this survey are kindergarten pupils, pupils assigned to special classes and special class centers, pupils who attend technical high schools, and pupils enrolled in schools having city-wide boundaries such as Central High School, the Philadelphia High School for Girls, the Masterman Laboratory and Demonstration School, and the Philadelphia High School of Agriculture and Horticulture.

Total Transferees by Types of Schools

District	Elementary		Junior high		Senior high		Percentage Negroes in district schools, June 1961
	Negro	White	Negro	White	Negro	White	
1.....	795	283	1,131	176	1,862	84	80
2.....	906	303	258	56	910	19	82
3.....	196	219	87	97	23	12	50
4.....	790	164	163	10	362	16	78
5.....	389	618	444	505	870	144	43
6.....	747	484	150	13	64	17	31
7.....	64	480	396	315	18	325	5
8.....	6	172	0	61	2	103	1
Total.....	3,893	2,723	2,629	1,233	4,111	720	49

Total Transferees by Administrative District

District	Negro	White	Total	Percentage Negroes in district schools, June 1961
1.....	3,788	543	4,331	80
2.....	2,074	378	2,452	82
3.....	306	328	634	50
4.....	1,315	190	1,505	78
5.....	1,703	1,267	2,970	43
6.....	961	514	1,475	31
7.....	478	1,120	1,598	5
8.....	8	336	344	1
Total.....	10,633	4,676	15,309	49

Total Transferees by School, District 6

Receiving school	Negro	White	Total	Percentage Negroes in schools, June 1961
Day.....	0	2	2	0
East Falls.....	0	0	0	22
Edmonds, F. S.....	0	0	0	1-
Emlen.....	15	0	15	98
Fitler.....	11	25	36	24
Keyser.....	2	0	2	94
Fulton.....	48	2	50	85
Henry, C. W.....	27	30	57	67
Houston.....	48	43	91	18
Jenks, J. S.....	88	37	125	13
Kinsey.....	20	16	36	23
Levering.....	18	66	84	4
Lingelbach.....	53	19	72	70
Logan.....	351	168	519	44
McCloskey.....	0	0	0	0
Mifflin.....	4	10	14	12
Pastorius.....	50	6	56	80
Pennell.....	0	0	0	94
Pennypacker.....	0	5	5	0
Rowen.....	2	13	15	0
Shawmont.....	0	8	8	1-
Dobson.....	3	9	12	8
Steel.....	0	0	0	29
Widener (Special Orthopedic).....				28
Wissahickon.....	0	10	10	0
Cook.....	2	15	17	32
Wister, J.....	5	0	5	88
Leeds Junior High.....	2	4	6	2
Roosevelt Junior High.....	130	2	132	85
Wagner Junior High.....	18	7	25	33
Central High (Special School).....				6
Germantown High.....	40	15	55	41
High School for Girls (Special School).....				18
High School for Agriculture and Horticulture (Special School).....				17
Roxborough High.....	24	2	26	4
Total.....	961	514	1, 475	31

Note again that these figures indicate the number of students IN the various schools who come from outside the boundaries of those schools. The following figures indicate the number of students in the Emlen Elementary School area who go to schools OUTSIDE of the Emlen area.

Schools	Number	Percentage Negroes in schools, June 1961
Day	2	0
Keyser	1	94
Fulton	21	85
Henry, C. W.	23	67
Houston	44	18
Jenks, J. S.	75	13
Lingelbach	19	70
Logan	46	44
Pennypacker	3	0
Wister, J.	4	88
Total	238	-----

INTEGRATION THROUGH TRANSFERS

Pupil transfers can undoubtedly be used as a means of achieving some measure of racial integration in the Philadelphia schools. The record of transfers shows this. Almost two-thirds of all Negro transfers in district 6 chose a predominantly white school. About 10 percent of the whites chose predominantly Negro schools. Logan Elementary School is a striking example. It has a 44 percent Negro enrollment because its 758 pupils include 351 Negro and 168 white transferees. But whether the school district of Philadelphia could, should or would use transfers to reduce racial imbalance throughout the entire system involves many factors which have yet to be studied and evaluated.

Could integration be achieved by means of pupil transfers? Does the immensity of the city of Philadelphia, 22 miles from one end to another, preclude the setting up of any practical transfer-integration plan? Could any plan be effective in view of the city's changing neighborhood patterns?

Should active steps be taken to achieve racial integration in the public schools? The school board and its superintendents do not think so; they believe that children can be educated best in neighbor-

hood schools. Many have indicated, however, that they have open minds on the subject. If it were definitely demonstrated that integration was more important than neighborhood in the education process, they would be in favor of integrating the schools.

Would the board of public education take adequate measures to achieve racial integration if members were convinced that it would improve education, or if a policy of school integration was decreed by the courts? Would sufficient funds be sought for new buildings, busing, etc.? Would such expenditures be educationally sound in view of the other financial demands of the school system? Would the school authorities feel that it was enough merely to "encourage" voluntary transfers? How would pupils be "encouraged" to transfer? Would it be enough? How could a system of compulsory out-of-zone transfers be set up?

These questions cannot be answered at this time.

Discrimination Against Teachers

THE PROBLEM

There is *still* considerable teacher segregation in the school district of Philadelphia. Although racial designations have long since been removed from teacher records and concerted attempts have been made to integrate school faculties, segregation persists. Yet it is true now—as it always has been true—that for the most part white teachers are *still* teaching in “white schools” and Negro teachers are *still* teaching in “Negro schools.” And the Negro teachers are *still* on the lower rungs of the academic ladder.

This too is involved in *Chisholm v. Board of Public Education*. Included in the relief sought by the plaintiffs is the request—

(2) That defendants be further enjoined from enforcing policies for the assignment of teachers which result in racial discriminatory patterns, or practices in the assignment of said teachers or other personnel and that the defendants be required to submit a desegregation plan to eliminate the existing assignment of teachers on a racially segregated basis.

Discrimination in the assignment of teachers is, of course, only part of a larger picture involving discrimination in teacher appointments, transfers, and promotions, as well as in assignments. This package may well constitute the most important single aspect of the present overall problem of segregation in the Philadelphia schools. It might be easier to take action in regard to this problem than it is to move school area boundary lines or to bus large numbers of pupils. Many believe that the first step in desegregation-integration is to “encourage” more Negro teachers to teach in “white schools.”

The Citizens Committee on Public Education in Philadelphia states the problem this way:³⁶

There seems to be growing agreement that schools in culturally and economically depressed areas must be especially good to overcome conditions which actively hinder educational progress. What are the effects of the school district's assignment and transfer policies relative to teaching in such areas in Philadelphia? Exactly what consideration is given race, and do these policies tend to either integrate or segregate teaching staffs? Do more new and long-term substitute teachers tend to teach in areas of high minority-group concentration?

³⁶ Statement to Commissioners, Philadelphia Commission on Human Relations, by the Citizens Committee on Public Education in Philadelphia, presented by Robert W. Blackburn, executive director, Apr. 4, 1961.

A partial, preliminary answer to these questions is provided by Mr. Schermer of the Commission on Human Relations:³⁷

Our commission has conducted surveys of school personnel assignment practices. We have concluded that there has been a consistent practice of assigning Negro teachers to predominantly Negro schools. We do not charge that the board of [public] education had refused to employ a person because of color. We do say that race enters into the decision as to which schools Negro teachers are assigned. It appears, also, that the promotional system has operated so that extremely few Negroes have been appointed to principalships.

HISTORY AND STATISTICS

When Mr. Logan's Educational Equality League was organized in 1932, there were only 12 Philadelphia schools in which a Negro was permitted to teach. Further, there was not one Negro teacher teaching other than a Negro child—and not one Negro teacher doing his teaching at other than an elementary school level. In 1934, the league made its first appearance before the board of public education, requesting the appointment of Negro teachers to the junior and senior high schools. Shortly thereafter, a few such appointments were made. In 1937 the league achieved its greatest victory: the abolishment of the then existing separate teacher eligibility lists—lists based on race alone. This was important because the Negro list had been used exclusively for appointments to schools which were predominantly Negro. Then, on July 8, 1959, the board adopted its policy statement, providing that “there shall be no discrimination because of race, color, religion or national origin in . . . the employment, assignment, training and promotion of personnel.”

“For Every Child,” published in October 1960, declares that “the qualifications of our teachers, their earnestness, their efforts to help pupils achieve the best possible results, are of the same high standard in all schools.³⁸ Then comes this statement: ³⁹

Many years have passed since separate eligible lists based on race were abolished. All employees are treated equally in the matters of appointment and transfer. These arrangements are governed by established regulations. The candidates are called in order of standing on the eligible list. Preliminary to appointment each candidate reports to the office of an associate superintendent for a conference. In making assignments the associate superintendent takes into consideration the following:

1. Wherever possible, the location of the person's home in relation to the school location.
2. The transfer policy with its ratio of two transfers to one new appointment and with seniority rights. This policy has been approved by teacher groups.

³⁷ Letter from George Schermer to Senator Joseph S. Clark, of Pennsylvania, June 30, 1961.

³⁸ “For Every Child,” at p. 4.

³⁹ *Ibid.*

3. The possibility of enhancing the integration program.

4. The question of where the teacher might render the best service to the school and the community. There must be some flexibility in this regard.

According to Superintendent Wetter, this covers the matter. He brands as a lie any assertion that racial policies have governed teacher appointments, assignments, transfers, or promotions—at least during the 7 years he has been superintendent.

What do the facts show? Figures compiled by the department of superintendence in October 1961, provide statistical data by race on the approximately 8,700 teachers now in the public schools. Here are the figures on 4,373 of the elementary school teachers, by district:

Number of Teachers by Race—Elementary Schools

District	Number of Negro teachers	Number of white teachers	Percentage Negro teachers in district elementary schools October 1961	Percentage Negro pupils in district elementary schools June 1961
1.....	368	305	55	84
2.....	446	200	69	83
3.....	173	218	44	56
4.....	379	275	58	82
5.....	162	319	34	47
6.....	90	460	24	34
7.....	2	476	1—	4
8.....	5	495	1—	1
Total.....	1, 625	2, 748	37	53

These data clearly show a higher proportion of Negro teachers in the predominantly Negro districts and conversely, a smaller proportion in the predominantly white districts. They do not explain why this is true.

Here are the figures for some of the district 6 elementary schools involved in the "centers of dispute":

Number of Teachers by Race—Elementary Schools, District 6

[Partial list]

School	Number of Negro teachers	Number of white teachers	Percentage Negro teachers in each school October 1961	Percentage Negro pupils in each school June 1961
Day.....	0	22	0	0
Edmonds, F. S.....	0	46	0	1-
Emlen.....	25	18	57	98
Fulton.....	18	15	54	85
Henry, C. W.....	5	14	26	67
Houston.....	0	26	0	18
Jenks, J. S.....	1	17	5	13
Kinsey.....	2	20	9	23
Lingelbach.....	1	11	8	70
Logan.....	0	20	0	44
McCloskey.....	0	26	0	0
Pastorius.....	14	3	82	80
Pennell.....	6	23	21	94
Pennypacker.....	0	24	0	0
Rowen.....	0	16	0	0
Howe (district 7).....	0	12	0	11

The picture becomes clearer when assignments of Negro teachers to individual schools are considered. There are no Negro teachers in the four all-white schools and a substantial number only in very predominantly Negro schools. This, of course, is merely the bare fact and does not establish how it came about.

Here are a few other elementary schools with either no white teachers or a very small percentage of white teachers :

District	School	Number of Negro teachers	Number of white teachers	Percentage Negro teachers in each school, October 1961	Percentage Negro pupils in each school, June 1961
1	Brooks	25	0	100	100
1	McMichael	37	5	88	99
1	Washington, M	42	0	100	99
1	Wilson, A	18	1	95	99+
2	Arthur	9	0	100	100
2	Carver	32	2	94	99+
2	Douglass-Singerly	38	0	100	99
2	Durham	18	0	100	99
2	Gideon	33	5	87	99+
2	Meade	49	1	98	99+
2	Reynolds	40	0	100	100
2	Smith	21	0	100	99+
3	Hancock	13	0	100	99+
3	Spring Garden	21	0	100	100
4	Dick	34	1	97	100
4	Pratt-Arnold	45	0	100	99+
5	Dunbar	25	0	100	100
5	Harrison	25	1	96	100

Moreover, there are 80 elementary schools (fully 40 percent of the total) which have no Negro teachers at all. And of the 978 elementary school teachers in districts 7 and 8, in which Negro enrollment is 5 and 1 percent, respectively, only 7 teachers are Negroes.

The breakdown on senior high schools, where there is a far smaller percentage of Negro teachers, reveals a similar pattern :

Number of Teachers by Race, Selected Senior High Schools

High school	Number of Negro teachers	Number of white teachers	Percentage Negro teachers in high schools, October 1961	Percentage Negro pupils in high schools, June 1961
Frankford	3	94	3	3
Lincoln	2	155	1	1
Northeast	0	156	0	1—
Olney	1	141	1—	3
Franklin	10	42	19	91
Gratz	23	67	25	99
Penn, William	34	38	47	95
West Philadelphia	23	65	23	97

Thus, to a large extent, white teachers are *still* teaching in "white schools" and Negro teachers are *still* teaching in "Negro schools." How can such teacher segregation exist in a school system dedicated to racial equality in appointments, assignments, and transfers?

TEACHER APPOINTMENTS

Two distinct problems are involved in teacher appointments. The first is possible racial discrimination in obtaining any type of teaching appointment; the second is possible racial discrimination in obtaining an appointment to a junior or senior high school, rather than to an elementary school. The school authorities deny the existence of racial considerations in regard to either type of appointment. For the most part, Negro leaders agree.

As a matter of fact, it is even agreed that the school authorities are trying to get more Negro teachers into the system—at all levels. This is not based upon any policy favoring Negroes, of course; it is solely in response to the current teacher shortage. And the most severe teaching shortage, according to Dr. Wetter, is in the schools attended primarily by culturally deprived children, who are, for the most part, Negroes.

The antidiscrimination policy in making teacher appointments is clearly outlined:

In the city of Philadelphia, as in many other large cities, a way was sought to select competent teachers without favoritism or discrimination in the selection.⁴⁰

Pennsylvania school law⁴¹ requires Philadelphia to constitute a board of examiners to examine all applicants for placement on eligibility lists; to establish appropriate eligibility lists, containing the names of qualified persons, arranged in the order of rank or standing; and to appoint teachers from these lists. . . . The Philadelphia Board of Public Education has authorized the formation of the division of examinations to conduct examinations for the establishment of eligibility lists for presentation to the superintendent of schools. . . . From the eligibility list, assignments to positions are recommended to the Board of Public Education by the superintendent of schools.⁴²

⁴⁰ "Teach in the Philadelphia Public Schools," leaflet of the School District of Philadelphia, undated, c. 1961, p. 14.

⁴¹ Purdon's Pa. Stat., Tit. 24, 21-2110. "Eligible lists, properly classified containing the names of persons who have received certificates of qualifications to teach, and arranged as nearly as possible in the order of rank or standing, shall be kept in the office of the superintendent of schools, and shall be open to inspection by members of the board of public education, associate and district superintendents, and principals.

"Except as superintendent of schools, associate superintendent, associate district superintendent, director of a special branch, or as a principal of a high school, junior high school, state teachers' college, or vocational school, no person shall be appointed, promoted, or transferred to any educational position in the public school system, in school districts of the first class, whose name does not appear among the three highest names upon the proper eligible list. No person holding a position at the time of the passage of this act shall be displaced by the above provisions."

⁴² "Qualifications and Examination Procedures for Obtaining a Teaching Position in the Public Schools of the City of Philadelphia," leaflet of the School District of Philadelphia, March 1961, p. 1.

Prior to 1937, as previously noted, there were two eligibility lists, one for white teachers and one for Negro teachers. Since that time there has been a single eligibility list for all applicants who meet the necessary requirements.

Because of the scarcity of teachers, everyone who qualifies for the eligibility list can now receive an appointment, regardless of race. Moreover, exceptions to the eligibility list procedures which do exist have been primarily helpful in securing appointments for Negro candidates. When the national teacher examinations were first given in 1940, an applicant needed a grade of 640 to teach in Philadelphia. Now the requirement has been reduced to 540, a grade at which only 29 percent of the applicants are eliminated nationally. Even candidates who fail to attain this score, however, may still become Philadelphia teachers. One way is through the "special 60-day eligibility program." Under this program, temporary teaching assignments may be obtained by those who may not be fully qualified, and, after the prescribed 2 months of teaching, they may be declared satisfactory and receive regular appointments. It is significant that the rules under this program provide that, "candidates, if successful, must agree to accept any assignment given, or any appointment offered."⁴³ Many Negroes have taken advantage of this procedure and are now teaching full time in the Philadelphia schools.

Many Negroes have likewise taken advantage of the substitute teachers' program.⁴⁴ The statistical summary of October 1961 indicated a total of 2,478 substitutes, 965 of whom are Negroes. This is a high percentage in terms of the actual number of Negro teachers in the school district. Consequently, it has given rise to comment and criticism. Few, however, would consider this a sign of racial discrimination. Superintendent Wetter recognizes the existence of this high percentage and blames it on the fact that too many Negro teachers attended substandard colleges and do not have the qualifications for full certification. In view of the teacher shortage, he has repeatedly said that he wishes that they could be certified.

Inadequate education is also given as the reason why more Negro teachers do not receive appointments to the junior and senior high schools. Regrettably, according to Dr. Wetter, most Negro applicants attended poor colleges and are notably deficient in languages and science, making it difficult for them to secure teaching positions in the higher grades. Negro spokesmen admit that these are the facts.

⁴³ See "Special 60-Day Eligibility Program for the Following Positions: . . ." mimeograph of School District of Philadelphia, Department of Superintendence, Division of Examinations, revised, Feb. 1, 1962.

⁴⁴ See "Regulations Concerning Substitute Service in the Public Schools of the City of Philadelphia," leaflet of the School District of Philadelphia, April 1959.

There are several ways of computing the actual number of teachers in the school district. The figure of 8,700 includes special class teachers, instrumental music teachers, etc. The statistics compiled for the report of October 1961 shows a total of 7,839 teachers in the elementary, junior high, and senior and technical high school. Here is the breakdown by race :

Number of Teachers by Race

Type of school	Number of Negro teachers	Number of white teachers	Total number of teachers	Percentage Negro teachers
Elementary.....	1, 625	2, 748	4, 373	37. 1
Junior high.....	501	1, 058	1, 559	32. 1
Senior and technical high.....	181	1, 726	1, 907	9. 5
Total.....	2, 307	5, 532	7, 839	29. 4

Whether there is racial discrimination in assigning white and Negro teachers to particular elementary, junior high, and senior high schools is another question.

TEACHER ASSIGNMENTS

Race may be the important factor in the ultimate assignment of teachers in the School District of Philadelphia; but, even if true, this is not necessarily an indication of racial discrimination in the making of such teacher assignments. Several questions are involved: (1) Does the administration comply with the board's stated nondiscrimination policy? (2) Does practice conform to the regulations-procedures designed to carry out the board's nondiscrimination policy? (3) Are regulations-procedures adequate to preclude teacher assignments based on race? (4) Are policy and the regulations-procedures being circumvented by "encouraging" Negro teachers to take assignments at "Negro schools"? (5) Should more comprehensive policies and procedures be adopted to preclude racial considerations in teacher assignments?

Does the administration comply with the board's stated nondiscrimination policy? Administrative compliance with the board's nondiscrimination policy is manifested in part by the regulations-procedures issued by the department of superintendence on July 28, 1961. Enti-

tled "Appointment of Professional Employees," the regulations contain these directives:

In order that assignment to positions may be made solely on the basis of competency and fitness for the position, appointment of professional employees shall be subject to the following regulations: . . . To be eligible for appointment an applicant must have obtained a place on an eligibility list as the result of having taken and successfully completed examinations required for the position. Placement on the eligibility list shall be in rank order determined by the passing mark made by the candidate in the examination. . . . The candidate whose name is highest on the eligibility list shall be assigned to a position in a school in which there is a vacancy. This shall be done in the order of the candidate's preferences as shown on his Assignment Preferences Sheet at the time appointments are made. Other candidates shall be considered in rank order in the same manner.

Theoretically, under these regulations, there cannot be any racial discrimination on the part of the superintendents. The only discrimination consistent with such procedures is discrimination based on the individual teacher's choice. For they are permitted, if they so choose, to express a preference for appointment to "white schools." Negro teachers, as well as white teachers, may express such a preference—and some of them do. Observers agree that a qualified Negro applicant who is determined to teach in a "white school" can obtain the necessary appointment. Most Negro teachers, however, are reported to feel that they should "conform" to existing racial patterns. "They are guided by the legend that if they 'buck the system,' they will receive lower ratings and less chance for advancement," says Mr. Schermer.

What this means, of course, is that white teachers are generally still going to "white schools" by choice and that Negro teachers are generally still going to "Negro schools" by choice.

Does practice conform to the regulations-procedures designed to carry out the board's nondiscrimination policy? There is one procedure set forth in "For Every Child"⁴⁵ and one provision of the regulations (repeated in "For Every Child"⁴⁶) which, if followed, should result in sending more Negro teachers to "white schools" and vice versa. But it is charged that the regulation is not strictly adhered to; and it appears that the procedure is completely ignored. The regulation specifically provides that, "In filling vacancies in any school, assignments will be made in the ratio of two transfers to one appointment from an eligibility list, if applications for transfers to that school are on file." Thus if a number of white teachers desire to transfer from "Negro schools" to the same "white school," it may not be possible to take care of a given appointment preference. Consequently, a white candidate might choose instead to be sent to fill a

⁴⁵ "For Every Child," at p. 4.

⁴⁶ *Ibid.*

vacancy in a "Negro school" caused by one of the transfers. It is claimed, however, that the regulation is sometimes subordinated to meet racial preferences.

Far more important is the statement in "For Every Child": "In making assignments the associate superintendent takes into consideration . . . (3) The possibility of enhancing the integration program." "Nonsense," says an NAACP attorney. And he thinks he can prove it. Depositions have already been taken in connection with the *Chisholm* case from the two associate superintendents in charge of teacher appointments. According to the attorney, both declared that race was never considered in making assignments. In fact, he reports, both were surprised to learn that the directive as to integration had ever been made. Superintendent Wetter claims that he never intended to apply this policy in assignments. All he meant by that statement, he says, is this: Where there is an integrated faculty, efforts should be made to encourage white and Negro teachers to get to know each other better and to learn how to teach and live together in the same school. It seems that the stated integration procedure, which might help to break the racial pattern in teaching staffs, does not mean much in practice.

Are regulations-procedures adequate to preclude teacher assignments based on race? All of the policies, regulations and procedures on nondiscrimination become meaningless in view of the policies, regulations, and procedures on teacher preferences. Superintendent Wetter would not have it that way. One of his major problems is finding teachers, regardless of race, who are willing to work in "problem" schools with culturally deprived children. Another major problem is finding teachers, regardless of race, with sufficient background to teach certain high school subjects. But he claims that he is powerless to do anything about the preference situation, even if he wanted to. It is strongly favored by teachers.

The regulations include these statements:

During the process of the examination [for a teaching post] each applicant will fill out an "Assignment Preference Sheet." At the elementary level the applicant will indicate his preferences and restrictions regarding school and grade. At the secondary level he will indicate the subjects he is qualified by examination and certification to teach and the schools in which he will accept appointment. . . . At the elementary level, in as many cases as possible the candidate is appointed to a school consonant with his preferences and restrictions. . . . At the secondary level, if a candidate is notified of an appointment to a school numbered on his Assignment Preference Sheet and does not accept it, another appointment will not be offered until all other candidates on the eligibility list on which his name appears have been offered appointments.

If a candidate does not accept a proffered, first available assignment, on the ground that it is not in accord with his preferences, he may accept a preferred assignment when a subsequent vacancy occurs. However, where a candidate refuses an appointment to a school previously

designated as a preference, he is placed at the bottom of his eligibility list. The important thing is that he is not dropped from the list.

Negro leaders assert that this procedure is educationally unsound—and discriminatory as well. They argue that a would-be teacher should be dropped from the eligibility list if he refuses to accept the first available assignment. Such a policy would, of course, further the goal of integrated teaching staffs.

Dr. Wetter, speaking for the board and the superintendents, objects strenuously to this recommended policy. Two of his reasons are stated in "For Every Child": "We are presently operating in a 'teacher's market' and no school system can afford to drop teachers from lists if vacancies exist anywhere." Again: "In making assignments the associate superintendent takes into consideration the following: 1. Wherever possible, the location of the person's home in relation to the school location."⁴⁷ Further, Dr. Wetter favors preferences as a matter of principle. He believes that such choice is only right and proper in a democratic society. Finally, he is candid enough to admit that he cannot blame white teachers for preferring "white schools"—schools with fewer problems and fewer problem children.

Mr. Logan does not think that there can be a preference as to existence of preferences. He takes the position that the present procedure is illegal. In a letter to Rev. William H. Gray, Jr., guidance specialist of the Pennsylvania Department of Public Instruction, on May 5, 1961, Mr. Logan had this to say:

Again reference is made to the open admission by the School District of Philadelphia [in "For Every Child"] that sometimes teacher candidates refuse assignments, and that in such instances names are passed over and retained on the eligibility lists for later assignments. . . . Although the School Laws of Pennsylvania in Section 2110,⁴⁸ provide that all appointments, promotions, and transfers of teachers in districts of the first class shall be in the order of their rank and standing on the proper eligibility lists, and that appointment shall be made from the three highest eligibles, this section does not in any way provide that names shall be passed over and retained in the same numerical positions on such lists for later appointment in the event of teacher refusal to accept an assignment. This is why we insist that the practice be ruled on by the Attorney General as to its legality, in that the practice certainly seems violative of the eligibility rights of other teacher eligibles, and which most assuredly results in most instances in racially restrictive teacher assignments, as for example in Philadelphia where at least 84.4% of Negro teachers are assigned to all and predominantly Negro schools.

Are policy and the regulations-procedures being circumvented by "encouraging" Negro teachers to take assignments at "Negro schools"? Mr. Schermer claims that there is still an unspoken policy to "discourage" Negro teachers from going to "white schools." Negro spokesmen concur. Superintendent Wetter is willing to admit that some Negro teachers, at some time, conceivably may have been "en-

⁴⁷ *Ibid.*

⁴⁸ Purdon's Pa. Stat., tit. 24, 21-2110. See note 45, *supra*.

couraged" to seek assignments at "Negro schools." But that is as far as he will go. He categorically denies that any such *policy* exists. He says that he knows of no specific instance of this "encouragement" taking place, and he reports that his office has never received a complaint that it actually happened. Further, he states that if he knew of any such practice he would not permit it to continue.

Should more comprehensive policies and procedures be adopted to preclude racial considerations in teacher assignments? There are three reasons why new policies and procedures for the making of teacher assignments would be desirable. The first is the continued existence of teacher segregation in the school district of Philadelphia. The second is the possibility that discrimination against Negro teachers also exists. The third is the unequal educational treatment of Philadelphia's white and Negro school children resulting from present practices.

Many Negro leaders will concede that there is no concerted, deliberate racial discrimination against teachers in the Philadelphia school system. One of these Negro leaders is Milo A. Manly, deputy director of the Pennsylvania Human Relations Commission. But Mr. Manly is quick to qualify his concession. For, as he points out, there are insufficient safeguards in appointment and assignment procedures to *preclude* discrimination, and there is an absence of a comprehensive personnel policy which would bring about an end to teacher segregation.

There seems to be an overlooking rather than overseeing in the enforcement of the nondiscrimination policy enunciated by the board of public education. One safeguard in preventing racial prejudice was the adoption of the single teacher eligibility list, back in 1937. Yet teacher records were known to be coded by race as late as 1956, although Dr. Wetter insists that this information had no bearing on assignments. Moreover, it is generally believed that the associate superintendents maintain their own lists indicating the race of the teachers under their jurisdiction. NAACP leaders claim that the superintendents still know which teachers are Negro and act accordingly.

There is also (to give another example) an apparent lack of either regulations or supervision in the assignment of substitute teachers. In at least one district, assignments are handled on an ad hoc basis by secretarial personnel. And when telephone inquiries are made about openings, the secretaries assign Negro teachers to "Negro schools" and white teachers to "white schools."

Greater effort will be required to end teacher segregation in Philadelphia.

Both Negro teachers and Negro students are being hurt by existing teacher segregation. "For Every Child" also states that, "In making assignments the associate superintendent takes into consideration . . . the question of where the teacher might render the best service to the school and the community. There must be some flexibility on this regard."⁴⁹ Apparently there is either too much flexibility or the whole policy is being ignored. "For Every Child," likewise contains this statement: "Actually, the qualifications of our teachers, their earnestness, their efforts to help pupils achieve the best possible results, are of the same high standard in *all* schools."⁵⁰ "What about the differences in teacher tenure and turnover, class size, and two-shift programs?" asks research analyst Martha Lavell of the Commission on Human Relations. She continues: "In addition, may not the X [Negro] schools need a higher grade of teacher qualification rather than a comparable one?"⁵¹

Meanwhile, the percentage of Negro teachers in the "Negro schools" continues to grow. This is partly because so many of the older, white teachers are retiring and so many more Negro teachers are entering the school system. This is partly because of existing assignment policies. It is also partly because of existing policies on teacher transfers.

TEACHER TRANSFERS

Any teacher who has served for "two years in the position to which he has been appointed from an eligible list or to which he has voluntarily transferred is eligible for a transfer."⁵² This means, of course, that a great many teachers are eligible, and in practice it means a slow but sure migration of white teachers from the schools with growing Negro populations. This obviously also means increasing teacher segregation.

There are only two limitations on the freedom to transfer:⁵³

. . . 1. In filling vacancies in any school, assignments will be made in the ratio of two transfers to one appointment from an eligible list, if applications for transfer to that school are on file. 2. Not more than 10 percent of the faculty of any secondary school and 20 percent of any elementary school may be transferred out on application during any one school year.

⁴⁹ "For Every Child," at p. 4.

⁵⁰ *Ibid.*

⁵¹ *Supra*, note 30.

⁵² "Transfer of Professional Employees," Administrative Bulletin No. 19, Office of the Superintendent of Schools, School District of Philadelphia, Sept. 1, 1957.

⁵³ *Ibid.*

Seniority is the sole basis on which voluntary transfers are granted—seniority measured not in terms of service in the school district, but “calculated from the effective date of appointment, or of the last voluntary transfer” to the particular school which the teacher desires to leave.

That such an open transfer policy for teachers is educationally desirable may be questioned. It results in a high teacher turnover in the very schools which need experienced teachers the most. It is inconsistent with the personnel policy of assigning and transferring teachers based upon their particular skills and the pupils’ particular needs. And, educationally sound or not, it “encourages” segregation. Ironically, the transfer privilege is listed among the teacher “benefits” in the school district’s teacher recruitment leaflet.⁵⁴

TEACHER PROMOTIONS

The fact that only 18 of Philadelphia’s 245⁵⁵ principals are Negroes does not necessarily mean there is racial discrimination in teacher promotions. But the fact that there is only 1 Negro⁵⁶ in the school district hierarchy of 65 superintendents and directors certainly has given rise to charges of prejudice. And the fact that the associate superintendent who is chief of school-community relations does not have a single Negro on a staff serving a student body which is 50 percent Negro, certainly gives some ground for complaint that race is at least a factor in promotions to “headquarters.”

Here is what the Citizens Committee on Public Education had to say about the situation in its statement of April 4, 1961, to the Philadelphia Commission on Human Relations:

The lack of significant penetration by Negroes into administrative roles is held by some to further aggravate our teacher shortage, waste available talent and lower morale among Negro staff members generally. Are attempts consistently made to utilize Negro teachers to the level of their certification; are all opportunities taken to increase the responsibility of Negro personnel commensurate with demonstrated skills and readiness?

The statistics compiled by the school district in October 1961, indicate that only 7.3 percent of the principals and only 3.75 percent of

⁵⁴ “Teach in the Philadelphia Public Schools,” *supra*, note 40, at p. 9.

⁵⁵ There are fewer principals than schools in the tabulations compiled for this report. Some of the Philadelphia schools have annexes and one principal serves both the main school and the annex. However, in computing the number of students in each school by race, annexes have been considered as schools. Thus there are fewer principals than schools.

⁵⁶ Robert L. Poindexter, district superintendent, district 4.

the secondary school vice principals are Negro. Here is a summary of the various tabulations:

Number of Principals by Race

	Number Negro principals	Number white principals	Total number principals	Percentage Negro pupils in schools June 1961
Senior high principals.....	1	17	18	34
Senior high vice principals.....	0	31	31	34
Technical high principals.....	0	3	3	45
Technical high vice principals.....	0	6	6	45
Junior high principals.....	3	24	27	48
Junior high vice principals.....	3	40	43	48
Total secondary.....	7	121	128	42
Elementary schools:				
District 1.....	3	22	25	84
District 2.....	5	24	29	83
District 3.....	2	23	25	56
District 4.....	1	23	24	82
District 5.....	3	22	25	47
District 6.....	0	24	24	34
District 7.....	0	25	25	4
District 8.....	0	20	20	1
Total elementary school principals.....	14	183	197	53
Total principals (excluding vice principals).....	18	227	245	49
Grand total (including vice principals).....	21	304	325	49

Few would charge racial discrimination in the promotion of teachers up to and including the rank of elementary school principal. As Miss Pincus points out, progress to the post of elementary school principal generally takes about 15 years and comparatively few Negro teachers have been in the Philadelphia system that long.

Such promotions are based on anonymously graded civil service examinations—all previously advertised—and all candidates are ranked according to their test scores. It is true that part of the examination is oral, thus revealing the race of the candidate, but it is generally believed that racial prejudice plays no part in the grading. Educators from other school systems sit with Philadelphia educators on the oral examination committee, and Dr. Wetter points out that

there is always at least one Negro among the examiners. Final selection is then made by the superintendents from among the three highest names on the eligible list. It is likewise generally believed that there is no racial prejudice in this final selection, but it is significant that the few Negroes promoted to the post of elementary school principal have been assigned to "Negro schools."

On promotions to the rank of junior high school principal and above, there are conflicting stories about "fairness"—which may or may not involve racial discrimination. Mr. Manly, of the Pennsylvania Human Relations Commission, says that the examinations for these higher posts are too "subjective." The board of superintendents, he claims, not only sit as examiners but also make the appointments. "It gives them too much of an opportunity to make decisions based on race," he says. It is also his complaint that the superintendents have created "an attitude of frustration" on the part of would-be candidates by failing to provide answers to two vital questions: "What are the criteria for promotion? What are the basic judgment factors in grading oral examinations?" He and other observers also criticize the fact that vacancies in the higher positions are never advertised.

Superintendent Wetter is understandably disturbed about even the slightest hint of discrimination in the selection of superintendents, directors, and secondary school principals; as a practical matter, he makes all of these promotions himself. "The board of public education just rubberstamps my selections," Dr. Wetter says. He does consider the recommendations submitted by the district superintendents and by his chief staff members, and he does confer with his associate superintendents with regard to promotions. But there is no doubt on his part as to who makes the real decisions and the absence of racial considerations in making them.

"The reason why most Negro teachers do not get promoted," Dr. Wetter says, "is because they do not take the examinations for promotion." Again: "There are few Negro principals in the junior and senior high schools because there are few Negro teachers who are qualified to teach there." Again: "There is no need to advertise [higher grade vacancies] since the teachers know all about them anyway."

All of this is logical, and it may even be an answer to the criticism that there are only 7 Negroes among the 128 secondary school principals and vice principals in the school district.

It is more difficult, however, to explain the virtually complete absence of Negroes in high-level administrative posts. Observers are quick to criticize the fact that there are no Negroes at all among the 17 directors and 33 assistant directors who head the "special divisions." Dr. Wetter answers this by pointing out that these directors are the

chiefs of his technical divisions and must be selected on the basis of their technical competence. This explanation makes complete sense as applied, for example, to the divisions of art education, libraries, and educational research. It is less satisfactory in the field of pupil personnel and counseling since 50 percent of the pupils are Negro—especially since there are 3 assistant directors in that particular division. And it is really no answer that two Negroes, now deceased, once held posts as directors.

Nor is there any answer, as previously noted, to the fact that there are no Negroes on the associate superintendent's school-community relations staff.

There is no clear-cut answer to the question of whether there is, indeed, racial discrimination in teacher promotions. While no conclusive evidence of such discrimination was found, some facts suggest there may be, and there is an absence of facts establishing that it does not. And suspicions and charges of discrimination will continue until the school district adopts policies and procedures which will preclude racial considerations in teacher promotions—and in teacher appointments, assignment, and transfers, as well.

Summary

The problems of segregation in the School District of Philadelphia are in many ways typical of the large cities of the North and West. Negro children now compose about one-half of Philadelphia's public school population, but these children live in concentrated sections of the city and hence are unevenly distributed throughout the school system. In the eight school administrative districts of the city the proportion of Negroes in the public school ranges from 1 percent in district No. 8 in the extreme northwestern section of the city to 82 percent in district No. 2 in South Philadelphia. In individual elementary schools the racial composition of the enrollment ranges from all white to all Negro. Clearly, segregation in the schools in fact exists.

The fundamental legal question arising in all northern and western cities having a large Negro population is found here: Does the Constitution require a school board which has not had and does not have a policy to segregate by race to take action to remedy racial segregation in fact existing in the schools? The Negro leaders in Philadelphia claim the answer clearly is "Yes." The school authorities disagree with this answer.

Even if there is such a constitutional duty, does the existence in Philadelphia of a longstanding transfer rule permitting all pupils to transfer out of the school of the zone of residence to any school in the city of appropriate grade which is not overcrowded satisfy the constitutional requirement? Such a transfer rule was ordered by the Federal court in the *New Rochelle* case for the benefit of the pupils of the school found to be segregated as a result of board policy. Philadelphia's transfer rule is broader than that ordered in *New Rochelle*; it applies throughout the school district.

The survey of out-of-district pupils made by the school authorities for this report shows that over 15,000 pupils exercised their right to transfer in the school year 1961-62 and that more than two-thirds of these transferees were Negroes. An analysis of the racial composition of the receiving schools in district No. 6 (the site of most of the specific disputes in the pending lawsuit) shows that over two-thirds of the Negro transferees selected schools having a substantial white enrollment. Thus, some Negro pupils in Philadelphia have escaped segregation by the transfer route.

In addition to the broad general question as to the duty of the school board to remedy segregation in fact existing but not caused by a policy to segregate by race, specific past actions of the Philadelphia School Board are challenged as indicative of a policy to keep Negroes in or out of certain schools.

The details of these past actions which relate to school zone lines, transfers of grades from school to school, encouragement and discouragement of pupil transfer, alleged to be based upon a policy of segregation, have been recounted. Whether or not if proven the alleged actions are sufficient to establish a policy of segregation as to one or more schools is a question for the courts.

Alleged discrimination in the assignment, transfer, and promotion of Negro teachers looms large in Philadelphia as in many other northern and western cities. (Discrimination in employment is not charged here as it is elsewhere.) The policies, rules, and practices governing assignment, transfer, and promotion of Philadelphia teachers and the end result as it appears in the schools has been delineated in detail. The gist of the Negroes' complaint as to teachers seems to be that the original assignment policy permits applicants to designate the schools in which they will accept appointment. Thus, white applicants may specify white schools only and refuse to accept appointment to schools attended mainly by Negroes. The fact that they are allowed to keep their names on the eligibility list if there is not an opening in a school designated in the application and thus be eligible for a vacancy arising later in a school of their choice is considered particularly objectionable by Negro leaders. As to transfers, which are allowed to a school having vacancies in a ration of 2 to 1 new appointment, white teachers and white schools seem to have the advantage merely because, generally speaking, white teachers have more years of service. Teachers senior in service in a particular school have priority in transferring out. In practice, white teachers appear to be transferring to a predominantly white school as the enrollment in the school in which they are assigned changes from white to Negro.

There are proportionately many more Negro pupils than teachers in Philadelphia (about 49 percent Negro pupils to 29 percent Negro teachers). A survey of the racial composition of the teaching staff as compared with that of the student body shows a preponderance of the Negro teachers in schools with large Negro enrollments and very few or none in schools attended principally or solely by whites.

The unwillingness of many white teachers to accept assignment to predominantly Negro schools or to remain on the job, when changing residential patterns change the racial complexion of a school from white to Negro, is not unique to Philadelphia; it is a phenomenon plaguing many big cities of the North and West. Insofar as a white

or a Negro faculty results from the choice of the individual teachers, albeit the right to choose is granted by the school authorities, does it present an equal-protection problem? No Federal court has yet ruled upon this question.

Certainly, the Philadelphia school authorities have no concerted general policy of racial discrimination or purposeful segregation directed at either pupils or teachers. Yet all-white and all-Negro schools exist both at pupil and teacher level. Are Negro pupils being denied equal protection of the laws in Philadelphia because of these facts? The Federal court's decision in *Chisholm v. School District of Philadelphia* may give a definitive answer.

CIVIL RIGHTS U.S.A.
Public Schools
Cities in the North and West
1962

CHICAGO

By JOHN E. COONS



A Report To
THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

In collecting material for this report the author personally interviewed the general superintendent of Chicago public schools, the deputy superintendent, the director of special projects, the assistant superintendent for human relations, and other top administrative officials of the school system. Also interviewed were school principals, the dean of a junior college, approximately 15 public school teachers, the attorneys in 3 of the current lawsuits, a member of the State Advisory Committee of the United States Commission on Civil Rights, the director and staff of the NAACP, the research director and staff of the Chicago Urban League, the director of the Catholic Interracial Council, the former chairman of the research committee of the Woodlawn Organization, officers and members of Teachers for Integrated Schools, an officer of the Real Estate Research Corp., and other interested individuals. Every effort has been made to record their observations and positions faithfully on the subject matter of this report.

The author gratefully acknowledges his indebtedness to the many individuals whose assistance and cooperation made this report possible.

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AUGUST 27, 1962.

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Part 4. Chicago

Introduction

The school year 1961-62 in Chicago was marked by acrimonious debate over policies of the general superintendent of public schools and of the board of education which were alleged to result in illegal discrimination among pupils in Chicago schools. During the course of the year, at least three lawsuits and an FEPC complaint were filed against the board of education charging either discrimination on the basis of race, illegal racial segregation, or discrimination unrelated to race. Civil rights groups made allegations of the same kind. The school administration in all cases responded with public denial of the charges. The issues involved were matters of complexity, both as to fact and law. Without exception, these issues clustered about the central fact of densely populated, racially homogeneous residential areas on Chicago's South, West and Near-North Sides. In these teeming sections of the city dwell nearly all of the 813,000 Negroes who constitute approximately 24 percent of the city's population. In these Negro families live 30 percent of the city's children of elementary school age. Because of the large white attendance in private schools, these Negro children constitute approximately 40 percent of all elementary public school pupils. With a young, expanding Negro population and an aging and contracting white population, it seems probable that the public elementary schools will be predominantly Negro by 1970. According to figures supplied by the Chicago Urban League, approximately 90 percent of the Negro elementary pupils currently attend schools which are virtually all Negro and which constitute about 20 percent of Chicago's public schools. This high concentration of Negroes in about 80 or 90 of the city's schools is the consequence of de facto segregation in housing and the neighborhood school policy of the Chicago public school system. Critics of the system allege that it is also in part the planned or unplanned consequence of acts and omissions of the Chicago Board of Education and the superintendent. Much of this study will be devoted to a description of facts and opin-

ions relevant to the degree and causes of racial segregation in Chicago schools.

Other parts of the study will be devoted to a relation of facts and opinions relevant to the question of the equality of educational opportunity in Chicago schools. Critics of the schools have charged that the city has discriminated among the schools in the degree of financial and other support provided. While this charge is generally coupled with an allegation of racial discrimination, the questions of race and racial discrimination may and should be kept separate analytically from the other questions of equal protection. The bestowal of preference by the city upon certain schools could constitute unlawful discrimination under the 14th amendment irrespective of the racial characteristics of the group adversely affected. The standard of equality suggested by the line of cases springing from *Plessy v. Ferguson* does not appear to depend for its vitality upon a showing that discrimination is based upon race, even though such a showing, under *Brown v. Board of Education*, would be sufficient in itself to establish the illegality of official action.

This study is incomplete as a factual survey and tentative in its conclusions. Wherever available, statistical information is included, but it should be recognized that in many instances these statistics have been collected under imperfect conditions. For example, the dynamics of Negro housing in Chicago make it very difficult to be precise about the boundaries of the colored residential districts. Furthermore, the unprecedented volume of new school construction in the impacted areas of Chicago has necessitated rezoning on a scale far too vast to be encompassed in the present study. The difficulty is compounded by the statutory prohibition of the recording of racial data on pupils and teachers in the Illinois school systems. Chicago school officials have taken this prohibition to forbid even an informal head count by teachers and principals to determine the racial composition of class and school groups. As a consequence, such important questions as the existence of a deliberate policy of gerrymandering school attendance zones to avoid integration can only be approached through isolated cases, and frequently only on the basis of opinion evidence gathered from interested parties. On other issues, there are substantial and useful—although sometimes conflicting—data.

The primary sources for all information are stated in the preface. Where it is known that factual disagreement exists, the sources for conflicting data are given.

No effort was made in this report to assess the general excellence of Chicago schools. The emphasis here is upon facts relevant to questions of constitutional rights. In the course of such an undertaking a

general discussion of the quality of the educational program is not pertinent. The absence of such discussion implies no criticism.

The attempt to pass judgment upon a school system's compliance with a constitutional standard of equal opportunity for education implies the existence of criteria by which the quality of education may be judged. Unfortunately about the only item of universal agreement is the assumption that some education is better than none, perhaps with the added proposition that more is better than less. Comparisons of specific content in educational systems are likely to evoke conflicting value judgments ranging from the archly phillistine to the avant-garde. Therefore, the selection of categories of constitutionally relevant information is made with diffidence. For example, the knowledge that the teachers in a given school are less experienced than the average may be a matter either for concern or gratification to the school involved. Does experienced age teach better than enthusiastic youth? And, for that matter, do experienced teachers have less enthusiasm? Is it possible that age itself irrespective of all other qualities has something to do with successful teaching? If so, which age is the optimum—the least, the most, or some stage between?

Despite the "inherently unequal" language of the *Brown* decisions, it is even necessary to ask whether racially integrated education is superior to its opposite. It is not yet clear whether the court had reference merely to governmentally designed segregation or whether it includes fortuitous segregation in determining the unequal character of such education. It is thus legitimate to inquire whether the sheer fact of racial admixture, whatever its other advantages, improves the learning experience, debilitates it, or is irrelevant. It is possible that some students may benefit and others suffer depending upon individual characteristics of such complexity as to elude enumeration, much less suffice as a standard for administrative judgment. Is it merely an act of democratic faith deliberately to mix Negro and white children in one classroom with the hope that this experience will promote inter-racial empathy?

Finally, does race itself constitute an element in the calculus of quality in education? That is, in order to provide equality, must the Negro be given a "bonus"? On what grounds? Presumably not that of racial inferiority. If the justification is "cultural deprivation," what about the deprived white pupil? And if one object sought is integration, how is the bonus to be bestowed in a class including both white and Negro children? If the bonus is granted only in areas of de facto segregation, will Negro children in integrated schools have a ground for complaint?

The one objective criterion which might be employed to articulate a standard of equality is money. It would be possible in theory to re-

quire a school system to spend an equal sum of dollars on each child. For comparison of two schools, both within the same classification—e.g., elementary grades, kindergarten through eight—such an approach may be useful. However, it would be an absurdity to compare a standard elementary school with a school for handicapped students. The logic of the dollar criterion in that case would prohibit the operation of the costlier school for the handicapped. But an ordinary education for handicapped children is by realistic standards unequal. If the question is asked who is handicapped, a full circle is completed and the question of a bonus for Negroes arises again. On the other hand, suppose the dollar criterion is applied to special schools for gifted children. If such schools are costlier, are they not prohibited? They cannot be saved on the theory that the students need more assistance than the average, unless “need” is redefined. Indeed, if handicaps are taken into account, can the expenditure of even an average amount upon gifted students be justified? And so on. Considerable information on school appropriations is included in this report.

Comparable information on Chicago suburban or other Illinois schools is not included, although such data logically would be relevant. May a State surrender educational policy to the municipalities if the inevitable result is discrimination which is more obvious than any existing within any individual school system? The answer for the moment undoubtedly is yes, but the rationale protecting such differentials in the provision of a governmental service is by no means clear. Although the specific factual differentials are not taken up in this study, the author may report the universal opinion that suburban education is superior to that provided in Chicago.

Lastly, there is a question as to the relevance of conditions less recent than the immediate past. Assuming that both the past and the present situations in Chicago reflect both racial segregation and serious disparities in educational opportunity, would the potential illegality be erased if it could be demonstrated that the school system currently is trying to eliminate segregation and the differential in quality among schools? Is it relevant to know whether such efforts are successful, if in fact they are bona fide?

With the reservations suggested by all these questions, the following report is submitted.

Racial Segregation in Chicago Schools

PUPIL SEGREGATION

Since the Chicago Board of Education and the superintendent maintain no records concerning race and are reluctant to express opinions on the subject, the racial composition of Chicago schools can be approached only indirectly. There is, however, very little disagreement about the general facts. According to the Chicago Urban League, approximately 65 percent—or 260 of the 400—Chicago elementary schools are either all white or virtually so. Of the remaining schools, 20 to 25 percent are all Negro and about 10 percent are integrated.¹ The league's methodology in reaching these determinations is to examine the 1960 census data for the tract in which the school is located. If the white population exceeds 95 percent, the school is denominated white; if the white population exceeds 40 percent but is less than 95 percent, the school is considered integrated; if the white population is less than 40 percent, the school is considered Negro. This last conclusion involves the judgment that, once the Negro school population reaches some critical point, white children in the school zone are sent to private schools or white families in such areas tend not to include children of school age.² The Urban League also supplemented its statistical assumptions with the personal observations of teachers and others.

In one respect the Urban League figures appear to be too conservative. Interviews with principals and teachers suggest that, although the school may not be all Negro until the population of the area is 60 percent Negro, the transitional period from a Negro pupil percentage of about 30 to an all-Negro school is brief—in some cases less than a year. It appears that, at the critical point—whatever it is—a formerly stable state of integration tends to deteriorate, being reflected by the exodus of white pupils. At the same time that this process is going

¹ Statement before Illinois School Problems Commission, Feb. 1, 1962. NAACP figures for 1956 are nearly identical, "De Facto Segregation in the Chicago Public Schools," *The Crisis*, vol. 65, p. 87 (1958). They are confirmed by numerous interviews.

² Testimony of Urban League, Chicago School Budget Hearing, Dec. 19, 1961.

on in the schools, the exodus of white residents is also apparent in the turnover of housing to the Negroes at only a slightly slower pace. This process is, however, by no means without exception and is influenced by factors in addition to change of racial composition of the neighborhood. It is insisted by some that the flight of the whites is inspired as much by their conviction that the standards of education will deteriorate as by antipathy to integration. Those who take this position frequently argue that white parents believe that the school system loses interest in maintaining standards once the school becomes predominantly Negro. There was no way in which to test the correctness of speculation about white beliefs concerning school policy.

The degree of racial compartition in the public elementary schools seems to have increased over the years rather than lessened. One study by the Chicago Urban League suggests that the elimination of legal segregation in Chicago public schools after the Civil War resulted in schools that were integrated in fact, for Negroes were at that time dispersed in many areas of the city.³ The formation of the homogeneous South Side community after World War I introduced *de facto* school segregation, but even in 1920 there is evidence that from one-third to one-half of the Negro pupils attended integrated elementary schools.⁴ After 1920, racially mixed neighborhoods tended to contract, partly as a consequence of restrictions upon the sale of housing to Negroes and partly from the influx of a large number of southern Negroes who tended to take up remaining white properties in the mixed areas.⁵ The degree of racial insularity has probably not altered radically since about 1930, though the Negro population has swelled enormously, and the Negro neighborhoods have vastly expanded their boundaries.

Racial separateness is probably less marked in Chicago high schools. It is also much more difficult to measure, since the high school attendance zones are much larger than elementary school zones and other factors connected with the age of the students may alter the pattern. Further, less research has been done in this area, although a 1958 study by the NAACP estimates that about 40 of Chicago's 55 high schools are racially homogeneous.⁶ Interviews with teachers tend to support these figures, but caution is indicated. For the most part this report will concentrate upon Chicago elementary schools.

Another word concerning the methodology of the present study is necessary. In later sections, various elementary schools will be compared with respect to quality of education and other matters. These

³ Baron, Chicago Urban League, "An Equal Chance for Education," (preliminary report), March 1962, p. 7.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ "De Facto Segregation in the Chicago Public Schools," *supra*, note 1, at 92.

schools will be labeled "white," "Negro," and "integrated." Judgments as to the racial character of these schools are difficult in certain cases. Confirmation of the classification was secured from teachers and principals who know the schools and from the Urban League. The hardest schools to label with any confidence are those in the "integrated" classification, because of the rapid shifts that may take place. Nevertheless, it is believed that the classifications are reasonably accurate as of the end of the school year 1961-62. To the extent that there is error, it will probably lie in the classification of a school as "integrated" which has in fact become Negro.

TEACHER SEGREGATION

There is currently no way to estimate the degree of dispersal of Negro and white teachers among the Chicago schools except through the gathering of opinions of administrators and teachers. Such sources are generally agreed that the number of Negro teachers in white schools is minuscule. On the other hand, there appears to be a fair number of white teachers in Negro schools, which fact has been confirmed by personal observation. The superintendent does not deny these facts but suggested in interviews that there are exceptions and that it was likely that a number of teachers of mixed blood were "passing." The superintendent also agreed that there are no Negro principals of white or integrated schools, although he said that there are many white principals of Negro schools.

A Review of State Action Affecting Racial Composition of the Schools

During the 1930's and early 1940's, it is probable that administrative policy played a significant role in preserving the segregated character of Chicago schools. School zone lines were made to conform to the configuration of the Negro communities and, as these communities grew in population, the administration placed new schools within their boundaries rather than transfer Negro children to available space in white schools. That white students assigned to Negro schools could obtain transfers to other schools seems fairly certain.⁷ The present superintendent suggested in an interview that this may once have been the policy of the system.⁸ "Neutral" areas were also established. Pupils living in a neutral area were permitted to choose between two or more schools. This apparently had the effect of maintaining the racial character of the schools.

After his appointment in 1947, Superintendent Herold Hunt, in cooperation with a specially appointed committee, planned and executed a redistricting of 102 schools in an effort to relieve overcrowding. The Urban League has characterized this effort as "essentially . . . an impartial application of the neighborhood school policy."⁹ Hunt also eliminated most of the neutral areas. The effect of this program was to ameliorate the crowded condition of schools in the Negro neighborhoods and to lessen to a degree the disparity in the size of classes throughout the entire system. Along the borders of the Negro residential districts it also effected some desegregation, although it had no such effect upon the rest of the system.

Superintendent Benjamin C. Willis, who took office in 1953, indicates that in 1961-62 no transfers were permitted from an assigned school without grave cause, although he admits that some pupils may have lied about their addresses in order to attend a school outside their

⁷ See Baron, *supra*, note 3, at 6, citing "Chicago Mayor's Committee on Race Relations, Proceedings of Conference, February 1944." And see "Study of the Technical Committee on Intergroup Relations in Chicago Schools, Subcommittee on School Districts, 1948." The committee was requested by Superintendent Hunt to examine the districting and other policies of the school administration.

⁸ Interview, June 7, 1962.

⁹ *Supra*, note 3.

proper attendance zone. The superintendent denies that any gerrymandering is involved in determining the boundaries of attendance zones. The principals and teachers interviewed—and at least one member of the board—were of the opinion that racial considerations have played some part in determining attendance zones, but the complaints are rarely specific and often are based upon sketchy evidence. The new president of the board candidly asserted to this reporter that race has been taken into account in decision-making by the administration and the board. He indicated his disapproval of this policy and his conviction that this approach would be abandoned.¹⁰

Those who assert that the superintendent and the board strive to maintain the status quo often deny any imputation of racial prejudice. It is the feeling of many that the administration is merely a part of a city government struggling to preserve the city from the disastrous effects of the flight of white citizens from changing areas. (See appendix D for an example of the pupil turnover in one transitional school district.) No doubt such a response of whites to the spread of Negro neighborhoods is an historic fact in Chicago. Whether this response is in spite of or, in part, because of policies of the board of education is a matter of current debate.

CHICAGO'S SCHOOL CONSTRUCTION PROGRAM

The massive investment of the city of Chicago in school construction in the last decade plays an important role in determining the racial composition of individual schools. To the extent that new schools are located in the heart of existing Negro neighborhoods, the program has the effect of preserving the segregated character of these schools. This will be true so long as the administration adheres to the neighborhood school policy. Even if the neighborhood policy were altered, the location of schools would have an important influence upon the feasibility of any program of open registration, free transfer, or selective pupil transportation of the kind adopted in New York City.

Between 1951 and 1962, over 200 new school buildings or additions to existing buildings were completed at a cost in excess of one-quarter of a billion dollars.¹¹ This represented a total of 3,498 classrooms. As will appear from the tables and maps in appendices A, B, and F, most of this building was in the Negro residential area just north of

¹⁰ The opinions indicated in this paragraph were all gathered in personal interviews with the persons noted. See also affidavit of the superintendent in *Webb v. Board of Education*, Civ. No. 61C1569 D.C., N.D. Ill., July 31, 1962. "I know of no attendance area in the City of Chicago that has been gerrymandered for the purpose of maintaining a 'racially segregated' school. . . ."

¹¹ Annual Report of the Superintendent, 1961. Most of the statistical information on new schools comes from this report.

the Loop, in the vast Negro sections stretching directly south and west from the Loop to the city boundaries, and in areas in the extreme north of Chicago.¹² These increases in the population in the northern part of the city resulted from the exodus of whites, particularly Jews, from the south and west of the city which took place as the Negro residential areas expanded. At the end of 1961, 74 percent of the existing school facilities of district 11, a Negro area south of the Loop, had been constructed in the last 10 years. Despite these new facilities in district 11, under plans for the immediate future it will receive 292 additional new classrooms. This is more than are planned for any other district. This new construction reflects the massive increase in population in this district in the last decade. In the case of district 11, however, this population increase is not accounted for by the exodus of whites and the influx of Negroes, for the district has been a center of Negro population for generations. The gain in population represents a high birth rate and immigration from the South.

In district 10, on the other hand, the same effects are accounted for by a "breakthrough" into a formerly white community. Although only a corner of the West Side district is now Negro, the density of population in the Negro area has required a new building program. Over 54 percent of the school facilities in the entire district are less than 10 years old, and 267 new classrooms are planned.

District 12, a large white area southwest of the Loop, provides an interesting contrast. Equal in area to districts 10 and 11 combined, only 5 percent of the facilities of district 12 were constructed in the last 10 years and nothing new is planned. It should be noted that districts 11 and 12 are contiguous. The explanation for the contrast is that the Negro residential expansion has halted, at least temporarily, at or about the streets and railroad track forming the district 12 eastern boundary—the western boundary of district 11.

The Negro school buildings in Chicago typically are larger and house a larger number of pupils than the average school. In 1958 nearly all of the 34 elementary schools having an enrollment in excess of 1,600 were in Negro districts.¹³ Total enrollment may be unrelated to individual class size and result solely from the additions to existing school facilities as an application of the neighborhood school policy in areas where the population is growing. In fact, however, total enrollment and class size have frequently gone hand in hand. Size of schools and of classes will be discussed in detail below.

¹² Of the 39 new buildings and additions occupied in the first 11 months of 1961, 22 are in 6 districts of high Negro concentration. They are dispersed as follows: district 20, 5 buildings; district 16, 3 buildings; district 11, 3 buildings; district 10, 4 buildings; district 9, 4 buildings; district 7, 3 buildings. Board of education Press Release, Dec. 13, 1961. Cf. app. A.

¹³ This appears from an analysis of a report of the superintendent to the board of education, "Elementary Education in the Chicago Public Schools," May 1959, p. 80.

TRANSFER POLICY

An official policy prohibiting transfers from assigned schools has been in effect for a number of years. The no-transfer rule has had two consequences. In a racially homogeneous area, coupled with the neighborhood school policy, it has tended to preserve the segregated character of the school. In integrated areas it has tended to preserve integration by preventing the transfer of white children. It has not, of course, inhibited their enrolling in a private school.

In assessing constitutional implications, the no-transfer rule cannot be viewed apart from the factual availability of space in some Chicago schools. If the schools are all filled to capacity, the transfer policy has little significance. The question of available space will be taken up in detail in a later section.

Among the many new developments in the last year was the announcement of the administration's plans to alter the transfer rule effective in the fall of 1962. The first plan, presented to the board on December 27, 1961, comprised the following proposals:¹⁴

. . . that the board could authorize the issuance of temporary permits to pupils on double shifts to enroll in elementary schools with available space within their general area of residence. . . .

Pupils who are granted these temporary permits will be required to provide their own transportation at no expense to the board of education. When full-day session classrooms become available for these pupils in their home school attendance area, in average size classes no larger than 40, their temporary permits should be revoked.

If this be considered by the board, attention then must be given to limiting the number of such permits to that which will bring available classroom space in any given school up to an average class size of 30 pupils.

The Chicago Urban League, which has long advocated greater freedom of transfer, sharply attacked the superintendent's plan. On January 5, 1962, it addressed a memorandum to the members of the board of education which reads in part:¹⁵

The Superintendent's 40-30 Formula

The most glaring defect—one which can only be seen as an overt admission of a deliberately discriminatory standard—is the amazing 40-30 formula on which the whole plan is based. This formula calls for shifting pupils *only from double shift schools, and only from schools with more than 40 pupils per room—and then allows such shifts only to rooms with less than 30 pupils*. In other words, the standard for the under-used schools (almost entirely white) is to be officially set by the board at a *maximum of 30 per room*, while the standard for the overcrowded schools (largely Negro) is to be set at a *minimum of 40 per room*.

¹⁴ Memorandum to the board of education, December 27, 1961.

¹⁵ Urban League memorandum to members of the board of education, Jan. 5, 1962. The league also objected to the new policy on the grounds (1) that requiring parents in the neighborhoods most affected to pay for transportation was to defeat the whole purpose of allowing transfers; (2) that the timing and preparation were bad in light of the imminence of the second semester; (3) that the transferees' status was only temporary; and (4) that the program needed a supporting effort in indoctrination.

The Urban League's objection may be somewhat intemperate, but the plan did raise some interesting questions. For example, must available classroom space be utilized on a numerically equal basis? Put another way, is the neighborhood school policy lawful if it results in an unreasonable imbalance in class size? Is it proper to permit one school to operate with a classroom average of 20 pupils while others have an average of 45? If a mere difference in classroom size is enough to demonstrate illegality, surely the neighborhood policy of Chicago, unless supplemented with a liberal transfer rule, is gravely suspect. If, on the other hand, allowances can be made for reasonable differences in class size, how great a difference is tolerable? The superintendent's December formula suggested that a difference of 33.3 percent is not only tolerable, but is a minimum difference that would be maintained in the face of additional applications for transfer. Transfers would be forbidden whenever (1) the sending school on double shift dropped to an average of 40 or went on single shift, or (2) the receiving school average rose to 30. If either factor occurred separately, the difference in average class size between sending and receiving school would always exceed 33.3 percent (i.e., the difference between 30 and 40). It is also important to observe that the superintendent's December transfer plan would retain any degree of imbalance in class size, no matter how great, where the overcrowded school was on single shift, for no transfers would be permitted. If the legal issue is one of relative size, this would raise serious questions indeed.

However, it may be that the Urban League entirely misconceived the issue. If it were possible to postulate an optimum class size—or even a maximum reasonable class size—the issue might be seen not in terms of relative numerical averages but rather in terms of the allowable degree of departure from an established norm. If, for example, 40 were seen as an acceptable standard, the superintendent's December formula might shed some of the malignity perceived by the Urban League. Unfortunately, the plan is vulnerable even from this point of view. The superintendent has taken considerable pride in his efforts to reduce class size to an eventual 30 in the Chicago system on the premise that this is an important step in the improvement of the education provided.

This analysis of the "40-30" transfer rule proposed in December 1961, may be thought hypercritical. If the policy was to be a relaxation of the rigid no-transfer rule, any doubts about the constitutionality of the old rule would be lessened. This is not necessarily true, however. The old no-transfer rule had the virtue of applying, at least superficially, without discrimination. In effect the old rule had the harshest impact on the crowded schools in the Negro districts, but

this was not apparent on its face. The December 40-30 rule, on the other hand, was discriminatory on its face. Of course, the racial aspects of both the 40-30 rule and the no-transfer rule, do not appear until an investigation is made as to which schools have crowded classes; but, if the provisions of the 40-30 rule amount to prima facie discrimination, it could invite exactly such an investigation. An additional element in the 40-30 rule that cries out for full disclosure is the administrative interpretation of the words "within their general area of residence"—a further limitation on the transfer privilege.

Finally, it should be noted that a discriminatory effect upon certain schools might violate equal-protection standards irrespective of any finding that the disadvantaged schools are also Negro schools.

The issues posed by the 40-30 rule proposed in December 1961 became moot, or nearly so, by summer of 1962. The proposed rule granted relief only to pupils on the double shift. The superintendent announced that the double shift had been reduced to about 4,000 pupils and that its early elimination was in sight.¹⁵ This would eliminate whatever potential utility the rule might have had. As a consequence, the board of education insisted that the superintendent produce a new transfer rule that would permit the use of underutilized facilities. The board met on August 22, and debated and apparently approved a transfer policy suggested by the superintendent. Precisely what the board intended by this action is not clear. The superintendent's transfer proposal to the board is as follows:

If you should make the policy decision to introduce permissive transfers, in relation to numbers of pupils and space, I would offer the following guidelines to the board of education in this situation:

1. Adopt policy decisions after 20th day enrollments in September are known.
2. Use the 40-30 base to initiate and terminate possible permissive transfers—first in relation to districts, then schools, and then distance.
3. Determine eligibility for permissive transfer in relation to an average class size of more than 40 and the expectation that the situation will not be corrected within a semester.
4. Place responsibility for transportation with parents of pupils utilizing permissive transfers since our expectations for new classrooms and thus lower class ratios imply that permissive transfers are an emergency measure only.

A motion was carried to adopt the policy suggested by the superintendent. Does this mean the board will—as suggested by point 1—"adopt policy decisions after 20th-day enrollment," or has it already adopted the substance of the plan? The latter seems more probable and will be assumed here, but other more difficult questions remain.

Under point 2, what is the meaning of ". . . first in relation to districts, then schools, and then distance"? Does the average classroom-student ratio in a whole district have to exceed 40 before any one school within the district is eligible, however large its classes?

¹⁵ Board of education meeting, June 27, 1962.

Is there to be a limit on distance that the student will be permitted to travel? The superintendent was asked by a board member during debate whether the transferee would be limited to the nearest school with classes under 30. He replied that he had not decided.

Under point 3, what is intended by determining eligibility “. . . in relation to . . . the expectation that the situation will not be corrected within a semester”? Does this mean that the administration may shut off transfers at will by announcing that class size will be reduced to 40 within a semester in any given school or even a district as a whole? If so, the superintendent already may have done so for all except district 20. Simultaneously with the announcement of the transfer plan he predicted that only district 20 would exceed 40 pupils per classroom by December of 1962. Later it will be noted that this prediction seems based upon a larger number of available classrooms than are reported for the schools by their principals.

The debate on this plan by the board suggested that the members thought they were discussing a plan which would permit transfer whenever an individual school's classroom-student ratio would exceed 40. If, however, the result of their action was the adoption of the superintendent's plan, the ambiguities in the scheme will make it difficult to know precisely what the rights of the pupils are to be. Even if the ambiguities in the plan receive the most liberal interpretation, it amounts, in substance, to little more than the plan of last December. The only concession is that the sending school need not be on double shift.

The board understood the issue of transportation involved in point 4. Several members expressed the view that any transfer policy must be implemented with free transportation, but decision of the issue was postponed.

NEUTRAL ZONES

The former use of “neutral” school attendance zones in Chicago has already been noted. Pupils living within the boundaries of one of these zones, unlike the mass of Chicago pupils, could choose among two or more designated schools. Either part or all of the attendance areas of the schools involved was declared to be “neutral” for this purpose.

Neutral zones are susceptible to use as a device to create or preserve segregated schools and, at least until 1948, appear to have been used for this purpose. The example in figure 1 below is purely hypothetical. The attendance zone for school B is a Negro residential

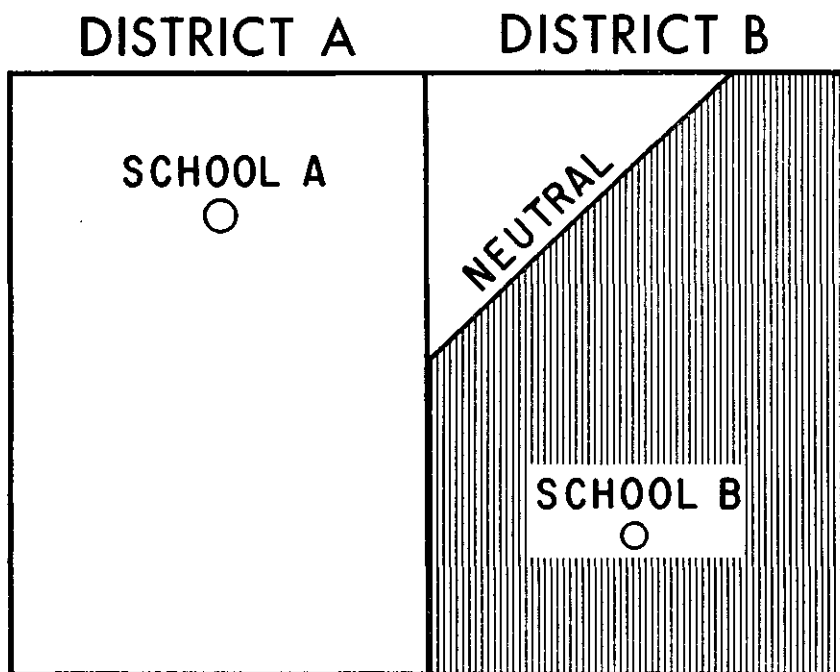


FIGURE 1

area except for one corner. School A's district is all white. By declaring the white corner of district B "neutral," the white children in that corner will be able to opt for school A. The effect of segregation is preserved while the school administration is spared the embarrassment of redistricting on racial lines. So long as the area is merely "neutral," the appearance of disinterested and equal treatment is maintained.

The specific effects of any neutral zone depend upon a number of factors. Residential patterns, the existing racial character of the schools, and boundary lines of school districts and of the neutral zones may occur in a variety of combinations.

The recommendation of the special committee appointed by Superintendent Hunt in 1948¹⁷ resulted in the elimination of a vast number of such zones. The 18 neutral zones still remaining were abolished by action of the board of education in the summer of 1962.¹⁸ The existence of the 18 zones had been a source of criticism of the administration. It is difficult to justify neutral zones upon any logical ground under a system dedicated to neighborhood schools. Actually, however, the locations of the zones abolished in 1962 suggest that their existence had nothing to do with race. They were located principally

¹⁷ *Supra*, note 7.

¹⁸ Report of the superintendent to the board, July 11, 1962. One neutral zone was overlooked but has since been abolished.

in areas of homogeneous racial composition.¹⁹ One official in the administration expressed bewilderment at the original reason for creating them and finally ascribed their existence to "sentimental" reasons.

MOBILE CLASSROOMS

The intensity of feeling among Chicago Negroes about the policy of the present administration may be gauged by the response accorded the introduction of mobile classrooms. The portable units were purchased with the express purpose of reducing the double shift in crowded areas. Each unit is a classroom approximately 40 x 20 feet equipped with washrooms, fountain, electric heating and air conditioning. They are designed to serve 30 pupils.

In December 1961, the superintendent requested authorization from the board to negotiate with a manufacturer of mobile classrooms.²⁰ Eventually 150 units were purchased, each to cost about \$9,000 installed. The first were installed about March 1, 1962, on a razed tract near the Sumner school, an overcrowded building in the changing Lawndale district of Chicago's West Side. By summer, the mobiles were scattered in clusters up to about 25 in number near various schools in the Negro districts. In the June 1962 issue of the "American School Board Journal," the author of an article entitled "Chicago's Mobile Classrooms" was ecstatic:

The reaction to the mobile classrooms has been tremendous. There are presently 26 in operation in the city. They have been lauded by teachers, parents, and pupils. Some people have referred to them as "model classrooms." Mothers of children who previously rejected school now state these children will arise early and want to leave by 7:30 or 8:00 instead of being coaxed to leave by 8:45. Teachers praise the desperately needed space to teach that these units afford.

This idyllic scene, unfortunately, was not the whole picture. While these newly inspired scholars sped happily to their mobiles on June 8th, a sullen crowd gathered in the auditorium of Herzl school, another West Side Negro school on the double shift. Herzl had been the beneficiary of 16 mobile classrooms erected several blocks

¹⁹ Nine of the zones involved schools in districts 1, 4, and 5; three involved schools in districts 12 and 15. There are almost no Negroes in these districts. Two other neutral zones involved 3 nearly all-white schools, i.e., the Bryn Mawr (17), O'Keefe (14), and Bradwell (17) schools. The other combinations of schools were Pasteur (12)—Twain (10); Vanderpoel (18)—Sutherland (18); Sutherland (18)—Clissold (18); Nobel (4)—Cameron (8); and Cameron (8)—Stowe (5). Only the last three pairs of schools could possibly involve racial implications. The identity of these zones was supplied by the office of the general superintendent of public schools.

²⁰ Minutes of the Chicago Board of Education, Dec. 13, 1961.

away. Many of the parents of the children ordered to report to the mobiles had decided to boycott the new installation. Their complaints involved the location of the units on a busy street with no playground, the inadequacy of notice, and the fact that the Herzl pupils assigned to the mobiles would walk past the new Henson school in order to reach the mobiles.²¹ Most important, it appeared that parents and NAACP representatives objected to the use of mobile units at all, despite any improvements in education made possible thereby.

The basis of the protest and boycott at Herzl and other mobile sites can be understood only in the light of the dispute over vacant space in white schools. A protracted debate, discussed more fully below, continued throughout 1961-62 between Superintendent Willis and various citizens' groups over the number of vacant seats and classrooms in non-Negro areas that might be used to reduce overcrowding. Adopting the assumption that such space did exist, the expenditure of nearly \$11½ million for mobile units began to appear to many Negro parents in one of two lights. Some saw it as a waste of money, others as a calculated effort on the part of the administration to prevent the transfer of pupils from crowded Negro classrooms into the white areas. At one point, Mr. Raymond Pasnick, a member of the board of education and a frequent dissenter, remarked in a board meeting: ²²

Are we going to spend one and a-half million dollars for 150 of these makeshift trailers and perpetuate ghettos in this city? Are we going to do this when there is considerable evidence, irreputable [sic] so far, that we have enough vacant space to give these children a decent educational opportunity. If this board buys these mobile classrooms in the face of this evidence that there is available space in our regular schools, it will deservedly bring down upon itself the scorn and wrath not only of people in our community but in the State and in the Nation. Trailer classrooms will become the symbols of segregation.

The complaints about the mobile units were not universal. In many areas they were in fact received very well, and, even at Herzl, many of the children and parents did not join in the boycott. The Negro principal of one Negro elementary school told this reporter that the mobile units were a desirable addition to any school. He only regretted his own conviction that their introduction represented not merely an effort to relieve overcrowding, but an intention to keep Negro pupils in their own schools. Others did not add this qualification, and were unwilling to question the good faith of the board of education and the superintendent. The president of the board who was extremely candid on all questions, indicated his belief that the board had no motive to segregate in adopting the mobile classroom program.

²¹ The investigating committee from the board has acknowledged that the disposition of the units was ill-conceived. The units have since been relocated. Interview with the president of the board, Aug. 1, 1962.

²² Minutes, *supra*, note 20, at 26.

THE EMPTY DESK IMBROGLIO

No fair assessment of the charges of discrimination is possible without examining the question of unused space in Chicago schools outside the Negro districts. If no space was available in these areas in 1961-62, criticism of the administration's approach to overcrowding in public schools is simply an attack on its neighborhood school policy—a policy which may or may not succumb in the constitutional long run, but which at present seems reasonably secure. If, however, space in fact existed in quantity, then the refusal to permit transfers, the maintenance of overcrowded schools and double shifts, the extensive building program in the impacted areas, and the use of mobile units, suggest some serious issues. It is not surprising that the yearlong scrimmage between the superintendent and his critics was most intense on the question of vacant desks and classrooms. What is surprising is the failure of this prolonged and bitter logomachy to produce a clear statement of the number of unused or underused classrooms. On July 2, 1962, the Chicago Daily News was able to say in the first of a series of articles on Superintendent Willis, "Despite heated protests, Willis never made clear just how many vacant classrooms the schools had last term."

In some earlier administrations, such information had been published. The present superintendent explained that it is no longer published because it is too difficult to obtain and because the calculations are too uncertain and ambiguous and not very useful.²³ A member of the board said that the information is very useful, may be obtained by a phone call from the superintendent to the principal, and that he had been trying without success to obtain it from the superintendent.²⁴ The deputy superintendent suggested that the publication of the statistics ceased because pressure groups were using outdated lists to embarrass the school administration.²⁵ The president of the board stated that there had been no inventory for years, that such an inventory was imperative and would be required of the superintendent by the board, and that the board would then "let the facts speak for themselves."²⁶

Whatever the reason for the failure to publish a regular classroom inventory, the fact is that, once the warfare commenced last year, the public was treated to a statistical display of prodigious and bewildering proportions. Even the bare outline of this mathematical blizzard requires considerable telling. The critics of the administration led off at the opening of school in September. The NAACP reported that

²³ Interview, June 7, 1962.

²⁴ Interview, June 14, 1962.

²⁵ Interview, June 7, 1962.

²⁶ Interview, Aug. 1, 1962.

enough space existed in white schools to take 25,000 to 30,000 pupils in Negro schools off double shift. Negro children and their parents reported at 10 schools outside their assigned districts and unsuccessfully attempted to register. On the 13th and 15th of September, the Chicago Sun-Times reported a board of education meeting at which the superintendent said he did not know how many classrooms and seats were vacant. Board member Pasnick noted one study which reported 20,000 unused seats. Another study was mentioned which estimated 75,000 seats. The superintendent replied, "ridiculous." The board directed the superintendent to prepare a feasible plan for using vacant space.

On October 11, in a report to the board, the superintendent briefly adverted to the question of surplus classrooms, but mentioned only 1957 statistics. The report is chiefly interesting for the revelation that statistics on classroom surplus and shortages were in fact kept in 1957 and plotted on maps of the system.²⁷

On November 8 the superintendent reported on empty classrooms in somewhat greater detail, as directed in the September meeting. However, he first announced administration plans which would use some of the available space, and confined his discussion of empty classrooms to those remaining after these plans were implemented. At least three of these plans may be relevant to the question of proper and bona fide use of vacant space when viewed in the light of overcrowded schools in the Negro areas:

1. The superintendent requested and the board approved the transfer of over 2,000 students from various high schools, principally white, into branch high schools created in elementary school buildings. The elementary schools to be utilized were, in nearly all cases, in all-white areas.²⁸ The superintendent stated that the high schools involved were overcrowded but gave no figures. It does not appear that they were on double shift.

2. The superintendent recommended the redistricting of 80 elementary attendance areas in order to achieve a balanced classroom-student ratio of approximately 1 to 30. Most of the schools involved were white schools with class sizes ranging from fewer than 20 up to about

²⁷ The report notes:

" . . . (b) In 1957 maps were drawn for similar studies each year [of the double shift].

1. High school surplus and shortage: Red dots—surplus of 4 or more rooms; Green—shortage of 4 or more rooms.

Note that as late as 1957 there were surpluses where there are shortages today.

2. Elementary surplus and shortage: Red dots—surplus of 3 or more rooms; Green—shortage of 3 or more rooms.

3. Here is a quick reminder of where surpluses and shortages were showing in 1957 . . ." Report, Oct. 11, 1961, p. 17.

The superintendent obviously referred to maps during the presentation of the report.

²⁸ The elementary schools retaining their own graduates or receiving new students under this program were Beaubien (5), Bradwell (17), Bridge (4), Gage Park (12), Hay (4), Irving Park (5), Norwood Park (1), J. N. Thorp (17), and West Pullman (18). Only the Thorp school contains a substantial number of Negroes. *Of. app. A.*

35. Almost none of the crowded or double shift schools were to be affected. The total result would have been to distribute evenly the students in the less densely settled attendance areas. The plan was criticized by opponents as an effort to cloak evidence of available space.

On December 27, in a subsequent report to the board, the superintendent withdrew this redistricting plan. The board directed him to prepare a transfer plan instead, and the "40-30" plan discussed above was eventually offered.

3. The superintendent recommended that the board adopt as policy the setting aside of one vacant room in every school as surplus space for purposes of flexibility. He indicated that this was then possible in about 5 percent of elementary schools (i.e., approximately 20 schools).

Each of these plans first assumed the existence of unused space in various schools, and then suggested uses which either would fill the space primarily with white students or leave the space unused. Having accounted for and disposed of this space, the superintendent reported that vacant classrooms remained. He stated, however, that for the most part, these rooms would be needed when certain housing developments were completed, or that they were already committed to relieve overcrowding in the impacted areas where they were located, or were in overage and dangerous buildings. He stated that there remained only 14 empty rooms in the entire Chicago school system. At no point in this report or later was a complete inventory of all Chicago schools provided.

The report to the board on November 8 and a subsequent report by the superintendent on November 22 provoked in turn a study of selected schools by the Urban League.²⁹ The league compared the total number of classrooms reported in various schools by Superintendent Hunt in 1948 with the Willis figures of 1961. On this basis, the league found that the present superintendent had overcounted the number of classrooms in Negro schools and undercounted in white schools. It reported 382 undercounted classrooms. In the board meeting of December 13, board member Pasnick (admittedly no admirer of the superintendent) referred to the Urban League figures and commented:³⁰

We have in the last two months seen a great effort made to hide or cover up vacant classrooms, either through unreporting or through a variety of sudden transfers for various purposes other than reducing double shifts. It is easy for me, and perhaps others, to jump to the conclusion . . . that in light of this there may be a deliberate pattern of work here to keep children segregated. Everything points to a willful effort to block the integration of pupils through various devices and through the misuse of classroom space.

²⁹ Report of the Chicago Urban League, Dec. 8, 1961.

³⁰ Minutes, *supra*, note 20, at 26.

On December 18, the superintendent issued a reply to the Urban League. He stated first that "classrooms" in the 1948 report meant "total classrooms" and in the 1961 report meant "available classrooms," a concept excluding library, home mechanics, and other rooms. Thus the 1948 report was said to exaggerate the number of rooms. This would explain the apparent undercounting in the white areas by the present superintendent. But when one recalls the alleged "overcounting" in the Negro areas in the 1961 report, the explanation is less satisfactory. If the present superintendent's method of counting produced fewer rooms in white schools than the 1948 report, it should have done so in the Negro areas as well, but the opposite was true.

The second major criticism by the superintendent of the Urban League report is clear. As the league had indicated was possible, some of the 382 rooms had been demolished—in fact, the superintendent said, 84 rooms, or 22.4 percent no longer existed.

The superintendent's third objection to the league's report was the listing as "vacant" of rooms in fact being used for high school branches. This accounted for 62 rooms or 16.2 percent of the total.

If the first objection to the league report is disregarded as meaningless, the report erred to the extent of 38.6 percent or 146 rooms. Of course, this would mean that 236 empty rooms (61.4 percent) had in fact been identified.

On January 10, the superintendent issued a more detailed statement of total available classroom space in the schools studied by the Urban League. This report again employs a more "conservative" method of counting rooms than that ascribed to the 1948 report. On this basis it demonstrates that there has been no undercounting in the white schools and that for these schools the 1948 and 1961 reports, when adjusted for the difference in method, agree almost precisely. Unfortunately, it again demonstrates that on the same basis the overcounting for the Negro schools in the 1961 report would be even greater. For the 4 schools reported in district 13, the superintendent's figures show 11 more rooms than the 1948 report, and the pattern is the same throughout the other Negro districts. This curious result invites other possible explanations of the differences in the two reports. The most obvious possibility is that one of the two reports is simply wrong. Further events failed to clarify the situation. On January 16, the Sun-Times reported a statement by the public relations director of the board of education that 200 classrooms were "available." This figure was later confirmed by the then president of the board.³¹ If this last statement is coupled with information from the superintendent himself, indicating that 85 additional rooms would be made available by

³¹ Chicago Sun-Times, Mar. 8, 1962. ". . . But the figures don't mean anything because nobody knows what is a proper or an improper use for classrooms."

February graduations,³² the result is startling. This total of 285 rooms at 35 pupils per room, if the necessary transport were available, could have taken nearly 20,000 pupils off double shift in February without purchasing mobile units. The difficulty with this conclusion is that since no one is sure which figures are correct, the estimate may be an egregious overstatement. On the other hand, it may be conservative.

In January the classroom-counting contest took a new and dramatic turn. A transfer of children involving several South Side schools raised the question of available space in the nearly all-white Perry school, a situation discussed in greater detail below.³³ The Perry matter eventuated in a suit against the superintendent and board. A second and related court action, this time with Negroes as criminal defendants, grew out of the activity of "truth squads," which began to annoy school administrators in the white areas. These groups consisted principally of Negro mothers who were searching for empty classrooms. Their uninvited, and sometimes opposed, visits resulted in their arrest and conviction on ground of criminal trespass. The defendants received \$50 suspended fines in June.³⁴ They have said that they will appeal.

It is interesting to note how the discussion tended to shift from the larger question of underused space to the narrow question of totally vacant classrooms. In answering his critics, the superintendent emphasized not the degree of utilization of the facilities but only the rooms that had no students whatsoever. He seemed to assume in the debate that a classroom in use by a small number of students was not to count as vacant. This left the question of the amount of usable space ambiguous. Under this approach, in comparing a school housing 20 students per class with one housing 45, it was possible to say that neither had vacant space if all rooms were in use.³⁵

Whether or not large numbers of vacant rooms existed, it has remained reasonably clear throughout the controversy that, viewed in

³² Board of education, Press Release, Oct. 11, 1961.

³³ See *Burroughs v. Board of Education*, discussed *infra*, pp. 212-15.

³⁴ Chicago Sun-Times, June 6, 1962.

³⁵ It is true, of course, that an underused classroom is not as handy as an empty one. The introduction of transported students into the empty desks in an existing class unit creates more and greater administrative problems than installing the transported group in an empty room. Whether this added difficulty would justify a refusal to transfer children to an underused facility is at best questionable. To recognize such a justification might invite the distribution of students in an unfilled school in small groups so as to preempt all classrooms.

Where there exist classrooms which are totally empty, a different question is posed. May the class units of the receiving school, irrespective of size, properly be kept completely separate from the transported pupils? Where children are bused from an all-Negro school to an all-white school, may they be kept completely isolated within the receiving school by assigning them separate facilities? Any answer to this question put in general terms would appear doctrinaire, but to suppose there is no problem is equally unrealistic. Such separation indeed might be a clearer case of discrimination under some circumstances than not busing at all.

terms of *relative crowding of facilities*, the white schools did have space. This appears clearly from the utilization of over 2,000 spaces in white elementary schools for high school branches proposed on November 8. It appears also from the redistricting plan noted, the object of which was to achieve an average of 30 students per class in 80 schools, primarily white. A later section of this report will suggest that the average class size in the Negro schools was significantly greater than the proposed 30 average. This disparity in class size between Negro and white schools has never been denied by the superintendent. Indeed, its alleviation has been one of the avowed objectives of his building program in the impacted areas.

The disparity appears again indirectly from a comparison with the school population in Chicago in the year 1932-33. At that time, the elementary and high school pupil population (472,789) was only 4.3 percent less than the 1960-61 population (494,270). In the early thirties the problem of the double shift was greatest in areas of the city which were then and still are white. Since those days, the white population of Chicago has declined and its average age has increased with a consequent depopulation of the schools. It is the vast increase in the Negro population—a young and prolific population—that has filled the pupil ranks. The pressure has come in the main, not on the schools that were overcrowded in the early thirties, but on the schools in the Negro neighborhoods. It is instructive to compare the 1961-62 pupil population of a few of the schools that lie near but outside the West Side Negro districts with the population of those schools in 1930-31:

School	District	1930-31 ¹ enrollment	1961-62 ² enrollment
Corkery.....	10	947	872
Gary.....	10	1,031	728
Key.....	4	639	489
Lafayette.....	6	2,479	1,451
Lewis.....	4	953	588
Lowell.....	6	1,787	1,430
McCormick.....	19	927	878
Nash.....	4	1,145	757
Nobel.....	4	1,354	842
Orr.....	4	1,255	531
Spencer.....	4	935	827
Whitney.....	10	1,180	741
Young.....	4	1,726	660
Total.....		16,358	10,784

¹ The 1930-31 figures are taken from a study prepared by the Greater Lawndale Community Council, Schools Committee. June 28, 1960.

² From the Directory, Illinois Schools, 1961-1962.

The decline in enrollment is marked. Of course, classes were probably overcrowded in 1930-31 and it is possible that demolition has removed space in some of these buildings (although it is also possible that additions have been built). Conceding these unknowns, it remains probable that some of these schools could have accommodated students from Negro schools that were on double shift in 1961-62 if this had been thought desirable.

The school year ended in June with a proposal by the superintendent to create a number of additional high school branches in elementary schools most of which are in white areas. These additional changes will mean that more than a dozen new high school branches will be in operation in white elementary schools in September.³⁶

It is reasonably clear from this mass of indirect evidence that substantial space existed in a number of areas of the city in 1961-62. The new president of the board readily conceded this in an interview, although he stated that he thought the Urban League count was exaggerated.³⁷ Even if the use of this space for high school students in 1962-63 were regarded as imperative because of anticipated high school overcrowding, the failure to use that space during 1961-62 to relieve the overcrowding in impacted areas presents a troublesome appearance.

During 1961-62, the administration, consciously or not, was faced with a choice. It was clear that the overcrowded schools had to be relieved. The issue was whether this should be accomplished by transfers to uncrowded schools or by the purchase of mobile units. When the superintendent took the position that there was no room in other schools for this purpose and the board did not dissent from this conclusion, the issue was foreclosed. Why the superintendent so concluded and why the board accepted his conclusion without inquiry in the face of the evidence is difficult to understand.

In response to a later board directive the superintendent produced a list of total "available classrooms" in each elementary school at the August 22 meeting. This list will be discussed again below, but it should be noted that the report did not satisfy all members of the board. It was objected that a more complete inventory would be necessary to assess the degree of overcrowding properly. The later discussion in this report of class size will indicate that, even on the basis of the superintendent's figures of August 1962, it is clear that substantial disparities existed between schools with respect to the degree of utilization of facilities in 1961-62.

³⁶ Report to the school board, June 13, 1962. Some of the designated elementary schools which are clearly in predominantly white areas are Boone (2), Dawes (15), Hubbard (15), Jamieson (12), Orr (4), and Taylor (17).

³⁷ Interview, Aug. 1, 1962.

TEACHER CERTIFICATION AND ASSIGNMENT

Two matters will be dealt with under this heading: (1) the methods of teacher certification,³⁸ and (2) the methods of teacher assignment to individual schools.³⁹

Teacher certification is relevant to the question of discriminatory State action only in an indirect way. It is useful, however, in gaining a general picture of the internal character of the Chicago school system. All teachers in the Chicago public schools must be certified. The normal procedure for permanent certification involves the taking of an examination which is in part written and in part oral. The written examination is prepared and administered under contract by one of the national testing services. There are examinations of various kinds given for the different categories of certificates—kindergarten-primary, grades 3-8, trade school, high school, etc. The examination for each category has a slightly different scoring system, usually with a passing mark of about 80.

The oral examinations ordinarily are conducted for individual applicants by an examining board consisting of principals and district superintendents of the Chicago school system. A minimum grade of 80 is required in all oral examinations. They are ordinarily conducted within the space of a half or three-quarters of an hour—a fraction of the time of the written examinations. The oral examinations are not subject to review. It would be extremely difficult to obtain direct evidence indicating either that the oral examination is or is not employed to exclude teachers because of race. That discrimination is effected in this way appears unlikely, however, since there are a large number of Negro teachers in Chicago.

The principal issue of discrimination in the area of teacher selection involves the assignment of the certified teacher. It is often suggested that Negro teachers are never or rarely assigned to white schools. This is in fact probably true, but it does not of itself, or even in context, demonstrate discrimination. The truth seems to be that ordinarily neither are white teachers assigned originally to white schools. Before this becomes too mysterious it should be observed, first of all, that openings occur with much greater frequency in Negro schools. Since on initial assignment a teacher may choose only among schools with vacancies, he is apt to be assigned to a Negro school whether he is white or Negro. The "popular" schools with fewer openings are generally in the white areas. To transfer to such a school

³⁸ The information with respect to certification comes principally from the 1961 Circular of Information of the board of education containing "Rules and Information Regarding Examinations of Candidates for Certificates to Teach."

³⁹ Information on teacher assignment procedures was gathered in interviews of administrators, principals, and teachers.

the teacher who is dissatisfied with his original or present assignment signs the transfer list for that school in the office of the board of education. He may sign the transfer list of as many as six schools if he desires. When his name comes to the top of the list for any school, he may transfer to that school at the beginning of the next semester, unless the principal of that school visits the class of the prospective transferee and reports in writing to his district superintendent his reasons for refusing to accept the transfer.

It is quite impossible to say whether this system results in the refusal of transfers based on race. No evidence of such discrimination exists. It seems probable that the small number of Negro teachers in white schools is more the consequence of the failure of these teachers to request transfer. This is the opinion of many teachers sympathetic to integration. This reluctance to transfer to white schools is explained as a consequence of a combination of factors relating to the Negro teacher—distance of the school from the teacher's residence, fear of rejection in the white schools, dedication to the teaching of underprivileged Negro children, and sheer inertia.

The method of assigning substitute teachers is often cited by critics as a source of discrimination, but, again, proof is lacking. When a school needs a substitute teacher, the principal is required to telephone the "subcenter" for his district. The center communicates with a substitute who fills the vacancy. It is said that Negro substitutes are rarely called for white schools, either because the principal does not want them or because the center informally assigns substitutes on a racial basis. This inference, however, is often based upon the experience of teachers in white schools who rarely encounter Negro substitutes. In an all-white district this is not surprising, as the distance from the residences of Negro teachers often would suggest a natural selection of whites. In the fringe areas, the allegation, if true, is less easily explained.

In the spring of 1962 the first complaint under the new Illinois Fair Employment Practices Act was filed by a Negro teacher who alleged that her application in 1961 for a position at one of the city junior colleges was rejected because of race.⁴⁰ The complainant testified at the hearing before the commissioner that she had been promised the teaching post over the telephone but, upon appearance at the school, was rejected.⁴¹ The complainant at the time was a psychology counselor at a private university in Chicago. The student counselor at that university who had recommended the complainant to the college testified that the chairman of the college's social science department thereafter called him and complained because he had not been told

⁴⁰ *In re Sylvia Taylor*, charge No. 62-1, State of Illinois Fair Employment Practices Commission, 1962.

⁴¹ Transcript of record, pp. 17-24, 26-32.

the applicant was a Negro. This witness further alleged that the chairman stated that the college had a policy against hiring Negroes although there was a possibility the policy would change.⁴² The chairman then testified that he had made no such statements and that the college had no such policy.⁴³ An employee of the Chicago Commission on Human Relations testified that the dean of the college had said at a conference on the matter that any Negro would have to have exceptional qualifications to be hired because of the neighborhood situation.⁴⁴ The dean testified that the complainant had not fully complied with the requirements of the board of education, but stated that she might have been hired if no one better qualified had been available, which was not the case.⁴⁵ He indicated outside the hearing that he already had a part-time Negro teacher who would become full-time in the fall, and had hired another.⁴⁶ A decision by the commission is not expected for some time. Some question exists under the statute whether the board of education is subject to the jurisdiction of the commission.^{46a}

SELECTION AND ASSIGNMENT OF PRINCIPALS

Principals must successfully complete written and oral examinations which are conducted in a manner similar to those for teachers.⁴⁷ To be eligible to take the principal's examination, the applicant must have taught 6 years in Chicago schools. There are a number of Negro principals in Chicago, but apparently none is assigned to a white school. Unlike teacher segregation, this situation is not easily explained. There is no apparent reason for the imbalance. In conversation, the superintendent indicated that Negro principals had on two occasions been assigned to non-Negro areas, but the reaction of the teachers had been negative. He did not elaborate further. The president of the board feels that the Negro principals prefer to be assigned to the Negro schools and that the opportunity will be opened to them in the white schools if they seek it.

One anomaly in this picture cannot be ignored. There has never been more than one Negro principal of a general Chicago high school, and it has always been the same school—Wendell Phillips, an all-Negro school. There has not been a white principal at Wendell Phillips since the 1930's.⁴⁸

⁴² *Id.* at 59-64.

⁴³ *Id.* at 133-34, 144.

⁴⁴ *Id.* at 164-67.

⁴⁵ *Id.* at 102-05, 108-09.

⁴⁶ Chicago Daily News, July 3, 1962.

^{46a} On October 29, the commission announced its decision. It found the charges of discrimination proven but held that the statute conferred no jurisdiction over the board.

⁴⁷ See *supra*, p. 205.

⁴⁸ This information was supplied by Rev. Carl Fuqua, the executive director of the Chicago Chapter of the NAACP.

THE APPRENTICE PROGRAM

The Washburne Trade School occupies a special place in the Chicago school system, and the manner of its administration poses some interesting questions concerning the duty of the school administration toward its constituents. According to a publication of the board of education this school had an enrollment in 1960 of about 2,700.⁴⁹ These students were in training programs of varying lengths for 24 skilled trades such as plumbing, sheet metal, cake decorating, and cosmetology. Washburne differs from the Chicago vocational high schools in several ways. First, most of the training programs at Washburne school require the pupil to obtain a high school diploma before admission. Washburne does not offer a general course of education in the traditional academic subjects required in the other vocational schools which are essentially "undergraduate" institutions.⁵⁰

Secondly, admission to Washburne is accomplished in one of three ways, depending upon the course desired. Admission is granted to persons who (1) are already employed in the general area for which training is sought and are recommended by an employer, or (2) have been accepted as an apprentice in the Washburne program by the appropriate labor union, or (3) have joint approval of a union and employer. To put this more briefly, admission to the Washburne programs depends upon union or employer approval or both. The school does not, in the ordinary case, pass upon the admissibility of its own applicants.

The third arresting feature of the Washburne school is that in 1960 its 2,700 apprentices included approximately 26 Negroes.⁵¹

The importance of gaining admission to Washburne for anyone interested in working in the trades for which training is given there is quite apparent. Unions control the trades, and this is the mode established by the unions for entering these trades. Failure to achieve admission to the school may thus be tantamount to exclusion from employment. The school's abnegation of the power to determine the

⁴⁹ This pamphlet was apparently addressed to the unions and employers who supply the apprentices. It states ". . . sufficient enrollment must be maintained to justify the Board of Education's expenditure [sic] for space and personnel. The importance of examining all apprenticeship programs, in the light of the potential demands during the 1960-70 decade, should be emphasized. Your cooperation will do much in maintaining the nationally known school at its present effectiveness." The pamphlet also stated, ". . . It is imperative that each group examine the size of its potential force for replacement of those dropping out of the ranks due to retirement, deaths, or for other reasons."

⁵⁰ Most of the information about the Washburne school comes from interviews. The author is especially indebted to the president of the board of education and to board member Raymond Pasniek who is midwest director of public relations, United Steelworkers of America.

⁵¹ "Wanted: More Negro Apprentices at Washburne School," a study initiated and prepared by the Negro American Labor Council in cooperation with the Chicago Committee on Racial Equality, June 1961.

identity of its own students permits the employers and unions to use the facilities of the school for preparing whichever applicants they see fit. The irony of the school administration's position is heightened by the fact that it operates similar programs in such schools as the Dunbar Vocational High School. The Dunbar graduates experience difficulty in achieving entry into the trades for which they are trained, because the unions and employers choose their apprentices almost exclusively from Washburne. The Dunbar student body is nearly all Negro. Whether the unions and employers discriminate on the basis of race in their choice of Washburne applicants and, if so, whether such discrimination is lawful for the union or employer, are issues outside the scope of this report.

It is arguable that the elimination of union and employer influence on admissions to the training programs would have little effect on freedom of entry into the apprentice programs and eventual employment. If, in fact, union status and employment are bestowed upon a discriminatory basis, such discrimination could be effective irrespective of any connection with Chicago schools. Nevertheless, the surrender of a public function to private organizations in this manner is difficult to justify. In a conversation with the superintendent he made no effort to defend the policy of admission at Washburne. He merely pointed out what he felt were analogous failings of the Federal Government, citing specifically the paucity of Negro workers hired for construction of Federal buildings in Washington. No individual interviewed offered any rationale defending the Washburne-Dunbar situation. The president of the board excoriated the policy and indicated, "We're going to have to do something."

WEBB v. THE BOARD OF EDUCATION ⁵²

In September 1961, the parents of a number of Negro children attending various public schools in Chicago filed suit against the board of education and the superintendent in the U.S. District Court for the Northern District of Illinois. The complaint, as amended, alleged deliberate racial segregation by the school authorities by gerrymandering, school location, refusal to utilize space in white schools, and the application of the neighborhood school policy. The complaint also alleged that plaintiffs attended double shift or overcrowded schools; that in some cases classes were as large as 60 students; that instruction was inferior; that on occasion several classes were held simultaneously in one room; and that space that was unfit and unsafe was being used for classroom purposes. These acts were challenged

⁵² Civ. No. 61C1569 D.C., N.D. Ill.

under the 14th amendment, and temporary and permanent injunctions were sought to prevent defendants from compelling plaintiffs and others in the same class to attend segregated schools.

Charges were specified with respect to certain schools. One typical example involved the old Ryder and Fernwood schools and the new Kipling school opened in September 1961. These three schools have contiguous attendance zones, with Kipling roughly in the middle. The Ryder and Fernwood buildings are located in white neighborhoods, but it was alleged that, prior to the 1961-62 school year, the attendance zones of these two schools included also a substantial number of Negroes living in the middle of the area between the two schools.⁵³ All grades from kindergarten to eight were, in fact, integrated in both schools prior to 1961-62. The Kipling school, located midway between the other two, was opened in 1961-62 for grades k-6 (kindergarten through grade 6). Kipling's attendance district is practically all Negro and takes up the Negro neighborhoods formerly included in the Ryder and Fernwood zones. Thus, the only integrated grades said to remain in the latter schools were the seventh and eighth, and the Kipling school was almost entirely Negro (835 Negroes; 15 whites). The plaintiffs contended that the building of the Kipling school and the creation of its attendance zone constituted a deliberate plan to segregate pupils by race. It was alleged that thereafter the graduates of Kipling would be sent to the all-Negro Gillespie school rather than Fernwood and Ryder, thus making the latter schools all white within 2 years. This last allegation was denied in an affidavit of the superintendent,⁵⁴ who stated no change would be made in the handling of the seventh and eighth grades.

The superintendent's affidavit denied all allegations of gerrymandering and discrimination in the school system. He described at length the population and residential changes which had plagued the administration and which he blamed for the overcrowding in some schools. He denied the existence of empty classrooms, except 14 located in the far northwest corner of the city, though he indicated that these 14 were those remaining ". . . after consideration of proposed boundary adjustments." These adjustments, all in white areas, have already been discussed in connection with the vacant-classroom issue.⁵⁵ The superintendent, in general, reaffirmed the policies of the board and supported his position with great factual detail.

After numerous pretrial motions and an exchange of interrogatories the case was disposed of in August 1962, upon a motion by the defendant to dismiss. The court held that the plaintiffs had failed to

⁵³ From the affidavit of Paul B. Zuber filed Oct. 18, 1961, in support of a motion for preliminary injunction.

⁵⁴ Filed Dec. 15, 1961.

⁵⁵ See *supra*, p. 199.

exhaust the administrative remedy available to them under the Illinois School Code. Section 22.19, chapter 122, Illinois Revised Statutes, 1961, provides for the filing of complaints with the State superintendent of public instruction signed by 50 or more residents of a school district alleging exclusion or segregation of any pupil because of race or religion by or on behalf of the school board of such district. Similar provisions protect employees of school districts and applicants for employment from discrimination or even questioning concerning race or religion. Upon complaint, the State superintendent is required to conduct a hearing on the allegations and is armed with subpoena power. Procedures for hearings are set out in detail. The superintendent is to inform the parties of his decision, and, "if he so determines," shall request the attorney general to take action for injunctive or other relief "to rectify the practice complained of."

A suit similar to the *Webb* case had been decided in the U.S. District Court for the Eastern District of Illinois late in 1961. In *McNeese v. Board of Education for Community School District Number 187*⁵⁶ the district court held the Illinois statute to constitute a remedy available to plaintiffs, the neglect of which barred judicial action. The *McNeese* decision was affirmed on July 5, 1962, by the U.S. Court of Appeals for the Seventh Circuit.^{56a} The *Webb* case, in the eyes of the presiding judge, fell squarely within this principle.

There is irony in the result. The statute was passed by the legislature for the purpose of assisting Negro pupils to challenge administrative action. Its effect to date has been to frustrate at least one and possibly two efforts by Negro leaders directed to that very end.

The *Webb* case, however, brought some consolation to the plaintiffs. The presiding judge, Julius Hoffman, followed his decision with an encomium of the *Brown* decision, and an analysis of the evils of pupil segregation. He added:⁵⁷

Chicago cannot deny the existence of de facto segregation or excuse it on the pretext of a benign indifference. We can't say piously, as there was once a tendency to do, that we don't know what is the percentage of Negro pupils in a given school because we don't ask a child his race or make it a part of the school record . . . As has been suggested . . . [citing *Branche v. Hempstead Board*] . . . separation cannot be defended on the ground that it is the result of a high concentration of Negroes in the school district.

Judge Hoffman then expressed confidence that the superintendent, ". . . a great man and a great educator . . . will see to it that the Chicago schools will be fully integrated and equal." Plaintiffs have indicated they will appeal.

⁵⁶ 199 F. Supp. 403 (E.D. Ill. 1961).

^{56a} 305 F. 2d 783 (7th Cir. 1962).

⁵⁷ From a transcript of the record of Judge Hoffman's remarks supplied by the Urban League.

BURROUGHS v. THE BOARD OF EDUCATION ⁵⁸

This litigation involves in microcosm the kinds of legal problems that exist potentially in many areas of Chicago. It can best be understood by reference to a sketch (See map, 1, p. 213) of the area and schools involved.

The heavy line outlines the attendance area of the Burnside Elementary School in district 16 prior to the changes to be described. The school is old, its first building having been constructed in 1898 and additions completed in 1913 and 1929.⁵⁹ During the last generation its attendance area has, at first slowly and later rapidly, become more densely populated and heavily Negro. By 1960 the census tract at the east side of the Burnside area—roughly bounded by Cottage Grove Avenue, 87th Street, and the Illinois Central tracks—contained 147 white children 5 to 14 years of age and 29 nonwhite children of that age group. In that same year the census tract in which the Burnside building itself is located contained 240 white children and 492 nonwhites. Most of the rest of the attendance area and the areas immediately north and west were also heavily Negro. The area south of 95th Street is nonresidential for some distance. The area east of the Illinois Central tracks is almost exclusively white.

The pupil population of Burnside school itself has been growing rapidly and becoming preponderantly Negro. An examination of graduating class pictures during the last 12 years ⁶⁰ suggests roughly the following mixture:

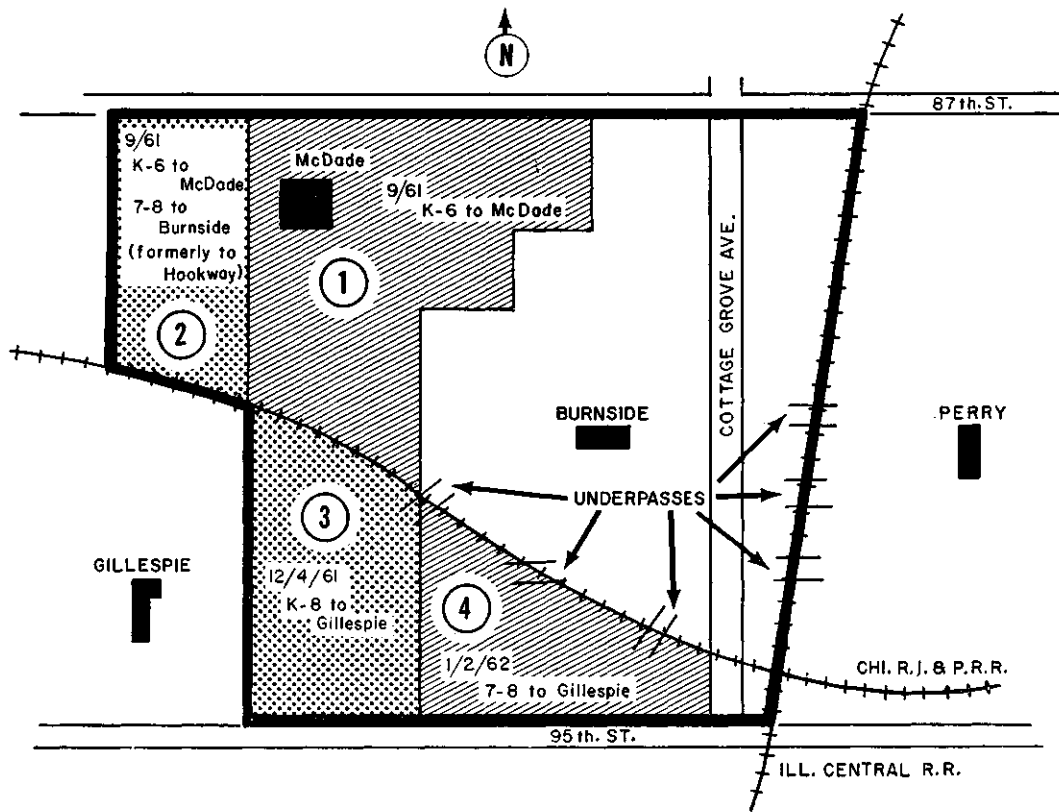
Class	Total number in picture	Negro	White
June 1950.....	49	11	38
June 1952.....	38	13	25
January 1954.....	40	14	26
June 1956.....	65	26	39
June 1958.....	63	37	26
June 1959.....	47	27	20
January 1960.....	47	34	13
June 1960.....	62	48	14
January 1961.....	91	80	11
June 1961.....	105	93	12
January 1962.....	65	63	2

⁵⁸ Civ. No. 62C206, D.C.N.D. Ill., filed Jan. 19, 1962.

⁵⁹ Information in this paragraph comes principally from the affidavit of Dr. Eileen Stack, assistant superintendent of the board of education, filed of record Jan. 26, 1962.

⁶⁰ The pictures were appended to the affidavit of the Burnside principal, Dominic Pandolfi.

MAP 1



In 1958 the enrollment of the Burnside school totaled 1,338. In 1959 it rose to 1,582, and in 1960 to 1,773. Because of the overcrowding it was determined in 1959 to erect a new school—what is now the McDade school—in the northwest portion of the Burnside attendance area. McDade now enrolls pupils from k-6 in the shaded areas marked “1” and “2.” Its capacity is rated at 250 pupils.⁶¹ A number of Burnside parents argued at the time of its planning that this would be insufficient, but the administration did not agree.⁶²

On the opening day of school in 1961, the new McDade school was filled, but the Burnside school was still overcrowded with a total of 1,746 pupils. The population increase had been underestimated. Also Burnside received 23 new seventh and eighth grade students from the shaded area marked “2” west of McDade. This area previously had sent its seventh and eighth grade pupils to the Hookway school.⁶³

Meanwhile, as part of the general attack upon overcrowding, an addition was being completed at the Gillespie school southwest of Burnside. Gillespie is an all-Negro school. The addition was completed late in the fall of 1961, and, on December 4, 250 Burnside pupils from k-8 were moved to the Gillespie addition. These were the Burnside students who lived in the shaded area marked “3.” On January 2, 1962, seventh and eighth grade Burnside pupils from the shaded area marked “4” were also transferred to Gillespie. This involved 34 children. These moves to Gillespie reduced the Burnside enrollment to approximately 1,515.⁶⁴

East of the Illinois Central tracks is the Perry school which is about 95 percent white in its enrollment and which plays an important role in the litigation. Perry has an enrollment slightly in excess of 500. About 60 or 70 of these children are deaf or blind. Perry has had classes for the deaf since 1922 and for the blind since 1948. It is one of four centers for the blind and eight for the deaf students in the Chicago system. Perry has approximately 23 classrooms.⁶⁵ Its pupil-classroom ratio thus is low, but is difficult to evaluate in equal protection terms because of the special needs of the blind and deaf pupils.

Negro resentment at overcrowding in Burnside crystallized around the decision to move Burnside pupils to Gillespie. The Negro parents and leaders argued that the allegedly underutilized and all-white Perry school should have its attendance boundary moved west to Cottage Grove Avenue. This would take the population pressure off

⁶¹ Affidavit of Dr. Stack, *supra*, note 59.

⁶² Affidavit of Alma P. Coggs in support of plaintiffs' applications for a temporary restraining order.

⁶³ Affidavit of Dr. Stack, *supra*, note 59.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

Burnside and, at the same time, tend to integrate and fully utilize the Perry school.

On January 2, 1962, the day that the transfer of 34 seventh and eighth graders was to take place from Burnside to Gillespie, demonstrators appeared at Burnside school protesting the move. For the next 2 weeks the demonstrators entered the school each weekday morning and remained standing or sitting in various areas of the building.⁶⁶ On the 16th of January, 16 demonstrators inside the building were arrested on charges of trespass and disorderly conduct.⁶⁷ The following day the charges were dismissed in Chicago Women's Court by Judge Joseph J. Butler who also expressed his approval of the defendants' actions as a "good mode of expressing opinions."⁶⁸ That same day 10 more arrests were made at the school. Charges against these 10 were dismissed by Judge Butler on the 25th.⁶⁹ Apparently the sit-ins were not thereafter resumed at Burnside, although similar demonstrations took place at other schools.

On January 19 the parents of a number of Burnside Negro pupils filed the *Burroughs* suit in the Federal district court charging deliberate racial segregation, and assignment to inferior schools. The request was for an injunction against maintaining Perry as a white school and against forcing plaintiffs to attend Gillespie or Burnside and for damages. Affidavits and counter-affidavits were filed upon a variety of questions including the relative distances from plaintiffs' homes to Gillespie and Perry, the lunchroom facilities at the two schools, the degree of utilization of facilities, the race and qualification of teachers, and the boundary changes in attendance areas made in the Chicago system, with special reference to the Burnside school. On January 31, Judge Richard Austin denied plaintiff's application for a temporary restraining order. Plaintiffs did not appeal, nor have they yet amended the complaint. What further action will be taken in the case, if any, is unclear.

⁶⁶ New York Times, Jan. 14, 1962.

⁶⁷ Chicago Tribune, Jan. 17, 1962.

⁶⁸ Chicago Sun-Times, Jan. 18, 1962.

⁶⁹ Chicago Tribune, Jan. 26, 1962.

A Review of State Action Affecting Relative Quality of Schools

The third part of this report on Chicago schools will depart from the previous emphasis given racial discrimination resulting from segregation of pupils and teachers. Stress will now be put upon those aspects of Chicago schools other than racial concentration which may affect the quality of education. Information will be provided by which the reader may gauge to some extent the quality variation in schools without regard to racial factors. Wherever possible, however, the racial character of the schools described also will be indicated which may be helpful in determining whether or not existing inequalities, if any, are related to race.

APPROPRIATIONS AND EXPENDITURES PER PUPIL IN SELECTED SCHOOLS

The budget of the board of education reveals interesting disparities in the appropriations per pupil in certain schools. For example, from the 1961 budget and the 1961-62 "Directory, Illinois Schools," we can compare the per student appropriations for the Carnegie and Twain schools. The total appropriation per student in the Carnegie school is \$241; in the Twain school it is \$281. The Carnegie appropriation represents approximately \$197 for teaching salaries and \$44 for other expenses. The comparable figures for the Twain school are \$209 for teaching and \$72 for other expenses. These schools were chosen at random except for the fact that the Carnegie school is a Negro school and Twain is a white school.

Before indicating the statistics for a large number of schools a word of caution is indicated. A disparity between white and Negro schools should not be taken in itself as a clear indication of discrimination. If, as critics of the administration assert, the quality and experience of teachers in the Negro schools is low, a relatively low expenditure for teachers' salaries may be anticipated. If, as these critics suggest, these

schools are overcrowded or on double shift, the appropriation for other costs—administrative, janitorial, heat, etc.—will be spread over more children and will be less on a per pupil basis. Thus, the differentials, if any, which may appear between appropriations for schools constitute only one manifestation of differences in quality, the causes of which may lie elsewhere than in the sheer size of appropriations. At the same time, if appropriations for teachers' salaries are lower in Negro schools, it would appear that the administration has accepted as inevitable the staffing of these schools with less qualified and experienced teachers.

It should also be noted that appropriations for special teachers, of which the Negro schools apparently get a large share, are not included in the budgets for the individual schools.

Another caveat: The distinctions which appear to exist from an examination of appropriations may in fact be lesser or greater depending upon actual expenditures. The superintendent has released statistics only on appropriations. Expenditures, as he himself agreed, may be either more or less than appropriations.⁷⁰ Critics argue that expenditures in the crowded Negro and integrated schools are in fact likely to be less. This is said to be the result of the school's inability to attract regular teachers and its consequent dependence upon lower-paid substitutes. On the other hand, since the budget estimates are made on the basis of the school's status as of the previous October, this factor may already be taken into account.

With these reservations in mind, the general conclusions appearing from appendix G will be noted. Total per pupil appropriations in 9 Negro schools average \$269; in 9 integrated schools, \$320; in 10 white schools, \$342. Breaking these totals down, the average per pupil appropriation for teachers' salaries is as follows: Negro schools, \$220; integrated schools, \$231; white schools, \$256. Other operating appropriations average as follows: Negro schools, \$49; integrated schools, \$90; white schools, \$86. Appropriations for nonteaching expenses in integrated schools present the only exceptions to a uniform pattern of descending appropriations as we move from white to Negro schools. The sampling is, of course, very small and possibly atypical. In general, however, it confirms a broader study of the same kind undertaken by the Urban League.⁷¹

⁷⁰ Interview, June 15, 1962.

⁷¹ The Urban League study was presented in connection with hearings of the board of education on Dec. 19, 1961. The study involved approximately 375 schools. The general findings were stated graphically as follows:

	<i>Negro schools</i>	<i>Integrated schools</i>	<i>White schools</i>
Teachers' salaries-----	\$217. 70	\$227. 80	\$256. 50
Other operating items-----	49. 00	57. 40	73. 70

The data were compiled from the 1961 budget and the 1960 and 1961 school enrollments.

SIZE OF SCHOOLS

The superintendent has indicated his belief that the size of schools is relevant to the quality of education. On June 13, 1962, he reported to the board:

Size of school and class size are constant concerns. The maximum size of a school for grades kindergarten through 6 is generally accepted as 1,200, as is that for the upper grade center. This is large enough to permit flexible organization and small enough to help the child retain his sense of identity.

The 1961-62 edition of "Directory, Illinois Schools," indicates that 41 of Chicago's 400 elementary schools have enrollments exceeding 1,600. Of the 19 schools with enrollments from 1,600-2,000, 2 are white, and 2 or 3 others are integrated. The rest are Negro. Of the 22 schools with enrollments over 2,000, all appear to be Negro.⁷²

SIZE OF CLASSES AND THE STUDENT-TEACHER RATIO

The student-teacher ratio is in theory fairly uniform throughout Chicago schools. It is approximately 32 or 33 to 1 for most schools if calculated on the basis of the budgeted number of teachers and the actual enrollment stated in the Directory of Illinois Schools for 1961-62. The figure is not particularly useful. How many of the budgeted teachers are in fact hired is difficult to determine. How many of the teachers hired are in fact in the classroom is unclear. If the school is overcrowded, the available space will dictate the number of teachers actually engaged in instruction unless the school goes on double shift. An examination of the reports of principals of the various schools to the State superintendent, prepared on standard reporting forms is equally unhelpful. The form itself is ambiguous in important respects, and the reporting principals complete the form in different ways which are seldom explained. In sum, the teacher-student ration, though often quoted, is of little utility in comparing schools.

The number of students per unit of classroom instruction would seem clearly relevant. This question is not basically different from that discussed in connection with the debate over empty and under-utilized classrooms. Here, however, it would be well to re-examine the issue in terms of individual schools and classes in so far as this is possible. Unfortunately, classroom-student ratios ordinarily

⁷² These schools and districts are Beale (21), Beidler (8), Bryant (10), Doolittle (11), Douglas (11), Forrestville (13), Grant (9), Gregory (8), Herzl (10), Hess (19), Howland (19), Jenner (7), Lawson (19), Lewis-Champlin (21), Manley (8), Marshall (8), Parker (20), Penn (10), Shakespeare (13), Wadsworth (14), Wentworth (20), and Williams (11).

are not reported for individual schools by the superintendent, and must be approached indirectly.

The Chicago Teachers Union has done a study of this question, obtaining individual classroom counts made by union members for 140 schools and involving about one-third of the pupils in Chicago schools.⁷³ The only difficulty with the study is the union's unwillingness to release the names of the schools involved, because of a pledge of secrecy made to its informants. Nevertheless, the study is revealing simply for its stark display of the immense variations in class size within the system. For the 4,786 classes reported, the average class size is 35.7 and the median 37. The study showed 229 classes composed of 25 or fewer pupils, the range being as low as 15, and 672 classes (about 14 percent of the total) with 43 or more students, the range being as high as 57.

Counting noses in individual classrooms in this fashion is the only completely dependable way of establishing class sizes. It avoids the interpretive difficulties inherent in any definition of classrooms which includes rooms of differing design, capacity and numbers of desks, some used as libraries, lunchrooms, or adjustment rooms. The administration receives from each school at the beginning of each semester a report of the size of each class. It does not, however, release this information. In denying access to the reports one official insisted that such information from February 1962 was too old to be significant because of the rapid changes taking place.⁷⁴ Because of the unavailability of official data the report of the teachers union study will be supplemented with indirect and less reliable evidence of class sizes in specific schools, stated in terms of average classroom-student ratios. If accurate, this evidence suggests that the larger classes reported in the union's study are probably concentrated in the Negro schools.

For this purpose the reports submitted by each school principal to the Illinois Superintendent of Public Instruction are useful. The form records the number of "general classrooms" for each school. These are distinguished from library, gymnasium, auditorium, lunch, and other rooms. It also gives student population, and, on the assumption that all general classrooms are in use at all times during the day, a calculation of average class size may be made. The figures presented in the first chart below are taken from reports of the elementary principals for certain schools for the year 1959-60. Six of the schools included in the other statistical studies already set forth above do not appear in the chart.⁷⁵ For five of these six schools the information was not available. For one—the Perry school—the statistics were considered misleading, because of the large number of handi-

⁷³ The report is dated June 4, 1962. It was made available by Mr. John Fewkes, president of the union to whom the author expresses his thanks.

⁷⁴ Telephone interview, Aug. 25, 1962.

⁷⁵ Kellogg, Perry, Burns, Jefferson, Shoemith, Carnegie.

Number of Pupils per Classroom 1959-60

School	District	Number of classrooms	Total school enrollment	Average number of pupils per room
WHITE				
Armstrong.....	2	22	840	38.0
Bryn Mawr.....	17	31	1,014	32.7
Coonley.....	3	18	642	35.7
Edison.....	1	12	548	¹ 45.7
Harte.....	17	14	424	30.3
Locke.....	18	23	787	34.2
O'Keefe.....	17	27	794	29.4
Stevenson.....	15	32	1,373	42.9
Twain.....	10	20	848	42.4
Average per class for 9 white schools.....				36.5
INTEGRATED				
Avalon Park.....	16	16	657	41.0
Cornell.....	16	25	1,062	42.5
Fernwood.....	16	17	771	45.4
Franklin.....	7	40	1,165	29.1
Schley.....	6	21	838	39.9
Skinner.....	9	28	1,078	² 38.5
Average for integrated schools:				
(1) all 6 integrated schools.....				37.9
(2) excluding school on double shift.....				37.8
NEGRO				
Burnside.....	16	33	1,624	49.2
Doolittle.....	11	61	3,192	² 52.3
Forestville (South).....	13	66	2,789	42.3
Gregory.....	8	38	2,952	² 77.7
Lewis-Champlin.....	21	25	2,347	^{2 3} 93.9
Parkside.....	14	23	806	35
Pope.....	19	25	1,854	² 74.2
Williams.....	11	48	2,159	45
Average for Negro schools:				
(1) all 8 Negro schools.....				55.6
(2) excluding double shifts schools.....				43.4

¹ There appears to be an obvious error in the omission of the rooms in the Edison branch. Nevertheless, the figure shown by the principal is used to remain on the safe side. Note that the superintendent lists 22 rooms for this school. Page 221, *infra*.

² Partly on double shift—figure shown is therefore inflated to an indeterminate degree.

³ There appears to be an error. The number of classrooms in the branch may be omitted although the branch enrollment is included.

capped students in small classes. Unfortunately, it is not known whether nonclassroom facilities are pressed into service as classrooms in these schools. But if this is the case, it may well mean a diminution of other services, such as in the library, and thus the figures remain relevant to the issue of quality.

In connection with the board meeting of August 22, 1962, the superintendent released a list of all elementary schools indicating the total number of "available classrooms" in each school. The list appears to have been prepared on substantially the same basis as that used by the school principals in their annual reports. That is, auditoriums, gymnasiums, libraries, and adjustment rooms were said to be excluded. Kindergartens and special education rooms were included. As will appear from the chart below, the superintendent's classroom figures differ markedly from those given for 1959-60 by the principals. Part of this difference is easily explained. Eight of the schools, as indicated on the chart, have branches which are counted by the superintendent, but were not counted in the principals' reports. In still another case—the Avalon Park school—several rooms used by the Caldwell school in 1959-60 again became available for use by Avalon Park. In the Forestville school several rooms in a Chicago Housing Authority building will be pressed into service in 1962-63. In the other 19 schools the disparity must spring from some difference in the counting system adopted by the superintendent—perhaps the inclusion of the "special education" rooms. It is not clear whether these rooms—usually smaller than a classroom—were, or should have been, included by the principals. In any event, the superintendent's figure is consistently higher than that of the principal. One effect of this is to reduce the

Number of Pupils Per Classroom 1961-1962

School	District	Number of classrooms	Total school enrollment	Average number of pupils per room
WHITE				
Armstrong (and branch)-----	2	34	1, 155	34. 0
Bryn Mawr-----	17	33	957	29. 0
Coonley-----	3	23	676	29. 4
Edison (and branch)-----	1	22	604	27. 5
Harte-----	14	16	495	30. 9
Kellogg (and branch)-----	18	22	533	24. 2
Locke-----	4	27	733	27. 1
O'Keefe-----	14	28	721	25. 75
Stevenson-----	15	32	1, 393	43. 5
Twain (and branch)-----	10	26	873	33. 6
Average per class for 10 white schools-----				30. 95

Number of Pupils Per Classroom 1961-1962—Continued

School	District	Number of classrooms	Total school enrollment	Average number of pupils per room
INTEGRATED				
Avalon Park	16	23	765	33.3
Burns	10	31	1,086	35.0
Cornell	16	26	1,306	¹ 50.2
Fernwood (and branch)	16	27	807	29.9
Franklin	7	41	1,109	27.0
Jefferson	9	28	1,054	37.6
Schley	6	23	851	37.1
Shoesmith	14	15	634	42.3
Skinner (and branch)	9	35	1,092	31.2
Average for 9 integrated schools				34.95
Average excluding double shift school				33.2
NEGRO				
Burnside	16	38	1,726	45.4
Carnegie	14	27	1,316	² 48.7
Doolittle	11	³ 61	2,325	38.1
Forestville (South)	13	71	2,500	35.2
Gregory	8	43	3,875	² 90.1
Lewis-Champlin (and branches)	21	56	2,291	² 40.9
Parkside	14	26	1,009	38.8
Pope (and branch)	19	33	1,955	² 59.2
Williams	11	54	2,136	39.5
Average class size for 9 Negro-schools				46.8
Average excluding 4 double shift schools				38.8

¹ 453 pupils on double shift.

² Double shift:

Carnegie, 332 pupils.

Gregory, 3,218 pupils.

Lewis-Champlin, 1,102 pupils.

Pope, 1,107 pupils.

³ Principal's figure, 1959-60 report.

⁴ If the classroom figure suggested by the superintendent is correct, it is difficult to understand why this school was on double shift, for under present policy full-day classes for all students are ordinarily continued until the classroom pupil ratio reaches 44.

apparent classroom-student ratio. The chart above is prepared on the basis of the superintendent's classroom figure and the enrollment in 1961-62 according to the State directory for that year. It should be noted that for the Doolittle school the superintendent's figure has not been used, since his figure (99) included an addition which will be opened for the first time in the fall of 1962.

At the August 22 meeting the superintendent predicted that 3 districts would have an average enrollment of over 40 pupils per classroom in September 1962. District 20 will average 42.8; district 13, 42.7; district 8, 41.6. District 10, he predicted, would average 39.8. Each of these figures is meaningful only in terms of individual schools. District 10, for example, will be well over 40 per class in the crowded Negro schools at the north end of the district. District 10, it was said, has "no immediate prospect of reduction."

The superintendent predicted that 4 districts would average under 30 per classroom. They are as follows: District 12, 26.2; district 4, 26.7; district 1, 29.6; and district 11, 29.8. This last figure is interesting because it involves a district almost entirely Negro.

THE PATTERN OF DOUBLE SHIFT IN CHICAGO SCHOOLS

In 1930, 50 Chicago schools were on double shift because of overcrowding. In Illinois a double shift ordinarily means about 4 hours of instruction—an amount sufficient to comply with State law.⁷⁶ Of the 50 schools on double shift in 1930, very few were in the Negro districts. By 1940, however, the situation had changed radically. All 14 of the double shift schools were in the South Side Negro district. By 1948, the wartime drop in birth rates brought the number of double shifts down to 11, but over half of these were in Negro areas.⁷⁷

In the 1950's the number of schools on double shift began gradually to grow. By 1956 it had risen to 30; by 1957 to 48. By 1960, the number of schools had dropped to 38, but the total number of pupils on double shift rose to a new high for the period of 33,452.⁷⁸ This is explained by the renewed concentration of the double shift in the Negro areas where schools are generally much larger in population. For a generation the Negro children have made up over 50 percent of the school population on double shift. By 1961, this concentration of the split shift in the Negro areas arose to nearly 100 percent. This is evident from an examination of the double shift statistics supplied by the superintendent for the years 1950-61 and of the maps indicating the locations of schools and Negro neighborhoods. These are included in appendices A, C, and H.

⁷⁶ Under the normal school schedules the time spent in school is as follows:

Kindergarten through sixth grade, 4 hours 34 minutes plus recess.

Seventh and eighth grades, 4 hours 47 minutes.

On double shift the time for all children is 3 hours 55 minutes.

Affidavit of superintendent, *Webb v. Board of Education*, Civ. No. 61C1569, D.C., N.D. Ill.

⁷⁷ Report of the investigating committee appointed by Superintendent Hunt, *supra*, note 7, at p. 3.

⁷⁸ Information supplied by the office of the superintendent of schools. See app. H.

By the close of school in June 1962, the school building program, the introduction of mobile units, and February graduations had reduced the double shift to approximately 4,300 pupils in 6 schools. To what extent the anticipated increased enrollment of 25,000 to 30,000 pupils will require double shifts in September 1962 is not yet certain. The administration appears confident that it will be able to eliminate double shifts altogether in the near future.

It is only fair to note the opinion frequently expressed by members of the school administration that the double shift is a questionable target for criticism. The elimination of lunch hour and outdoor recess periods and the differing starting and closing hours for double shift bring the total period of actual instruction within 40 to 50 minutes of the normal total.⁷⁹ This means, also, that the teacher is available either morning or afternoon for special tasks for which there is otherwise no time. The teacher has more free time to plan and reflect. Further, the financial saving from greater efficiency would make possible more ambitious special programs needed in the schools with a high pupil turnover. One high official expressed regret over the policy of the administration to make the elimination of the double shift one of its primary targets.

However persuasive these arguments may be, it is also clear that the existence of the double shift creates special social problems in the crowded areas of the city, largely because the mothers of the children frequently are working. Thus, the pupil spends half his day free of the guidance and the restraints both of school and home.

QUALITY OF INSTRUCTION

It has already been noted that the Negro schools in Chicago are staffed by teachers of less experience. Of course this is a generalization; many of the teachers in the Negro schools have spent many years in the classroom. These experienced teachers are primarily Negroes, although a few dedicated white teachers have stayed in these schools. Again, experience is only one aspect of quality, and the hope to establish on this basis any clear accounting of the relative excellence of teaching staffs is vain.

The proportion of uncertificated teachers on a school's staff seems to be a more reliable measure of differences in quality. This criterion is suggested by the school administration itself, and by this test the Negro schools are inferior. The figures appearing in appendix I show that for selected white schools an average of 12 percent of the teachers are not permanently certificated. Integrated schools have

⁷⁹ See *supra*, note 76.

a corresponding average of 23 percent uncertificated. For Negro schools the average is 27 percent.

PROVISION OF EDUCATIONAL EXTRAS TO NEGRO AND WHITE PUPILS

One measure of relative quality may lie in the degree to which specialized training for unusual needs and talents is provided by the system in its various schools. It is an occasional complaint of Negro leaders that these extra advantages are provided more frequently in the white schools where they are less needed. No evidence of such discrimination appears to exist, at least with respect to the schools to which special attention has been given in this report.

For example, in the categories of free assistant principal, master teacher, special-service teacher, physical education teacher, library teacher, special-education teacher, part-time psychologist and nurse, and adjustment teachers, the schools in the Negro areas consistently show a larger number of such teachers.⁸⁰ Of course, the Negro schools are ordinarily much larger and have special problems. Thus, a difference is to be expected. Nevertheless, in this area no discrimination against the Negro is apparent.

In addition to the provision of larger numbers of teachers in special categories the school administration has made efforts to assist pupils in the Negro schools by a number of special programs. These include remedial classes of various kinds, counseling and placement programs, field trips, experimental summer schools, and a special program prior to the opening of school to insure the attendance on opening day of the children in areas of high mobility. None of these programs can be evaluated here, but, taken at face value, they manifest considerable concern by the administration for the peculiar problems of the Negro pupils.

LIBRARY RESOURCES

Appendix J of this report contains a comparison of the library resources of selected schools. Eleven white schools average 4.95 volumes per pupil. Nine integrated schools average 3.5 volumes per pupil. Nine Negro schools average 2.5 volumes per pupil. Part of the disparity springs from the rapid growth of the Negro schools.

⁸⁰ This judgment is based upon statistics supplied by the board of education. The Urban League report of Feb. 5, 1962, reaches opposite conclusions.

Part results from the policy of allotting lump sums to each school on a per pupil basis for library, textbooks, and workbooks. Where pupils cannot afford workbooks, and where loss of textbooks is high, the library suffers. The same general condition existed in the Negro schools in the year 1959-60, when the average number of volumes per pupil was 2.14.⁸¹ The gain from 1959-60 to 1961-62 in these Negro schools approximates 0.36 volume per pupil. In the same period the average for the white schools analyzed rose from 4.49 to 4.8, a gain per pupil substantially equal to that in the Negro schools.

The administration insists that special efforts are being made to build up libraries in the schools having a high pupil turnover. Information from the administration indicates that 37 such schools received supplemental library funds in September 1961. It is interesting, then, to compare the volumes per pupil of the Cornell and Gregory schools, which were among the 37, and for which comparative figures are available for 1959-60 and for June 1962.⁸² In 1959-60 the Cornell school had 2.66 volumes per pupil in its library. In June 1962 this figure had dropped to 2.20. In the interim the enrollment of the school had risen by 244 and the library had increased by 60 volumes. In 1959-60 the Gregory school had in its library 1.52 volumes per pupil. In June 1962 this had dropped to 1.39. In the interim the enrollment had risen by 923. The addition of 938 books in this period failed even to maintain the prior ratio.

QUALITY OF PRODUCT: THE PERFORMANCE OF THE GRADUATE

The superintendent declined to make the mental and achievement scores of the pupils in the Chicago system available to the reporter. The performance of Chicago schoolchildren on such tests is a closely guarded secret. Thus, it is extremely difficult to determine the relative performance of pupils in Negro, white, and integrated schools.

Some indirect evidence was made available by the dean of a Chicago junior college. The college is located in an area of Chicago rapidly becoming Negro. Its student body, once primarily white, is now about 50-percent Negro. The college has always had a number of students from the families of Negro professional men. Now it has large numbers of Negro students from laboring families. Most of the latter are unable to find employment, which may explain why they attend college. Of the total entering class of 1,800 each year, about 600 students are now assigned to what is called the "basic program." The

⁸¹ These calculations are based upon figures contained in the principals' reports for 1959-60.

⁸² The figures are taken from the reports of the principals of Cornell and Gregory to the Illinois Superintendent of Public Instruction for the year 1959-60.

dean describes it as teaching these pupils to read, write, organize work, and do simple arithmetic. In essence, it is a remedial course for pupils who, in the school's judgment, are incapable of doing passing work in the regular program. This basic program is a noncredit 1-year course. Through it the school is currently salvaging about 10 percent of these remedial cases for further work.

The 600 students in the basic program are, almost without exception, Negro graduates of Negro high schools and elementary schools. The median reading score in the group is at the 8.4 grade level and ranges from grade 4.0 to 10.5. Forty percent were in the top half of their high school class, and over 13 percent were in the top quarter.

Eighty percent of these 600 students are from Chicago high schools. The other 20 percent are mainly from the South—principally Mississippi. The 20 percent from outside Chicago read at about the same level as the Chicago Negro high school graduates in the program. There is no discernible difference in their general preparation, or lack of it, for college work.

The dean was unable to state the degree to which blame for the low scholastic achievement should be assigned to family background, economic and social deprivation, or the preparatory school instruction.

Favorable Aspects of Chicago School Policy

The Chicago school administration has been the subject of two recent reports by inspecting organizations. One was complimentary on the performance of the administration in some areas dealt with in this report. A committee from the office of the Illinois Superintendent of Public Instruction visited four Chicago school districts, including two of the densely populated Negro areas. It found schools in these areas “. . . generally superior to those observed in similar socio-economic areas outside the city.”⁸³ What areas outside the city were similar to Chicago's South and West Sides the committee did not indicate.

If there were doubt about the objectivity of this committee, however, the State Advisory Committee to the U.S. Commission on Civil Rights would seem to be above suspicion. According to this group, “It would seem . . . that there is not a deliberate policy of segregation [in Chicago schools]. . . .”⁸⁴ The Committee, however, noted the existence of de facto segregation, the inferiority of the Negro schools, and the social problems created by the prevalence of the double shift in Negro areas. It suggested that “. . . some redistricting would seem to be possible, and construction of new schools in appropriate areas ought to lead to an elimination or minimizing of the double shift problem.” What this last suggestion means is not clear, since the effort of the administration has been to locate new schools in close proximity to the overcrowded schools. If the approach to eliminating double shift is to be through building new schools, it is hard to find fault with existing policy. The fault, if any, lies in the refusal to transport children to uncrowded schools in other areas. Of this, the committee said, “Proposals to transport students from one school district to another in order to achieve greater integration have not yet secured any measure of popular support.” It should be noted that the report was completed before the furor over this question arose in the fall of 1961.

⁸³ Board of education press release, Feb. 26, 1962.

⁸⁴ Report to the Commission on Civil Rights from the State Advisory Committee, 1961.

The board itself recently has taken an important step toward achieving an understanding of Chicago's special problems. It plans to support an independent survey of Chicago schools to be conducted over a period of 2 or 3 years. The study will be directed by a Committee of three distinguished educators—Herman B. Wells, former president of the University of Indiana, Eugene B. Youngert, former superintendent of Oak Park, Ill., high schools, who is currently conducting a study of schools in Miami, Fla., and Francis B. Keppel, dean of the Harvard Graduate School of Education. The scope of the study is not clear, but will undoubtedly comprise in part the questions dealt with in this report. Such a study has long been urged by the PTA, the Citizens' Schools Committee, and other civic groups. This evidence of good faith by the board could do much to improve its public image and to increase confidence in its impartiality.

Finally, it should be reemphasized that the administration has made every effort to provide new physical facilities in the impacted areas. Whatever motives are assumed, the fact is that the crowded Negro districts have received the major portion of building in recent years. This building has not yet caught up with overcrowding, but unless finances are curtailed,⁸⁵ it probably will. Apart from occasional complaints of poor design and shoddy workmanship on Negro schools, it seems clear that much of the best and newest construction will be concentrated in these areas. As noted above there is no evidence that the Negro schools receive less than their share of co-curricular services in the form of special teachers, truant officers, lunch programs, etc. Indeed, if there is a differential in these respects, the Negro schools appear to be preferred. Of course the need is undoubtedly the greatest in these schools, and it may be that the extra services provided are insufficient in the light of the conditions they are intended to meet.

⁸⁵ There is some doubt as to the ability of the city to continue to undertake the necessary construction. On June 28, 1962, the Chicago Daily News reported, "Willis told the board that the birth rate is running ahead of the school system's ability to finance new buildings."

Concluding Observations

An evaluation of the facts reported seems appropriate. Some have already been commented upon. Some differences already indicated either speak for themselves or involve judgments the author is not equipped to make. The comments here made will be confined to a few of the larger questions of segregation and equality of educational opportunity. The conclusions suggested are tentative.

On selected premises a case could be made against the school administration. Timely measures might have desegregated substantial numbers of classrooms, if that were the primary object. The administration has made no effort to aid in integration; indeed, to the extent that it has recognized the existence of the problem, its policies probably have impeded rather than promoted integration. At the same time, it is legitimate to inquire what solution within practical reach would have improved the situation in any substantial way.

It is often argued that locating new schools in the heart of the Negro areas is a primary cause of segregation and should be stopped. School location can cause segregation, and perhaps has, in Chicago. If the new schools had been built along the 100-mile periphery of the Negro residential areas, considerable integration could have been achieved. But at what cost? Pupils would have had to travel several times the present distance to school in this case. The map showing racial residential patterns indicates that the distances involved are not inconsequential. (See app. A.) Furthermore, removal of the school from the neighborhood inevitably means the estrangement of the pupils and their parents from the total life of the school. At best it is difficult to get parents in the "deprived" areas interested in schools and education and the work of the PTA. To the extent that the neighborhood school concept is abandoned, these difficulties are compounded. Would the integration achieved be worth it? A decision that it would not be worth it cannot be wholly condemned. And, if in another 10 years the solid Negro neighborhoods advance concentrically another 2 miles, what then? The schools would again be clustered deep within Negro areas, but without the saving grace, as now, of being distributed rationally by population. This likely eventuality is the strongest argument against a policy of locating an abnormal number of new schools in fringe areas. Schools do not move. Fringes do.

It may be argued that the experience in such schools would create the kind of democratic empathy needed to effect the elimination of

fringe areas. In other words, mutual understanding through integrated education will beget integrated housing. It is also arguable, however, that fringe area school construction would accelerate the exodus of whites, though this surely is the counsel of despair. The fact is that no one knows what the effects will be in advance. On balance, such a program might be worth a try, but to regard the existing neighborhood school policy in itself as evidence of prejudice seems a dubious conclusion.

The determination of attendance areas is a different matter. A fair amount of integration could have been maintained in Chicago by a careful and continuing redrafting of attendance zones for fringe area schools. A prime advantage of such an approach would be its flexibility. As the neighborhoods change, the attendance boundaries—within reasonable limits of distance—may also be changed. The administration did not utilize its power in this fashion, and in fact may consciously have avoided doing so. It should have been tried. Such a program should be inaugurated promptly. A change of general attitude within the board of education gives reason to hope that this may be done. It must be recognized that this device also is replete with snares. Aside from the administrative complications of keeping current on Negro and white residential patterns, a question at once arises of the degree of integration desired. A 50-50 ratio might seem democratic, but, historically, a 50-50 ratio means that the school will very shortly be all Negro. White children are entitled to withdraw and attend private schools. If the administration should decide that 30 percent is the maximum incidence of Negro attendance consistent with stability, the question of the constitutionality of a benign racial quota arises. Indeed, it is present under a 50-50 ratio. As a practical matter, however, plaintiffs might be hard to find, and the program might never be challenged. Technical problems of standing to sue might further impede attack.

The most serious criticism of the Chicago system relates to the inflexibility of transfer policy. This suggests no criticism of the neighborhood school, which seems sensible as an abstract proposition. The telling complaint is less the logic of the neighborhood system than the illogic of its application under existing conditions. Practically speaking, neighborhood schools do not exist in many of the crowded areas of Chicago, unless the requirements of that concept are satisfied by the mere existence of a building called a "school" which is physically located in something called a "neighborhood." If the school is not *adequate* to serve the needs of a neighborhood, it is playing with words to label it a neighborhood school. The most serious charge against the administration seems to be that in many areas it has not been operating a neighborhood school system, but has acted as if it were. Even where no adequate neighborhood schools existed, the rules

of a neighborhood school system have been applied to prevent utilization of nonneighborhood facilities. The administration thus has failed to carry out a neighborhood school system or any other consistent system. From the point of view of racial discrimination or merely that of nonracial equal protection, the confinement of pupils in crowded classes when other facilities were underutilized cannot be justified. The effect of this action was not merely injury to the children retained in crowded schools. Perhaps the most serious injury was suffered by the school administration itself through the loss of public confidence in its impartiality. Refusal to face the issue of underutilized classrooms squarely created an impression of obstructionism that was resented in the Negro community and puzzled other observers. The appearance of the mobile units at the height of the empty classroom controversy further inflamed the indignation of the Negro parents. The mobile unit itself is a useful device in a large city with a fluid population. Its employment by an administration would ordinarily be a sign of ingenuity and resourcefulness. But the purchase of these expensive units could only be justified by need. Until available space had been inventoried the administration could not prove that the investment was necessary. Until the board's request for a full inventory of facilities is met, no one can say how many mobile units were in fact justified.

The failure of the board to explore alternative solutions to overcrowding fanned the flames of suspicion. At the time Chicago contracted to purchase mobile units, Cleveland, St. Louis,⁸⁶ and New York already had experience transporting substantial numbers of children from overcrowded to underutilized schools. Similar transportation in Chicago might have obviated the need for the purchase of many of the mobile units. Even as a temporary measure, it might have filled the gap until permanent facilities were completed and a true neighborhood system was created. This solution would not have left an oversupply of mobiles, if and when neighborhood school construction catches up with population.

The question of transportation of pupils continues to exist, for it is inextricably related to the adoption of any policy of pupil transfer. Should the city not only permit transfer but provide the transportation? The option of the second-grade pupil to walk two miles through the Chicago winter or spend two fares daily on the bus in order to enjoy his transfer right cannot be regarded as an unmitigated boon. Some might argue that the duty of the city to permit transfer from overcrowded classes implies as a corollary its duty to make the right of transfer a reality by providing transportation. This question has been raised and will be raised again in the future. The financial

⁸⁶ See St. Louis report, *infra*.

burden alone is significant to the economic class most likely to be affected.

What impact would a reasonable and impartial transfer policy have upon segregation? Probably not a great deal in statistical terms. It would not involve great numbers. Even if transfers were not limited to the nearest school having space, large numbers of Negro pupils would not transfer to schools in white areas,⁸⁷ and if the building program should catch up, transfers would probably be terminated. Furthermore, many Negroes will prefer not to transfer for reasons of convenience, inertia, or fear of competition with white pupils. Nevertheless, such a program would have an important consequence, for it would constitute a commitment of the Chicago school system to equality not merely in words but in action.

In preparing the groundwork for a new transfer policy and in drafting the rules for its administration, the board of education should recognize a basic danger inherent in any transfer program based simply upon overcrowding in one school and available space in another. If the Negro students are not carefully screened before transfer, would Chicago re-enact the tragedy of the New Rochelle schools described by my colleague Professor Kaplan? If the basic concern is to end racial prejudice as well as to provide equal opportunity, how much will it help to throw unselected Negro children into those white areas where experience suggests that many may perform at the bottom of the class? Chicago must have a transfer policy, but let it be a carefully planned program to transfer students whose background and personal characteristics are not poles apart from the children in the receiving schools. The introduction of Negro children into an all-white school in an all-white neighborhood is at best an artificial and awkward method of integration. It should not be rendered disastrous by leaving its administration to chance selection. A reckoning would have to be made with the constitutional implications of such a selective program, but the legal questions are not insurmountable. The most serious difficulties would arise in the development and application of standards for selection of the students to be transferred.

What then must be the assessment of the board's action on August 22 apparently favoring the new 40-30 transfer plan of the superintendent? The new plan seems as questionable as the 40-30 plan of December 1961.⁸⁸ Under the most liberal interpretation the only improvement is the abandonment of the requirement that the sending school be on double shift. If the superintendent is able, as he suggests, to reduce the class size in the crowded districts to nearly 40, the program will be a gesture and little more, for it will involve very few pupils. It will still require a minimum difference of one-

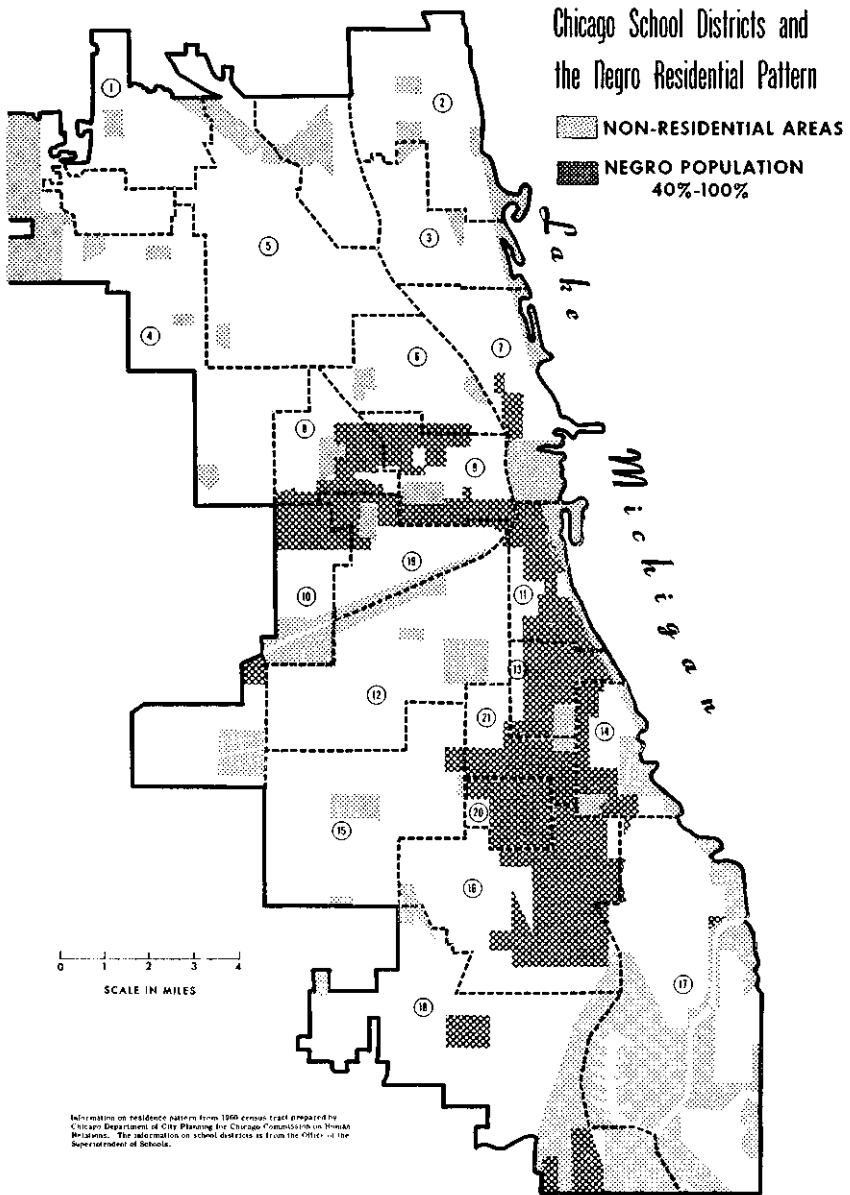
⁸⁷ For effect of open transfer policy on integration in the schools, see Philadelphia report, *supra*, pp. 149-53.

⁸⁸ Discussed *supra*, pp. 191-94.

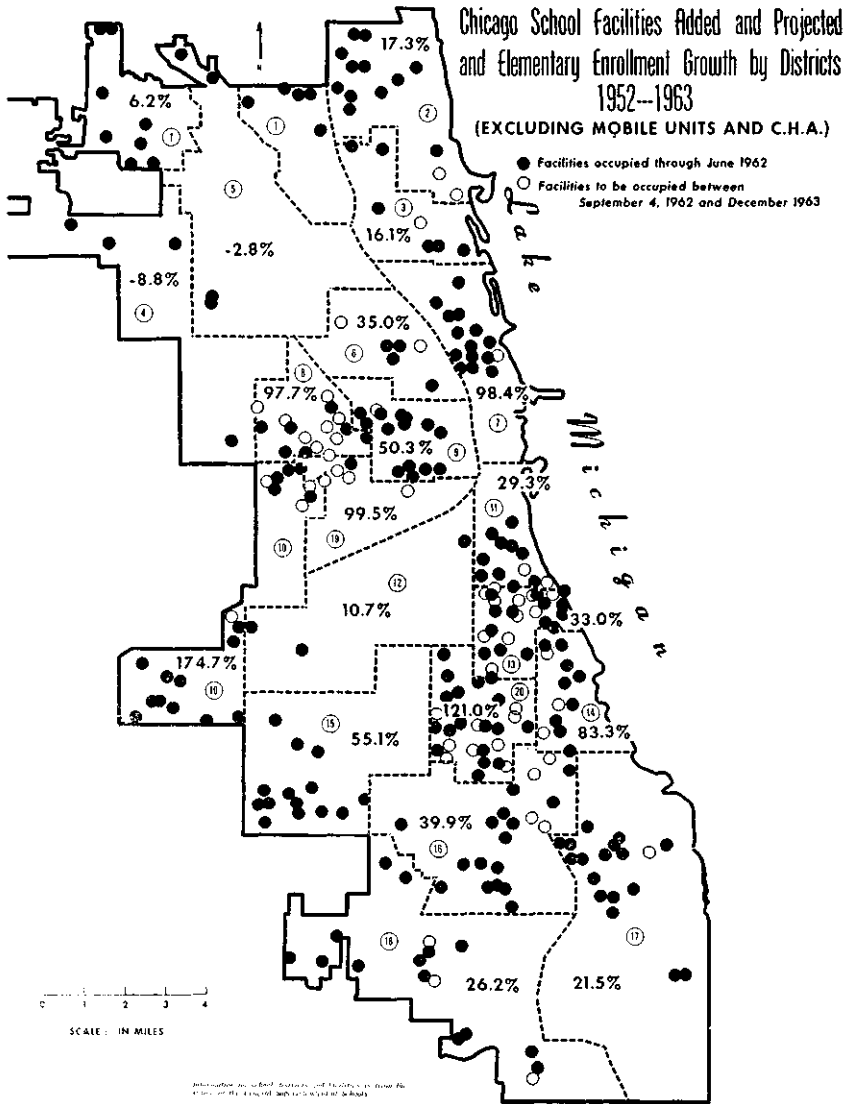
third in class size before transfer will be permitted. Coupled with the refusal to transport the transferring pupils, the new plan is an invitation to litigation and continued interracial strife. It is a disappointing total product of a year's effort of the board, the administration, and a number of public service organizations.

After this critical note, it might be well to reiterate that the basic problems of segregation in Chicago public education were not created by the school administration. The school system has merely accepted a pattern which is the product of other forces. In a city where it has been impossible to obtain an open occupancy ordinance, and where the city administration and council have passed up numerous opportunities to promote residential integration, is it reasonable to expect the school administration to undertake by itself a positive program of integration? Yet these same factors today pose a special challenge to the board. Spurred into action by the controversy over unused space and transfer policy, its momentum could carry the board into an era of experiment and reform. A program of carefully planned zoning in fringe areas coupled with a sound transfer policy might not only provide the first steps to integration in the schools but could encourage the other organs of the city government to undertake with a new spirit the herculean task of housing desegregation. This would be a great contribution.

APPENDIX A



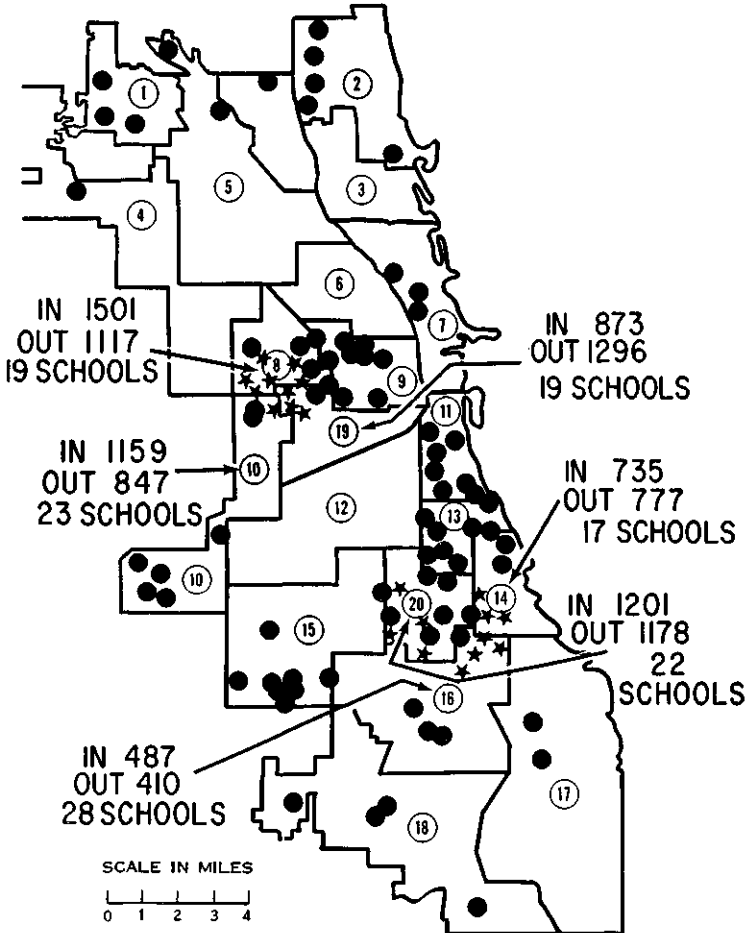
APPENDIX B



APPENDIX C

CHICAGO PUBLIC SCHOOLS ON DOUBLE SHIFT-SEPT. 30, 1961 AND
 MOBILITY OF PUPILS BY DISTRICTS WITH DOUBLE SHIFT SCHOOLS
 SEPT. 29, - OCT. 27, 1961

- SCHOOLS ON DOUBLE SHIFT SINCE 1950 NOW REMOVED
- ★ SCHOOLS ON DOUBLE SHIFT AS OF SEPT. 30, 1961



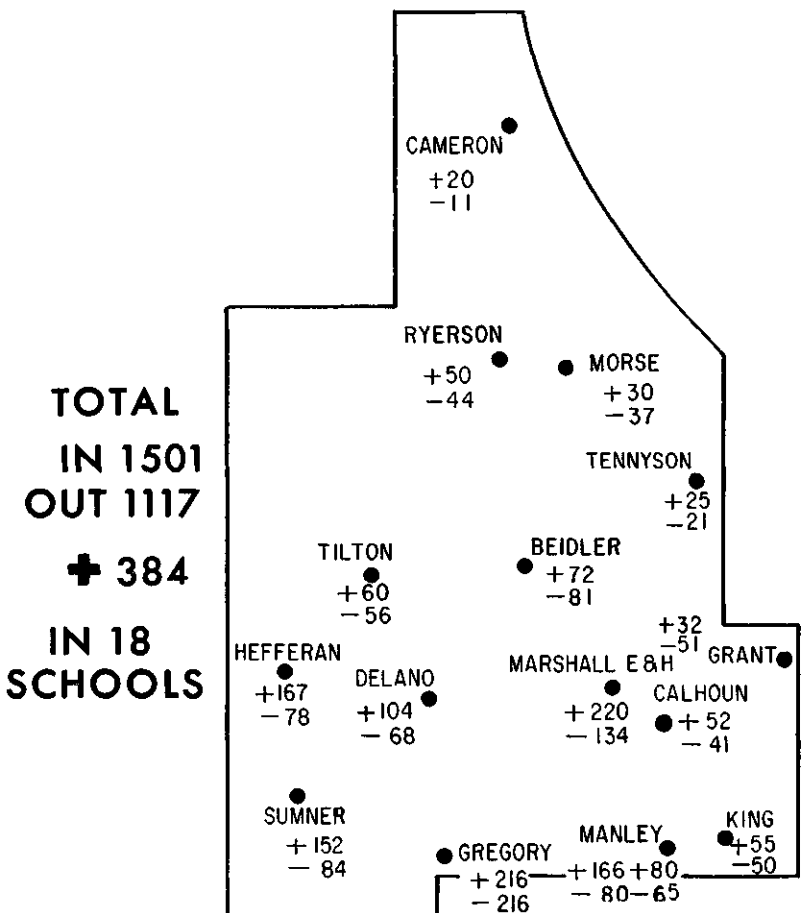
From information compiled by the Office of the General Superintendent of Chicago Public Schools.

APPENDIX D

MOBILITY OF PUPILS IN DISTRICT 8

SEPT. 29, 1961-OCT. 27, 1961

+ PUPILS ENTERING A SCHOOL
- PUPILS LEAVING A SCHOOL

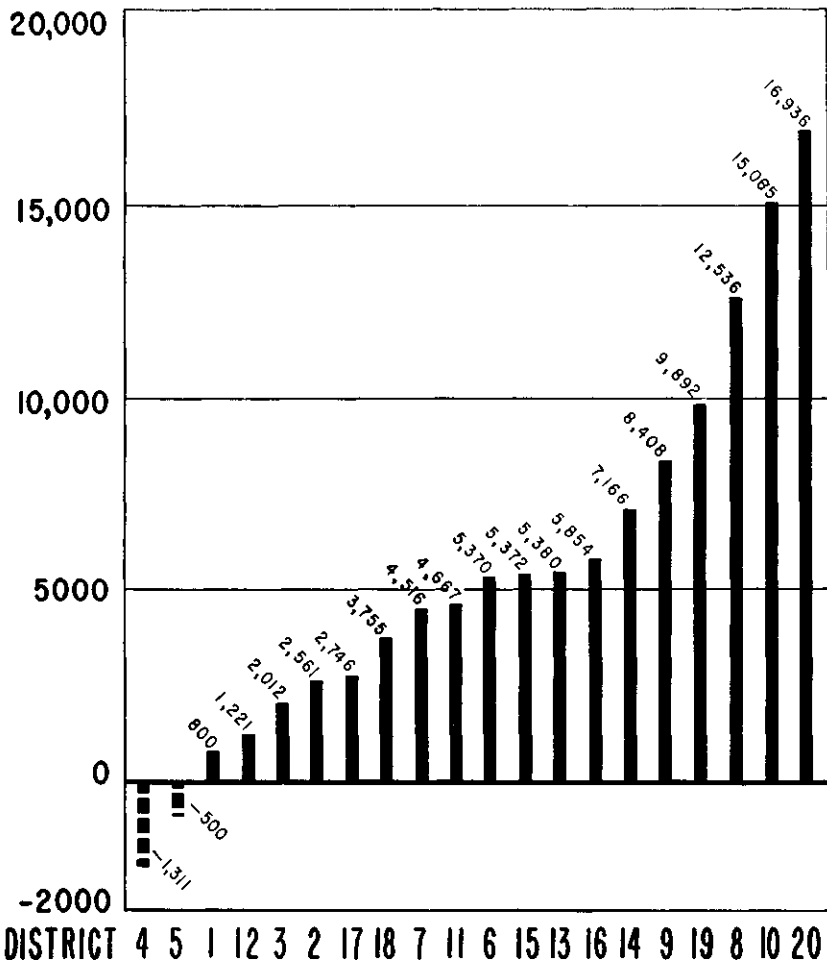


The Manley figures are for both Manley (k-6) and Manley Upper Grade Center.

APPENDIX E

ELEMENTARY SCHOOL ENROLLMENT
CHANGES

SEPT. 1951 - SEPT. 1961



APPENDIX F

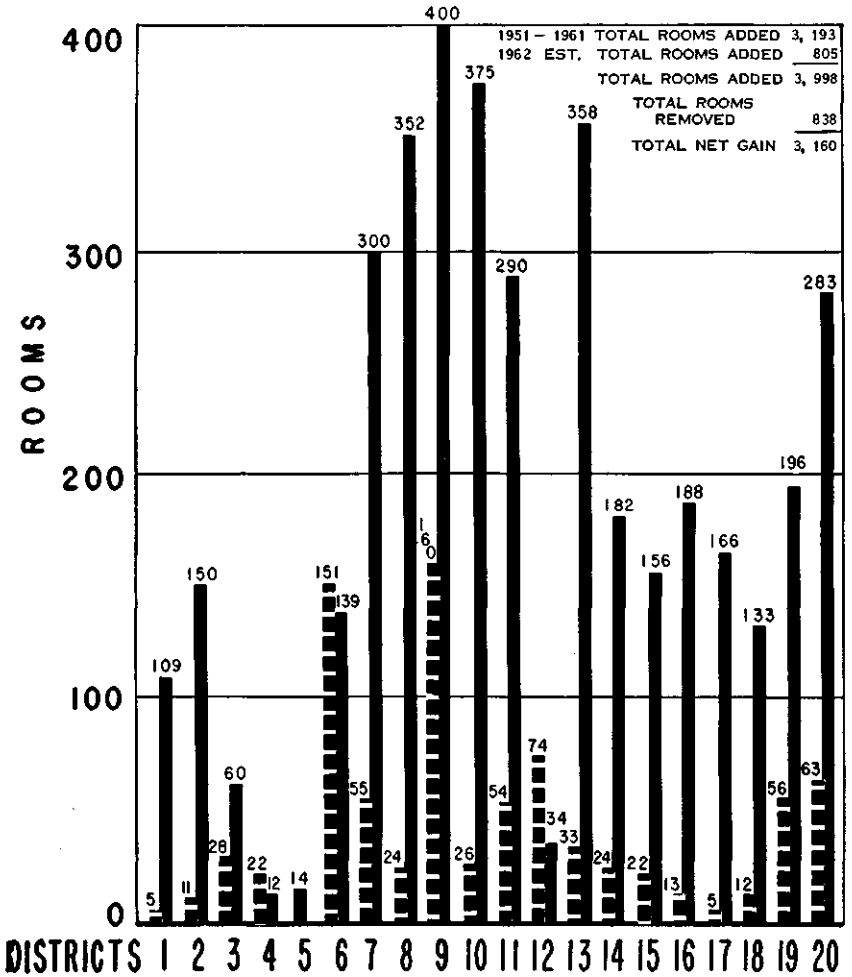
ELEMENTARY CLASSROOMS-BY DISTRICT

Added and Removed

1951-1961 & Estimated through 1962

 ROOMS REMOVED

 ROOMS ADDED



APPENDIX G

Appropriations per Pupil for Selected Chicago Schools—1961¹

School	District	Enroll- ment, ² 1961-62	Appropriations *		Appropriations for Teachers' salaries		Total	Average per pupil
			Total	Average per pupil	Total	Average per pupil		
WHITE*								
Armstrong	2	1,135	\$338,857	\$311	\$279,485	\$242	\$79,372	\$69
Bryn Mawr	17	957	324,302	339	247,995	259	76,307	80
Conroy	2	676	227,155	386	166,125	246	61,030	90
Edison	1	604	223,731	370	148,790	246	74,941	124
Harte	14	495	173,509	350	131,170	265	42,334	86
Kellogg	18	533	244,899	459	167,750	315	77,139	145
Locke	4	733	291,038	336	186,455	268	64,583	89
O'Keefe	14	721	261,729	383	158,455	225	68,274	95
Perry ⁴	16	798	347,981	436	183,515	225	88,466	111
Sevenson	15	1,393	387,798	278	313,225	209	74,573	54
Tweed	10	873	244,927	281	182,250	209	62,677	72
Total		8,638	3,056,926	342	2,285,865	256	770,051	86
Averages for 11 white schools.								
INTEGRATED*								
Avalon Park	16	765	228,245	298	162,500	212	65,745	86
Burns	10	1,086	309,364	285	236,050	217	73,314	67
Cornell	16	1,306	313,440	203	268,600	206	174,004	57
Fernwood	16	3,807	414,954	514	340,950	299	774,840	216
Franklin	7	1,109	400,723	415	339,175	306	121,548	110
Jefferson	9	654	287,133	272	217,300	206	69,833	66
Schley	6	831	239,761	282	179,425	211	60,336	71
Shoosmith ⁵	14	684	133,287	242	94,725	149	58,542	92
Skinner	9	1,092	352,543	323	208,400	246	84,143	77
Total		8,704	2,789,400	330	2,007,123	231	782,305	90
Averages for 9 integrated schools.								
NEGRO*								
Burnside	16	1,726	443,251	257	342,660	199	100,591	58
Carnegie	14	1,316	317,366	241	256,850	197	58,516	44
Doolittle	11	2,325	806,203	373	692,380	298	173,823	75
Forestville ⁷	13	4,087	1,288,994	315	1,035,485	253	253,509	62
Gregory	8	3,875	1,796,460	203	673,600	174	112,860	29
Lewis-Champlin	21	2,291	541,083	236	482,500	211	58,583	28
Partridge	14	1,009	299,199	297	227,625	226	71,574	71
Pope	19	1,955	509,165	280	426,810	218	82,355	42
Williams	11	2,136	512,587	240	416,500	195	96,087	45
Total		20,720	5,564,308	269	4,556,410	220	1,007,898	49
Averages for 9 Negro schools.								

*The determination of the racial category of the selected schools is based upon the method *supra*, p. 185.
¹ From the 1961 budget of the Chicago Board of Education.
² From the Directory, Illinois Schools, 1961-62.

† Appropriations for capital improvements excluded.

‡ Perry School is probably atypical. It serves handicapped children in special classes.

§ This figure is suspiciously low compared to 1960-61 (1,114). It is perhaps accounted for by interim shifting of students to other facilities, but this is only conjecture.

¶ The figures for the new Shoosmith school are taken from the 1962 budget. The 1961 appropriations were incomplete.

‡ The figures cover both the K-6 school and the upper-grade center.

APPENDIX H

Schools on Double Sessions, September 1950-61

School names	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961
District 1:												
Edison.....					245							
Garvy.....	245	233	301					182	280	76		
Oriole Park.....	170	316	336									
Solomon.....						312		165	168	158		
Wildwood Branch of Edgebrook.....		159	289									
Total.....	415	708	986		245	312		347	448	234		
District 2:												
Boone.....	397	544		107	679	386						
Clinton.....		309	569		435							
Jamleson.....				484	706							
Rogers.....	289	490		278	546							
Stewart.....				308								
Total.....	686	1,343	569	1,177	2,366	386						
District 4: Canty.....												
		403	265									
District 5: Forest Glen Branch of Farnsworth.....												
	22	14			12	11						
District 6: Hayes.....												
								278				
District 7:												
Jenner.....								1,703				
Manierre.....										339		
Mulligan.....										120		
Total.....								1,703		459		

District 8:											
Beldler.....						132	237	674	661		
Calhoun.....	380	580					319	287	393	674	732
Delano.....										242	637
Gregory.....								504	674	1,944	3,348
King.....										732	
Manley (k-6).....											441
Marshall Elementary.....						147		207		630	1,348
Sumner.....										363	638
Tennyson.....						156	265	406	419	218	64
Tilton.....										706	731
Total.....	380	580				435	821	2,078	2,147	5,529	7,498
District 9:											
Skinner.....	443	533	637	1,019		182	191				
Birney.....						427	741	1,004	739		
Brainard.....							222	365			
Brown.....	579	605					667				
Emerson.....							221	170			
Grant.....	863	1,036	1,262	1,755				194	856		509
Medill Intermediate.....										926	
Total.....	1,885	2,174	1,899	2,774		427	2,033	1,924	1,595	926	509
District 10:											
Bryant.....							1,135	2,008	2,103	2,694	2,881
Byrne.....				297	574	823	1,052				
Hale.....		215	170								296
Hearst.....								508	693		
Herzl.....							649	669	357	828	1,140
Kinzie Primary and Intermediate.....										417	
Mason (k-6).....								549		579	730
Penn.....						779	1,046	1,264	1,302	1,294	1,269
Total.....		215	170	297	574	1,602	3,882	4,998	4,455	5,802	6,316

APPENDIX H

Schools on Double Sessions, September 1950-61—Continued

School names	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961
District 11:												
Doolittle.....								969	514	870	1,084	
Drake.....	1,174	1,130						173		455		
Haines.....								276				
Keith.....								84				
Oakenwald.....				532	887	1,111	427	591				
Raymond.....							935	851				
Williams.....						366						
Total.....	1,174	1,130		532	887	1,477	1,362	2,944	514	1,325	1,084	
District 13:												
Burke.....										161	166	
Colman.....										75		
Farren.....										150		
Forestville Primary and Intermediate.....							421					
Hendricks.....			166	401		290	321	456	457	228		
Parkman.....	275	426	548	731	921			351	284			
Shakespeare.....		497	657		767	1,127	878	1,181				
Total.....	275	923	1,371	1,132	1,688	1,417	1,620	1,988	741	614	166	
District 14:												
Carnegie.....										355	341	332
Fiske.....							233	209		330	300	332
Kenwood.....		212										
Murray Branch—Kenwood.....					232							
Scott.....					579	1,215	1,722	887		316		613
Wadsworth.....				544	716	319	811	629	475	1,652	326	931
Total.....		212		544	1,527	1,534	2,766	1,725	475	2,653	967	2,208

District 15:											
Copernicus.....								168			
Dawes.....								337			
Hurley.....						485	511	324			
Owen.....	157		516	558							
Owen Branch.....			100	128							
Ashburn Branch—Owen.....			56	107							
Park View Branch—Owen.....				63							
Stevenson.....							400	909			
Total.....	157		672	856		485	911	1,738			
District 16:											
Madison.....										744	
Barton Branch.....				46							
Cornell.....									381	453	
Dixon.....									396	694	
Gillespie.....					275	431	465				
Gillespie Branch.....						226	216				
Park Manor.....			296	614					158	160	
Revere.....										451	
Ryder.....									296	555	
Total.....				342	889	657	691		454	1,943	2,603
District 17:											
Luella.....	146	397	886	350			316	566	188		
Warren.....				226				555	244		
Total.....	146	397	886	576			316	1,121	432		
District 18:											
Carver Elementary.....			538	1,033	1,579				352	452	
Carver Intermediate.....									289	623	
Mount Greenwood.....						82					
Shoop.....		563	661					215			
Bates Branch—Whistler.....										218	
Total.....		563	1,199	1,033	1,579	82		215	614	1,293	

APPENDIX H

Schools on Double Sessions, September 1950-61—Continued

School names	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961
District 19:												
Chalmers.....							280	125	322	608		
Howland.....										628	863	426
Lawson.....					906	1,458	1,296	1,567	1,642	1,852	1,482	1,415
Pope.....							174	678	415	1,131	1,496	1,107
Shepard.....										402	340	173
Total.....					906	1,458	1,750	2,370	2,379	4,621	4,181	3,121
District 20:												
Bass.....							174	581	245	552	911	
Brownell.....				214				261	480	518	302	
Carter.....	403											
Harvard.....											398	532
Kershaw.....										798	1,268	1,471
McCosh.....										361		
Parker Elementary.....								408		1,479	1,846	1,974
Sherwood.....		333	599	711	739	464		169				
Wentworth.....										935	2,040	1,929
Yale.....								566	1,192	1,376	324	
Total.....	403	333	599	925	739	464	174	1,985	1,917	6,417	6,691	5,906
District 21:¹												
Beale Primary and Intermediate.....						337	723	1,202		747	1,368	467
Lewis-Champlin.....			333	956				503	289	765	1,436	1,102
Total.....			333	956		337	723	1,705	289	1,512	2,804	1,569
Total schools, by years.....	13	21	19	23	18	22	30	48	25	46	38	34
Total pupils, by years.....	5,336	9,152	8,949	11,144	11,412	11,084	17,039	27,119	15,392	31,187	33,452	25,343

¹ District 20 was split into districts 20 and 21 in 1962.

APPENDIX I
Certification of Teachers

School (branches included)	District	Total teaching staff ¹	Uncertif- icated teachers ²
WHITE			
Armstrong.....	2	40	2.0
Bryn Mawr.....	7	33	1.0
Coonley.....	3	23	3.0
Edison.....	1	21	3.0
Harte.....	14	20	4.5
Kellogg.....	18	21	1.0
Locke.....	4	24	3.0
O'Keefe.....	14	26	6.0
Perry.....	16	34	4.0
Stevenson.....	15	45	6.0
Twain.....	10	27	4.5
Total.....		314	38.0
Average percent of uncertificated teachers, 11 white schools:			12
INTEGRATED			
Avalon Park.....	16	26	6.5
Burns.....	10	35	10.0
Cornell.....	16	41	6.0
Fernwood.....	16	36	1.0
Franklin.....	7	52	13.5
Jefferson.....	9	35	13.0
Schley.....	6	30	7.0
Shoosmith.....	14	18	4.0
Skinner.....	9	40	10.0
Total.....		313	71.0
Average percent of uncertificated teachers, 9 integrated schools:			23
NEGRO			
Burnside.....	16	54	12.0
Carnegie.....	14	42	14.0
Doolittle.....	11	79	15.0
Forestville (South).....	13	86	29.0
Gregory.....	8	124	55.5
Lewis-Champlin.....	21	79	26.0
Parkside.....	14	32	4.0
Pope.....	19	67	18.5
Williams.....	11	66	22.0
Total.....		729	196.0
Average percent of uncertificated teachers, 9 Negro schools:			27

¹ Directory, Illinois Schools, 1961-62.² Information supplied by office of superintendent of schools.

APPENDIX J

Library Resources 1961-62

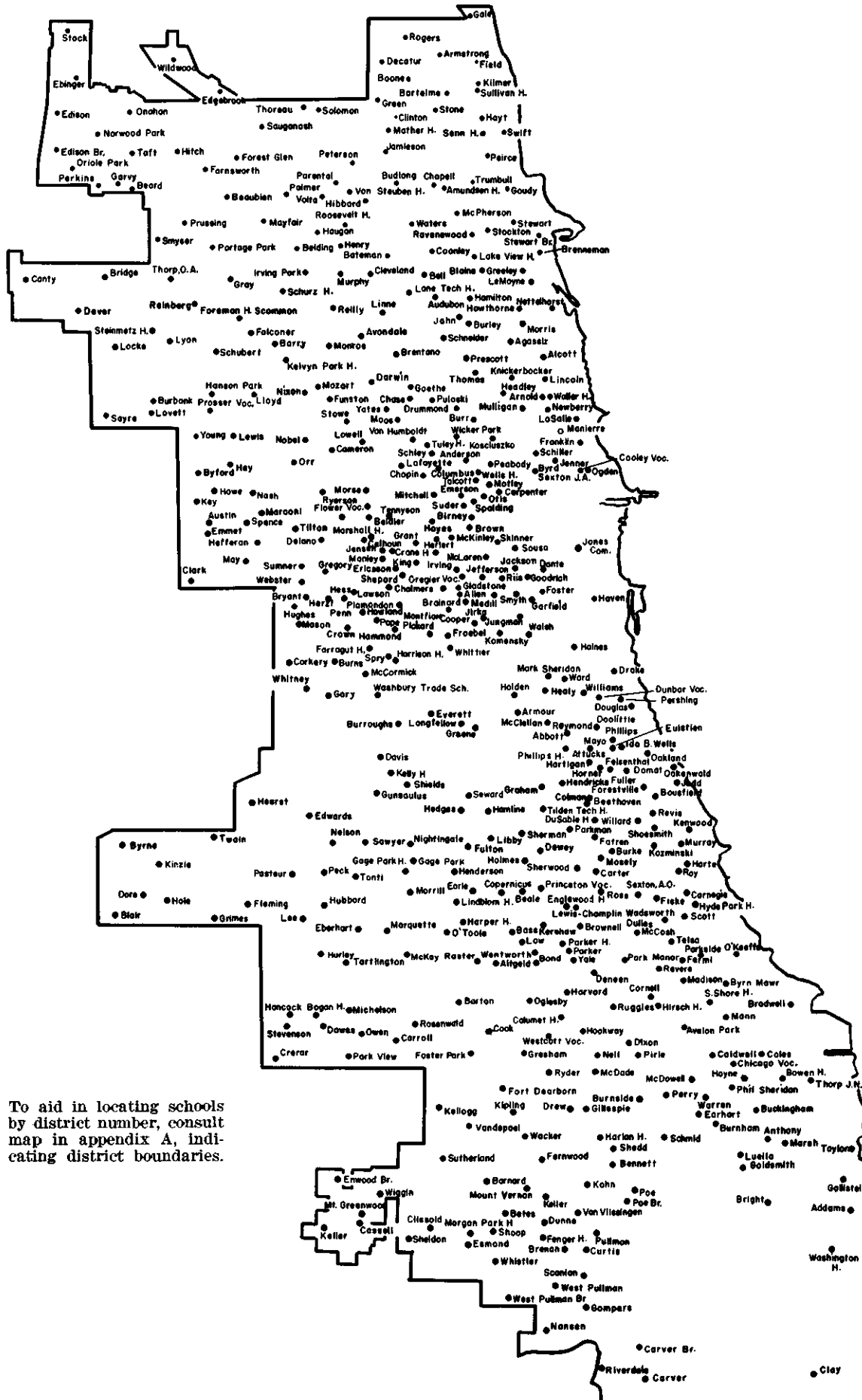
School	District	No. of students ¹ 1961-62	No. of volumes ² June 1962	Average per student
WHITE				
Armstrong (with branch).....	2	1155	³ 7728	6.7
Bryn Mawr.....	17	957	4538	4.7
Coonley.....	3	676	3087	4.6
Edison (with branch).....	1	604	4324	7.2
Harte.....	14	495	² 2497	5.0
Kellogg (with branch).....	18	533	3732	7.0
Locke.....	4	733	2672	3.6
O'Keefe.....	14	721	3683	5.1
Perry.....	16	798	2127	2.7
Stevenson.....	15	1393	³ 5816	4.2
Twain.....	10	873	4046	4.6
Total.....		8938	44250	5.0
Average per pupil for 11 white schools: 5.0 vols.				
INTEGRATED				
Avalon Park.....	16	765	3919	5.1
Burns.....	10	1086	3527	3.2
Cornell.....	16	1306	2881	2.2
Fernwood (with branch).....	16	807	4603	5.7
Franklin.....	7	1109	3970	3.6
Jefferson.....	9	1054	³ 2835	2.7
Schley.....	6	851	3405	4.0
Shoemith ⁴	14	634	742	1.2
Skinner.....	9	1092	4509	4.1
Total.....		8704	30391	3.5
Average per pupil for 9 integrated schools: 3.5 vols.				
NEGRO				
Burnside.....	16	1726	3837	2.2
Carnegie.....	14	1316	2715	2.1
Doolittle.....	11	2325	5459	2.3
Forestville (South).....	13	2500	6223	2.5
Gregory.....	8	3875	5423	1.4
Lewis-Champlin.....	21	2291	6876	3.0
Parkside.....	14	1009	4647	4.6
Pope (with branch).....	19	1955	6170	3.2
Williams.....	11	2136	6273	2.9
Total.....		19133	47623	2.5
Average per pupil for 9 Negro schools: 2.5 vols.				

¹ Directory, Illinois Schools, 1961-62.³ June 1961.² Information supplied by office of the superintendent of schools.⁴ Newly opened 1961-62.

APPENDIX K

Chicago Public Schools

OCTOBER 1961



To aid in locating schools by district number, consult map in appendix A, indicating district boundaries.

CIVIL RIGHTS U.S.A.
Public Schools
Cities in the North and West
1962

ST. LOUIS

By WYLIE H. DAVIS



A Report To
THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Preface

In tracing the evolution of racial problems in the St. Louis schools, the author is obviously indebted to many sources of information and opinion. Personal interviews and correspondence with the St. Louis Superintendent of Instruction and members of his staff were particularly helpful. Other essential data and insights were gained by interviews and communication with a number of organizational and governmental leaders, both Negro and white. Moreover, as the footnotes to this report will indicate, a wide range of publications has been extremely useful. Of course the author does not burden anyone else with responsibility for inferential findings or "analysis."

SEPTEMBER 15, 1962.

WYLLIE H. DAVIS,
University of Illinois College of Law,
Urbana, Illinois.

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Part 5. St. Louis

Introduction

The recent history of racial mixing in the public and private schools of St. Louis, Mo., has been chronicled in virtually the whole array of communications media.¹ It is a fascinating story. But only a brief resketching is needed here as background for a survey of the city's problems of 1962 in interracial education.

In view of St. Louis' manifold southern traditions, both legal and customary, its movement since World War II toward equality of opportunity for the Negro has been little short of revolutionary. For several years prior to the U.S. Supreme Court decision in the *School Segregation Cases* of May 1954,² an enormous amount of spadework was done by many community groups—religious, educational, civic, and social. These agencies and organizations marshaled unpleasant facts about human relations in St. Louis. At the same time they worked significant changes in some of those facts by desegregating organizationally and by conditioning a broad base of citizen leadership for desegregation of the schools. Pre-1954 Missouri litigation involving denials of equal protection of the laws under the "separate but equal" doctrine was a comparatively minor ingredient of the St. Louis ferment. One municipal swimming pool case in 1950,³ and the small but violent incident that triggered the lawsuit, did undoubtedly help to catalyze the community's growing intolerance of racial discrimination.

The churches and religious groups of St. Louis did a yeoman job in the late forties and early fifties. Temple Israel desegregated its pulpit for visiting Negro ministers. The executive board of the Metropolitan Church Federation (600 member churches) unanimously

¹ These include of course the newspapers, magazines, radio, and television. The St. Louis Post-Dispatch merits special citation as a leading daily historian and editorial commentator on every facet of race relations in St. Louis. Officially, two mimeographed reports by the instruction department of the St. Louis public schools trace the major public school developments up to Sept. 1956. "The St. Louis Story: The Integration of a Public School System" (Feb. 1955); "Desegregation of the St. Louis Public Schools" (Sept. 1956). The story was carried a bit further in an excellent report of 1959 dealing with the State of Missouri. Missouri Advisory Committee, "Report to the U.S. Commission on Civil Rights on Desegregation of Schools in Missouri," 134-46 (July 1959). See Valien, "The St. Louis Story: A Study of Desegregation" (1956), Anti-Defamation League of B'nai B'rith for a summary of race relations in St. Louis since 1820.

² 347 U.S. 483 (1954), 1 *Race Rel. L. Rep.* 5 (1956).

³ *Draper v. St. Louis*, 92 F. Supp. 546 (E.D. Mo. 1950), *appeal dismissed on dismissal filed by appellants* (the City), 186 F. 2d 307 (8th Cir. 1950).

condemned apartheid in religious practice. A few Protestant churches actually invited Negroes to their pews and Sunday schools.⁴ The Pilgrim Congregational Church, for example, desegregated in 1953 by majority vote of its congregation, and has enjoyed a positive experience in race relations ever since. It remained for the Roman Catholics,⁵ however, to supply the main thrust in interracial education before the Supreme Court's crippling shot at Jim Crow in 1954. Saint Louis University,⁶ a Jesuit school, opened to Negroes on a progressive basis from 1944 to 1946. There was no uproar. In 1947, after a quiet trial run in a few key schools, Archbishop Joseph E. Ritter (now a cardinal) ordered the immediate desegregation of all Catholic elementary and secondary schools. This was done, in his words, "simply as a step in a well-planned progression toward the realization in daily life of the ideal of the Brotherhood of Man."⁷

A group of about 700 Catholic parents made quite a fuss and threatened to sue. The Archbishop promised excommunication for any such recourse, and was backed by the Apostolic Delegate from the Vatican to Washington. Unlike a few recalcitrant New Orleans communicants of 1962, the St. Louis group soon capitulated, only a handful withdrawing their children from the parochial schools. The ensuing period of adjustment in the schools was eased by the vigorous leadership of the Catholic Interracial Council. If any serious problems have arisen from desegregation of these schools, they have not been publicly aired. Today the Catholic elementary enrollment in the city of St. Louis is 28,795, or almost 26 percent of the public-Catholic total. The Catholic high school enrollment is 9,784, or 35 percent of the public-Catholic total.⁸ Catholic school officials decline to make even a rough estimate of their Negro enrollments. Records

⁴ Among Protestant churches of substantial membership in St. Louis, the Lutherans and Episcopalians seem to have made the greatest strides since World War II in interracial worship and other church-related activities, including schools. Lutheran schools in the city are a sizable system, having a total pupil population of 3,554 in September 1961. Like the Catholic administration in St. Louis, Lutheran school officials are reticent as well as colorblind with regard to estimates of their Negro pupil enrollment. By the end of 1954, their secondary and elementary schools had desegregated in a piecemeal sequence, dependent upon the regulations of each congregation. Census school figures for 1960, with other data and circumspect opinion, imply that something on the order of 300 Negro children are currently attending the St. Louis Lutheran schools.

⁵ In the 1940's and 1950's about 24 percent of the city's population was Catholic. The percentage is probably somewhat higher today, or approximately 200,000 people.

⁶ Total student enrollment at Saint Louis University in the spring of 1961 was 8,741. Hansen, *The World Almanac* 523 (1962). A Negro faculty member at the university, Dr. George H. Hiram, reported in 1960 that only about 4 percent of the enrollment then was nonwhite. He pointed out, however, that some nonwhites were enrolled in every school and division. After probing the question whether integration had worked at Saint Louis University, Dr. Hiram concluded unreservedly that it had. Among other things, he carefully analyzed the meanings of "integration" and "worked" within his frame of reference. Hiram "Has Integration Worked at Saint Louis University?," *Interracial Rev.*, March 1960, p. 64 (Catholic Interracial Council).

⁷ See Vallien, *supra*, note 1, at 19.

⁸ The Catholic enrollment figures were furnished by The Very Reverend Monsignor James T. Curtin, Superintendent of Schools, Archdiocese of St. Louis.

by race are not kept (which is also true in the public schools). It is certain, however, that the Negro pupil population in the parochial schools has grown substantially since the public elementary and secondary system desegregated in 1955. The only requirement for pupils to transfer from a public to a Catholic school in St. Louis is membership in the Catholic Church. Census statistics for 1960,⁹ along with guesses by some close observers in St. Louis, suggest a Negro enrollment in the Catholic elementary schools of about 2,000; in the Catholic secondary schools, about 400.

Several other events and patterns of civic behavior had reinforced the foundation for voluntary compliance in St. Louis public schools with the new law of the land, when the Supreme Court announced it in 1954 and outlined its enforcement mechanism a year later.¹⁰ These contributory forces have been discussed at some length elsewhere, and for present purposes may simply be itemized:

1. Desegregation of Washington University (a private, nondenominational institution located just outside the west-central city limits), beginning in 1947.¹¹

2. Increasing desegregation of leading St. Louis hotels.

3. Desegregation of the major league baseball park in 1944.

4. Desegregation of municipal swimming pools and other recreational facilities in 1950.

5. Desegregation of the city's largest legitimate theater in 1951.

6. Some desegregation of housing as a result of the Supreme Court decision invalidating judicial enforcement of private, racially exclusionary covenants.¹²

7. Considerable progress in equalization of employment opportunity, as illustrated by the hiring of Negro street car and bus operators in 1953.

8. Revision in 1945 of the Missouri constitution to read, "Separate schools shall be provided white and colored children, *except in cases otherwise provided for by law*,"¹³ in lieu of an earlier provision making segregated schools mandatory without exception.

9. Increasing racial integration over the years and harmonious operation among administrative committees and professional organizations of the public school teachers and principals of St. Louis.¹⁴

⁹ U.S. Bureau of the Census, "Census of Population, 1960, Missouri, General Social and Economic Characteristics," table 77 (1962).

¹⁰ *Brown v. Board of Education*, 349 U.S. 294 (1955), 1 *Race Rel. L. Rep.* 11 (1956).

¹¹ Total student enrollment at Washington University in the spring of 1961 was 11,793.

¹² *Shelley v. Kraemer*, 334 U.S. 1 (1948) (originating in St. Louis).

¹³ Italics added. *Mo. Const.*, art. IX, § 1(a). On June 30, 1954, the Attorney General of Missouri ruled that any Missouri constitutional requirement of segregated schools was "superseded by the [May 1954] decision of the U.S. Supreme Court and . . . therefore, unenforceable."

¹⁴ In addition, the Missouri State Teachers Association admitted Negro teachers to membership in 1949. Most significantly, moreover, an Intergroup Education Association of teachers and principals was organized prior to 1954 for the purpose of improving the teaching of human relations in the schools.

10. Development since 1945 of a pervasive and systematic human relations program, involving school people as well as other groups.¹⁵

Thus, in May 1954, the dominant community attitude in St. Louis was receptive to the Supreme Court decision. Many Negro and white leaders were activists, not just passively resigned. However, the most potent single force behind prompt desegregation of the public schools was the positive desire of top school administrators to comply with the new constitutional requirement. The board of education was unanimously ready. The Superintendent of Instruction, Philip J. Hickey, and his staff were not only decisive but also uncommonly adroit in their basic planning. On June 22, 1954, the board adopted a three-step desegregation program,¹⁶ for commencement in September 1954, and completion by September 1955: (a) integration of colleges¹⁷ and of special schools and classes in September 1954; (b) integration of all high schools, except the technical high schools, and integration of the adult education program at the end of January 1955; (c) integration of the two technical high schools and all regular elementary schools in September 1955.

¹⁵ Writing in February 1955, the instruction department of the St. Louis Public Schools had this to say about the city's human relations program: "It has concentrated upon the problem of educating boys and girls to live together cooperatively and with mutual understanding and appreciation of each other. . . . From the curricular point of view, the approach has not been the offering of separate courses in human relations but the introduction of materials and techniques in the various areas of learning—art, literature, music, science, etc.—which would conduce to the improvement of human relations. From the extracurricular point of view, some activities found effective have been auditorium programs presented at one high school by pupils of another; formation of an all-city student council . . . an intergroup youth conference sponsored by the National Conference of Christians and Jews . . . interracial letterwriting between schools; and interracial high school athletic events. Perhaps the most important aspect of the work in this human relations program has been helping teachers acquire skills in assisting pupils to overcome artificial barriers to the acceptance of each individual on his own merits. Well over a hundred St. Louis teachers have attended summer workshops in intergroup education at such places as Washington University, Saint Louis University, Harvard, Denver University, Northwestern University, and the University of Chicago A full-time consultant in human relations has devoted a major portion of his time and energies to helping teachers guide pupils in the art of cooperative living. . . . This systematic, citywide program in teaching children the worth and dignity of the individual, which from the point of view of education for good American citizenship was essential to carry on whether segregation continued or not, has been productive of attitudes and good will which greatly facilitated the acceptance and implementation of the Supreme Court's decision. . . ." "The St. Louis Story: The Integration of a Public School System" 7-8 (Feb. 1955).

¹⁶ "A reason for making the transition by steps over the period of a year was that considerable detail work had to be done in regard to such matters as the drawing of new school district boundaries, assignment of teachers and pupils and other personnel, transfer of books and materials, and transmission of information to parents. To do this work properly required time. Another advantage of integrating the system by steps was that a major portion of administrative attention could then be concentrated on the particular schools being integrated at the time they were being integrated, thus making possible a better supervisory job." *Id.* at 8-9.

¹⁷ Stowe Teachers and Junior College (all-Negro) and Harris Teachers and Junior College (all-white) were consolidated into one 4-year institution, housed in the Harris College facilities and renamed the Harris Teachers College. Today the Harris faculty is about 35 percent Negro and its student body composition approximates an even racial balance. Average daily enrollment for the first semester of 1961-62 was 1,219.

Aside from a year's delay in full execution of the technical high school phase because a new school (O'Fallon) was not finished on schedule, all initial transitions were kept to the timetable and effected with little incidental friction or intractable detail. The school board set the theme and tone: ¹⁸

We believe that this program will expeditiously and wisely secure for every public school child full, equal, and impartial use of our school facilities and services and will secure for our employees fair and impartial treatment. To achieve these ends, we petition the help, the co-operation, and the good will of all the citizens of our community.¹⁸

General public acceptance was further inspired by the press, churches, League of Women Voters, City-Wide Parent and Patron Organizations and Alliances, Y.M.C.A., Y.W.C.A., NAACP, Urban League, National Conference of Christians and Jews, Mayor's Commission on Human Relations, and several other groups. Many of these, and some later comers too, have continued to concern themselves with race relations in every major aspect of human opportunity in St. Louis. Organized opposition to school desegregation in 1954 and 1955, though directed by expert rabble-rousers, never really got off the ground. St. Louis news media gave them little notice, and the city police department's "no foolishness" position was well publicized. One would be hard put to find evidence of severe dissatisfaction within any moderate white or Negro group in St. Louis with its transition to an interracial public school system. Subsequent events should be appraised against this backdrop.

¹⁸ "Desegregation of the St. Louis Public Schools" 19 (Sept. 1956).

Racial Concentrations in St. Louis

In 1960 St. Louis was the Nation's 10th largest city, with a population of 750,026.¹⁹ Although the city had a net loss of almost 107,000 residents between 1950 and 1960, its "nonwhite" population increased during the same period from 154,448 to 216,022, or from 18.02 to 28.8 percent of the total. In addition to Negroes, the census "nonwhite" category includes persons of Indian, Japanese, Chinese, and Filipino descent, plus a miscellaneous "all other." The entire State of Missouri, however, reported only 5,993 nonwhites other than Negroes. Thus the 1960 Negro population of St. Louis may be closely estimated in round numbers at 214,000. No doubt it is somewhat higher in 1962.

The city's 1950-60 loss of white persons and concurrently large gain of Negroes were due primarily to three sociological phenomena. One is the great American exodus, mostly of whites, from cities to suburbia during the last 15 years or so.²⁰ Greater St. Louis is typical. Most of the suburbs lie in St. Louis County, which is entirely separate politically from the city. Despite a near-doubling of the county's total population between the last two censuses,²¹ its Negro population increased very little. The following tabulation will show what has happened:

St. Louis County

	1950	1960
Total population.....	406, 349	703, 532
White population.....	389, 282	683, 932
Nonwhite population.....	71, 067 (4.2%)	19, 600 (2.8%)

¹⁹ Unless otherwise footnoted, all of the statistics in this and succeeding paragraphs were taken or derived from the *U.S. Census of Population*, either for 1950 or 1960 as indicated. In 1950 St. Louis ranked eighth in population, but was outstripped in the next decade by Houston and Washington.

²⁰ "By 1945 more Americans were home owners than renters; each year since, almost a million families have been joining the majority, and almost all of this increase has been taking place in the new subdivisions of suburbia. Between 1950 and 1955 the total number of people in the country's metropolitan areas increased by 12 million—going from 84,500,000 to 96,100,000; within the city limits, however, the number increased only 2,400,000—from 49,500,000 to 51,900,000. In some cities the number actually declined." Editors of *Fortune*, "The Exploding Metropolis" ix (1958).

²¹ St. Louis County also showed a population growth of 48.2 percent between 1940 and 1950.

Density of the Negro population in most of St. Louis County's geographic area is further attenuated by a concentration of 6,501 people in the all-Negro town of Kinloch,²² situated to the northwest about 5 miles from the nearest St. Louis city limits. Consistently with the "group attitude" theory of prejudice, by which the in-group's bigotry is weaker where the out-group is comparatively small,²³ St. Louis County so far has experienced no interracial problems of vexing magnitude or duration. Its public schools have desegregated smoothly in those communities where both Negroes and whites reside.²⁴

A second phenomenon contributing to a progressively higher Negro-to-white ratio in the City of St. Louis is the rather massive migration of Negroes in recent years from south to north and west. Nearly all of them go to the big cities.²⁵ During the last decade, larger numbers apparently have settled in Chicago, Los Angeles, Detroit, Philadelphia, and New York than in St. Louis. But the fact remains that about 40 percent of the Negroes in St. Louis were not born in the State of Missouri.

A third factor contributing to the disproportionate increase in the Negro population in St. Louis²⁶ in the decade 1950-60 is the higher

²² Census of 1960. Kinloch's population in 1950 was 5,957.

²³ "In many areas, where Negroes or Jews are comparatively few, there is not strong anti-Negro or anti-Jewish sentiment. The presence of the minority group does not constitute a threat to the economic security or social integrity of the in-group. When Negroes or Jews begin 'invading' in large numbers, the in-group feels insecure. Jobs are subjected to new competition, the neighborhood is filled with large numbers of people whose appearance and manner of speech seem strange. In a word, the comfortable, familiar world of the status quo is threatened by unfamiliar change. Psychologically, people need the comfort and security of a familiar world. It gives them status, a secure place where they know and are known. And so they are upset by the prospect of being uprooted and 'crowded out' of this familiar world. Frequently a reaction sets in, in which one can observe the whole pattern of prejudiced behavior." McManus, *Studies in Race Relations* 33 (1961). This interaction, involving a number of ethnic or religious minorities, is discernible in varying degrees in every section of the United States. With respect to small Negro minorities, for example, the whites appear to be contentedly tolerant—even liberal—in some of the communities of northwest Arkansas, west Texas, Kentucky, North Carolina, and Tennessee.

²⁴ Several districts in St. Louis County desegregated some or all of their schools in 1954 (Berkeley, Clayton, Ferguson, Kirkwood, Normandy, and Wellston). Others followed in 1955 and 1956 (Ladue, Maplewood, Richmond Heights, Maryland Heights, Ritenour, Riverview Gardens, Pattonville, and Webster Groves). Eureka rounded out the pattern in 1957. Kirkwood and Webster Groves reported the largest Negro enrollments at the times they desegregated. But in each instance their Negro pupils comprised less than 10 percent of the total. At the opposite mixture pole, Riverview Gardens reported only 14 Negroes among 2,429 pupils. Missouri Advisory Committee, "Report to the U.S. Commission on Civil Rights on Desegregation of Schools in Missouri" 55-56 (July 1959).

²⁵ Between 1950 and 1960 more than a million impoverished white persons from Alabama, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia migrated to northern cities under economic pressures similar to those affecting southern Negroes. Upon arrival in the cities of the North, these people have faced the same problems as the Negro migrant. In addition, the confrontation of the Negro and white migrant in the urban areas in competition with each other has resulted in some problems of intergroup relations. *Time*, Apr. 20, 1962, p. 31.

²⁶ This is a national trend not peculiar to St. Louis. In the Nation as a whole, the white population increased 18.1 percent and the Negro population 25.5 percent between 1950 and 1960.

birth rate among nonwhites²⁷ and a reduction in the nonwhite death rate.²⁸ These factors in combination result in a younger nonwhite population. The comparative youth of the nonwhite population is reflected in a proportionately greater number of school-age children.²⁹ This disproportion is equalized to some extent at the secondary school level by a higher rate of school dropouts among nonwhites.³⁰

St. Louis' Negro-white inversion trend has been accompanied since 1950 by a striking intracity mobility in the Negro population. Thousands have moved into the "West End" area, and an expansion to the northwest now appears to be in the making. Appendix A to this report shows the recent progression in areas of nonwhite occupancy.³¹ Mass dislocation caused by a slum clearance razing of about 900 acres in east-central St. Louis (the Mill Creek development) have combined with a burgeoning Negro population and emigration of largely "middle-class" whites to shape this startling growth of low-income Negro ghettoization.³² And of course since desegregation of the public schools in 1955, pupil composition in and near the West End has changed in close racial proportion to the residential pattern.

Appendix A also pinpoints a small Negro enclave in southeastern St. Louis, near the Mississippi River. This too is situated in a depressed area, which in the last few years has experienced an influx of Appalachian whites as well. Enrollments in three of the elementary schools serving this section are substantially interracial, though still predominantly white. Elsewhere in what is called locally the South Side of St. Louis, a smattering of advantaged Negroes have lived securely for many years in essentially white surroundings. A long-time St. Louis resident believes that 50 to 60 Negro families, one or two in a fully-occupied block, have established themselves in such relatively propitious environments. Typically, they were pioneers in their neighborhoods, the white families moving in later. Most of the

²⁷ The nonwhite population of the U.S. shows a total of 33.85 live births per 1000 as compared with 21.53 for whites in 1959. U.S. Department of Health, Education, and Welfare, *Vital Statistics of the U.S.*, sec. 2 (1960).

²⁸ In 1933 the death rate for U.S. whites was 10.3 per thousand; for nonwhites 14.1. By 1959 the nonwhites had narrowed the margin, but the rate 9.9 per 1000 still exceeded that for whites, 9.3. *Id.*, tables 6-A, 6-C.

²⁹ In 1960 about 24 percent of the nonwhite population in St. Louis was enrolled in public and private schools from kindergarten through high school, while only 16 percent of the white group were enrolled in such schools.

³⁰ The 1960 census indicates that the median number of school years completed by urban whites is 11.5 and nonwhites only 8.7. See U.S. Bureau of the Census, *U.S. Census of Population: 1960, General Social and Economic Characteristics*, final report PC (1)-1C, table 76.

³¹ Negro residents of the West End sector increased from 1,150 in 1950 to 57,300 in 1960. At the same time the white population there dropped from 81,500 to 24,400, or 70 percent. See "Report of the Urban League of St. Louis," *St. Louis (Mo.) Post-Dispatch*, June 5, 1961.

³² Slum blight already has a firm grip on most of the area. Only 10 percent of the housing units located in the transformed Negro neighborhoods were built since 1920.

breadwinners among these dispersed Negroes are schoolteachers, postal clerks, railroaders, barbers, and other middle income service workers.³³

Residential concentrations of underprivileged whites are localized for the most part in eastern St. Louis, in or near riparian locations. Some are slum areas, contiguous in part to east-central Negro slums.³⁴ Others are old, modest housing patterns in various stages of physical decay—and in a few instances, of rehabilitation.³⁵ A significant number of white children in these neighborhoods now attend school in racially consolidated classes.

³³ A few years ago, a Negro barber living in the south side left upon his death an estate of \$250,000.

³⁴ To most people, "slum" probably suggests a condition of lower specific quality than the generic term "urban blight." Federal legislation, for example, makes funds available for "urban renewal" of a "slum area or a blighted, deteriorated or deteriorating area." 63 Stat. 380 (1949), as amended, 42 U.S.C. sec. 1460(c) (Supp. 1961).

³⁵ White slum areas "A" and "B" are plotted on app. A to this report, along with past and present areas of nonwhite occupancy. It should be emphasized, however, that the boundaries shown for these white slum areas are rough approximations only, and may well include some neighborhoods that are not appreciably blighted or heavily congested. Furthermore, area "A" is one of very extensive urban renewal, now underway. A substantial part of it has already been razed.

Public School Desegregation: Physical Dimensions

Prior to desegregation, the St. Louis public system had seven four-grade, general high schools for whites and two such high schools for Negroes. Average daily enrollments in the first semester of 1954-55 were 9,898 whites and 4,236 Negroes.³⁶ Each high school's racial uniformity was further maintained in the assignment of 590 classroom teachers, 420 white and 170 Negro. The same was true of local administrative staffs within each group—principals, assistant principals, counsellors, and librarians.

A desegregation plan of the scope adopted in St. Louis obviously entailed attendance redistricting. This was done by applying a "neighborhood cluster" theory to a student residential census (excluding racial identities) of some 6,000 city blocks and to considerations of high school building capacity, distance, and transportation. The new boundaries were publicized in November 1954, and shortly afterwards parents were notified of registration and transfer policy. Principals elicited a preference statement from each student finding himself in the new district of a high school different from the one he had been attending. Although total applications for out-of-district attendance were fewer than in any year of segregation, more than 40 percent of the Negroes *in this situation*³⁷ elected to continue in their former schools. Almost 60 percent chose to attend the previously all-white schools of their new attendance districts. On the first day of desegregation in the second semester of 1954-55, the immediate effect of redistricting was a racial mixture of widely diverse ratios in six of the seven high schools that had been closed to Negroes:

³⁶ This was the last time to date (July 1962) that school officials made a count of high school enrollments by race.

³⁷ Redistricting for the high schools did not place the majority of either Negro or white students within the district of a different school. Moreover, all elementary graduates of Jan. 1955 were required to start high school in the district of residence.

School	Negro enrollment	White enrollment
Soldan.....	350	1,000
McKinley.....	211	1,437
Beaumont.....	98	1,792
Central.....	167	1,034
Cleveland.....	7	1,476
Roosevelt.....	29	1,791

About 25 Negro teachers had been carefully selected for transfer to these 6 schools. Except where dictated by sudden enrollment accretions, however, teacher transfers in the changeover phase were held to a minimum for the sake of rooted stability.

Sumner and Vashon, centralized in teeming Negro ghettos, were designated as all-Negro before desegregation and stayed so in fact thereafter. But relief of severe overcrowding in those schools was a healthy byproduct of desegregation. Southwest, the seventh former all-white general high school, was then and still is at least 3 miles away from the fringes of Negro residential concentrations in any direction.³⁸ No Negro students were assigned to Southwest upon desegregation, and for all practical purposes it has remained an all-white school.³⁹

The old segregated technical high schools had a combined enrollment in June 1955 of 3,274—2,073 whites at Hadley and 1,201 Negroes at Washington, with 98 white and 48 Negro teachers, respectively. In terms of physical capacity, Washington was overcrowded and Hadley underpopulated. In September 1955, all technical ninth-graders, Negro and white, were sent to Hadley and desegregation of the upper three grades was deferred until completion of the O'Fallon plant in the late summer of 1956. In September 1956, the four grades at both Hadley and O'Fallon were desegregated. So were their facilities. Two new technical high school districts were drawn for the city, O'Fallon being destined to serve much the larger geographic area. At the same time a separate general high school curriculum, for a relatively small enrollment, was begun at Hadley Technical. Washington was converted to a regular elementary school. Hadley's overall enrollment has steadily evolved to a 1962 level of 95 percent Negro. About one-third of O'Fallon's student body is Negro.

On the eve of its biggest transition in September 1955, the St. Louis public system had 83 all-white and 40 all-Negro regular elementary schools. Nearly all of them were eight-grade plus kindergarten

³⁸ It should be noted, however, that about 800 Negroes now attend O'Fallon Technical High School, which is little more than a mile north of Southwest High School.

³⁹ Negro enrollment at Southwest was recently estimated as "less than 1 percent." It is probably less than one-half of 1 percent.

schools, with an aggregate enrollment of 44,779 whites and 27,921 Negroes.⁴⁰ They were staffed by 1,204 white and 664 Negro classroom teachers. In redistricting for desegregation, the board followed the basic criteria adopted earlier for the high school shift, but necessarily tailored, of course, for much smaller neighborhood districts. Somewhat greater attention was given to traffic hazards and maintenance of a favorable pupil-per-room load in the elementary buildings. Months in advance, pupils living in revised attendance zones were allowed to opt for continued attendance in their old schools unless such options would produce overcrowding. The administration retuned its proven machinery of preparatory candor and publicity concerning redistricting and attendance, and the tempo of a citywide good-will campaign was accelerated by numerous organizations and news media.

The calm first day of elementary desegregation found racial mixtures of varying proportions in 50 of the 123 units; about two-thirds of the total enrollment was attending interracial schools.⁴¹ A number of Negro teachers had been transferred to these schools, with selective emphasis on teaching competence, predicted capacity of adaptation, and willingness to undertake the assignment. Overcrowding, pupil-teacher ratio, home-to-school distance and the disciplinary dockets of school principals were all measurably reduced—especially at the schools that had been all Negro.

The 1954-56 transitions, then, were solidly conceived and brilliantly carried off. They represented a signal breakthrough in human relations, and everywhere those who prize man's dignity were properly impressed. But St. Louis' great achievement neither banished prejudice and poverty nor stemmed the restless flow of population. Nor did it freeze a status quo in the attitudes of people.

A tabulation will mirror in broad perspective what happened in the public elementary and high schools between 1955 and 1962:

Enrollments	1955		1961-62	
	White	Negro	White	Negro
General high school.....	9, 898	4, 236	8, 528	6, 100
Technical high school.....	2, 073	1, 201	1, 500	2, 000
Regular elementary (including kindergarten).....	44, 779	27, 921	37, 669	45, 000

Thus Negro enrollment in all high schools, general and technical, is presently about 44 percent of the total. In 1955 it was only 31.2 percent. Negro elementary enrollment has now mushroomed to about

⁴⁰ Racial statistics for the elementary schools have not been compiled since that time.

⁴¹ But a good many of them were, as now, minimally interracial.

54.4 percent of the total. In 1955, it was a mere 38.4 percent. Although the 1961-62 figures used here coincide in the aggregate with officially published average daily enrollments for the first semester of last year, it should be stressed that exact racial percentages are not available. Unofficial and inexact as they are, however, the percentages given for 1961-62 are supported by credible estimates and circumstantial data of high probability. There is some reason to hope that the St. Louis Board of Education will require, or at least authorize, a head count of pupil population by race in the fall of 1962. In such an event, the policy of racial nonidentification would not be changed.

New classroom construction between 1955 and June 1962 did not keep pace with enrollment growth.⁴² Aside from completion of O'Fallon Technical in 1956, no high schools were built. Regular elementary schools increased from 123 to 136, the latter figure including as separate entities 20 branch schools and additional elementary centers established at 5 of the high schools. High school locations and attendance districts are mapped in appendix B, along with total enrollments, estimated racial compositions, and imminent school construction. A similar analysis of the elementary schools is plotted in appendix C.⁴³ Notwithstanding several districting adjustments since 1955, both of these maps depict a continuing and indeed spreading de facto segregation in the system. Roughly 70 percent of the Negro secondary students in St. Louis last year attended high schools whose student bodies were 90 to 100 percent Negro. The same was true with respect to approximately 85 percent of the Negro elementary pupils.⁴⁴ Only about 15 of the 136 regular elementary schools were significantly interracial.

Not to be ignored is a miscellany of special elementary schools in St. Louis. These had a combined average daily enrollment of 2,764 in the first semester of 1961-62. A small minority of them are provided for deaf, crippled, or hospitalized children; for sight conservation; and for disciplinary detention. The major special elementary group consists of 65 schools for mentally retarded but educable children. Their total enrollment last year was 2,201. Each unit, of one to five rooms, is designated "Special School No. —," and is located in a regular elementary school. About 75 percent of the pupils assigned to these classes in the past year were Negro.

⁴² School construction programed for the immediate future will be summarized later in this report.

⁴³ Elementary school district lines have been omitted for clarity. Lincoln and Pestalozzi elementaries, shown at bottom center, were recently demolished in the course of urban renewal and highway construction projects. The Wells school does not appear. Enrollment there is restricted to kindergarten and the first three grades; and the school is situated near the Washington and Washington branch schools, close to the eastern periphery of the West End.

⁴⁴ This estimate does not take into account 3,710 elementary pupils, nearly all Negro, who were transported last year to all-white or predominantly white schools in order to relieve overcrowding at the sending schools. See text *infra*, at note 48.

One may hope that the St. Louis Board of Education will soon make a racial count of teachers as well as pupils. Precise knowledge of teacher distribution by race would sharpen the assessment of a desegregated system, particularly a system beset with an apparently endemic segregation fact. Of 3,565 classroom teachers in all high school and elementary classes the first semester of 1961-62, however, the number of Negro teachers may be estimated with fair accuracy at 1,550: about 250 in the high schools and 1,300 in the elementaries, including kindergartens and special schools. As for principals, 3 of 11 running the high schools last year were Negroes. In the regular elementary schools there were 45 Negro and 84 white principals, of whom several, mostly Negro, administered branch schools concurrently.

If widespread racial heterogeneity in the schools is a cardinal desideratum, St. Louis did not move far between 1955 and 1962. In some ways the pattern has been retrogressive. Not a little "resegregation" has developed; that is, some schools which were predominantly white or substantially interracial schools, just after desegregation, have since become all-Negro schools or virtually so. This is notably true in the city's West End and an extended Negro residential section toward the northwest. Such resegregation is traceable in the main to a conjunction of population flux and the school administration's fundamental commitment to a neighborhood school concept.⁴⁵ Soldan High School, serving the West End and contiguous neighborhoods, is a prime example. Its enrollment in February 1955 was 74 percent white. It is now about 90 percent Negro. A number of elementary schools, like Arlington, Columbia, and Scullin, have undergone comparable changes. In some measure, however, the high school overview has been brightened by less overbalanced racial proportions at Beaumont and McKinley.

Classroom teachers, although not extensively reassigned in transition stages, have subsequently moved, or have failed to move, in such a fashion as generally to aggravate Negro-white contrasts among the schools.⁴⁶ From the beginning of desegregation, Negro teachers in predominantly white schools have been few. One white high school last year had two Negro teachers. There are still some white teachers in predominantly Negro schools which were formerly all-white. But the number of these teachers is waning, particularly in resegregated districts, as they either leave the system or transfer into less congested

⁴⁵ In metropolitan areas, a "neighborhood school" may be characterized as one which limits enrollment, or most of it, to pupils who live either within walking distance or no further than a short bus ride away. Maintenance of a neighborhood system must be distinguished, in motivation if not always in result, from deliberate gerrymandering of school districts in order to perpetuate segregation.

⁴⁶ A few noteworthy exceptions have so far persisted. Chouteau Elementary is probably the most exceptional. Although the majority of its pupils are Negroes, it still has some white teachers under a Negro principal.

areas of the city. There has never been an appreciable contingent of white teachers in schools that used to be all-Negro and remain so in fact. Assignment of school principals has tended to be a bit more stable. Soldan High School continues to have a white principal, and so do a handful of predominantly Negro elementaries. On the other hand, not one predominantly white school, regular elementary or secondary, has a Negro principal. In fact, there are no Negro principals in any of the schools—and there are only seven—whose enrollments approximate a 50-50 Negro-white ratio.

On balance, de facto segregation in St. Louis public schools has patently worsened during the last 7 years.

Special Problems of Desegregation Since 1955

OVERCROWDING: BUS TRANSPORTATION

Overcrowding of schools has occurred sporadically in St. Louis for more than a decade. In several instances prior to school desegregation, some of the pupils in congested schools were assigned, pending new construction, to schools where space was available. Movement to and from the receiving schools was either on foot, or by bus at public expense. As a partial solution, such assignments have been made increasingly since the school administration began in 1950 to push hard for reduced class sizes in the interest of educational efficiency.

It has been noted that desegregation and its attendant redistricting relieved at once much of the overcrowding in both elementary and high schools. But the relief was not enduring. Periodic redrawing of district boundaries and school construction to date have not been enough to cope with enrollment increases. The total public high school population has gained 4.1 percent and elementary population 13.7 percent since the transitions. It will be recalled that both gains have come as white enrollments dropped and Negro enrollments rose sharply from kindergarten through high school. Overcrowding, therefore, is again a pressing matter in some, though not all, of the completely and predominantly Negro school districts—more urgently pressing within the regular elementary group.

A number of devices have been simultaneously brought to bear on the overcrowding problem. The "double session" or "two platoon" expedient, however, has not been one of them. There is a dominant conviction within the school administration that having thousands of children in the streets all morning and other thousands there all afternoon is educationally unsound and socially explosive. Nor would "double sessions" be easy under existing Missouri law. The schoolday must consist of 6 hours, "occupied in actual school work," for all children above kindergarten.⁴⁷

Pressure on high school facilities, obviously far less acute, has been eased by districting adjustments and will be lowered considerably in

⁴⁷ *Mo. Rev. Stat.* § 163.020 (1959). In St. Louis the elementary school hours are presently 8:30 to 3:30, including an hour for lunch. The high school day runs from 8:45 to 3:15, with a half hour for lunch.

another year, or possibly two, by completion of the Northwest High School and additional classrooms at McKinley and Southwest High Schools. Ground has already been broken for the Northwest construction, which will have a normal capacity of about 1,000 students. Group assignment to relatively underpopulated schools continues to be the principal alleviation of overcrowding in the elementary system. Each schoolday last year, 25 rooms of pupils walked to receiving schools without hardship or increase of hazard. This number will be cut to 19 in 1962-63. During the second semester of last year, 3,710 pupils in 106 rooms were transported every day from sending to receiving schools and back in 74 rented buses.⁴⁸ In September 1962, the bus carriage program will swell to 4,800 pupils in 136 rooms. This will cost the board of education an estimated \$149,481.60 for rental of 100 buses and \$66,718.40 in overtime teacher pay for bus supervision—a total of \$216,200.00 for an academic year of 184 schooldays. Not wholly incidentally, this amounts to an expenditure of \$1,175 per day, or a shade less than 24.5 cents per pupil per day. Partial reimbursement from the State will reduce the city's burden to about 16 cents per pupil per day.

School termini, direct-line routes, and numbers of pupils selected for bus transportation in 1962-63 are shown on the elementary school map attached to this report as appendix C. The longest one-way travel distance will be a little over 7 miles, and the shortest, 1½ miles. Approximately 4 miles will be the average. These are straight-line distances, however, and not actual (and greater) street mileages.⁴⁹ There will be 11 different sending and 27 different receiving schools. Five of the former will send out more than one class group. One of the latter will receive more than one class group. All but one of the sending schools are currently all Negro or predominantly Negro. Twenty of the receiving schools are all white or essentially so. Three of the remaining seven are vacated elementary buildings in Negro neighborhoods. Two are receiving units housed in factually Negro high schools, and the last two are operating elementaries with racially balanced enrollments. Of the children to be transported, about 95 percent will be Negro. Through 1961-62, these children have been carried as "room groups," each traveling under teacher supervision. Nearly all of them have been drawn from grades 4, 5 and 6; but in September 1962 a few of the 4,800 will be in grades 3, 7, and 8.

With two limited exceptions in recent years, each transported "room" with teacher has been taught at the receiving school in what may fairly be called a contained unit. In both classroom and extra-

⁴⁸ All figures in this paragraph relate only to transportation for overcrowding. An additional 480 pupils were bused last year simply because of atypical home-to-school distances within a few districts. Transportation was also provided for perhaps 500 handicapped children. Both of these categories will number about the same in 1962-63.

⁴⁹ Outgoing travel times varied last year from 8 to 32.5 minutes, with a median of 20 minutes. Return trips required from 10 to 40 minutes, the median again being 20.

curricular activities, commingling with resident pupils has been inconsequential. Even arrival and departure times and lunch periods have varied from the school's established regimen in most cases. The leitmotiv of this practice is not clear. But three factors have almost certainly been weighty in the containment of transported units: a comparative simplicity of unitary administration; a variety of probable inconveniences from dovetailing time schedules; and an apprehension of strain upon lunchroom and recreational facilities.⁵⁰ These considerations may possibly have blended with an assumed psychological value to the incoming children of familiar "togetherness" in an alien environment, and timidity about the disruption of resident classes by reorganizing them interracially to include short-term "transients." In all fairness, these possibilities are speculative as the record stands. Yet the usual effect has been clear enough; namely, to isolate Negro classes intramurally at predominantly white schools.

As one would expect, these pockets of racial segregation in the receiving schools have not escaped criticism by Negro parents and some of the community's Negro leaders. The Negro press has been generally restrained but nevertheless disturbed about the situation.⁵¹ On the basis of personal interviews in St. Louis, this writer is persuaded that one or more lawsuits would have been filed months ago by Negro parents of transported children were it not for two related, delay-inducing forces. One has been described by a prominent Negro critic as the felicitous image consistently projected by Superintendent Hickey, his staff, and the board of education in their public relations before and after 1954. Moreover, there seems to have been no concrete and probative evidence of anything deceptive or spurious in that im-

⁵⁰ Some inconvenience would probably attend any workable plan for placing resident and transported pupils on identical schedules, so that the latter group might be assimilated to interracial classes without the obvious disruption of one group's arrival after the other has started classroom activities. If, for example, 30 minutes were the maximum bus transportation time for incoming pupils, regardless of daily traffic and weather variations during the school year, the receiving school might convene classes at 9 a.m. instead of the present 8:30. This would entail a later dismissal time in the afternoon, and perhaps less than ideal adjustments of lunch and recreation periods. On the average, it would probably coincide also with heavier street traffic in both mornings and afternoons. A later afterclass workday for teachers and staff might be involved as well. Retaining an 8:30 convening time would doubtless require somewhat earlier morning departure times for transported pupils than those formerly scheduled, if arrival by 8:30 is to be routinely certain. This would mean, of course, that pupils (and presumably their parents) who make the longer trips would have to arise, dress, and eat breakfast earlier in the morning than is necessary in normal instances of public attending their own neighborhood schools. This has been almost certainly true already in many cases, even without insuring an 8:30 arrival time for all transported pupils. Some parents might take a jaundiced view of this particular inconvenience. On the other hand, if these parents wish their children to be educated in both smaller and desegregated classes, the early rising burden would seem to be a small payment for a large benefit. As for overloads upon lunchrooms and recreational facilities at some of the receiving schools, a "two platooning" of lunch and recess groups is probably just as feasible for interracial classes as it is now for segregated classes.

⁵¹ See Poinsett, "School Segregation up North," *Ebony*, June 1962, p. 96.

age. Some Negro leaders in St. Louis and elsewhere, of course, are understandably but chronically suspicious of white-dominated school management and even of Negro educators within such administrations.

A second moderating influence toward a nonjudicial solution of the segregation problem at receiving schools was the known fact that a special committee⁵² appointed by Mr. Hickey was investigating the matter during the winter and spring of 1961-62. In March of this year, the committee made relatively minor, though not trivial, recommendations concerning the organization of schooldays at receiving schools and urging greater efforts to bring resident and transported pupils together during lunch and recess periods. A more comprehensive "progress report" and 12 recommendations were released to the press on June 13, 1962,⁵³ after careful, on-the-scene studies by the committee at receiving schools and analysis of views expressed by principals, teachers, parents, and human-relations specialists. These proposals, being embodied in a progress and information report, have not yet been officially approved by the board of education. But the publicity given them would seem to portend an official imprimatur, or perhaps changes in practice even without formal board adoption.

Of the 12 recommendations, Nos. 2 and 9 in the committee's sequence represent the crux of what needs to be done:

(2) Intensification of efforts on the part of all principals and teachers of schools receiving transportees to bring about fullest possible integration of pupils, parents, and teachers in all aspects of school life—with emphasis on integration of playgrounds, lunchrooms, schoolwide projects, picnics, and parent activities.

(9) Continuance, expansion, and spread to the fullest extent possible of integration of local and transported pupils in classes for instruction in basic skill subjects, content subjects, remedial reading, art and music, and physical education.

The other 10 recommendations, set out in the footnote,⁵⁴ were designed to remedy particular deficiencies found by the committee. If ag-

⁵² This group is entitled the "Committee on Practices and Procedures Relative to Desegregation and Integration." The three members are Chairman James A. Scott, formerly a director of education and recently promoted to assistant superintendent; R. M. Inbody, assistant superintendent in charge of secondary schools; and Mrs. Reba S. Mosby, assistant professor of sociology at Harris Teachers College.

⁵³ See St. Louis Post-Dispatch, June 13, 1962, pp. 1, 5; St. Louis Argus, June 15, 1962, pp. 1-A, 4-A.

⁵⁴ (1) Organization of the schoolday for pupils in receiving elementary schools and organization of the schoolday for pupils transported to high school buildings. (3) Maintenance, as far as possible, of suitable balance of numbers of transportees and local pupils of the same grade and reduced pupil-teacher ratios in schools receiving transported pupils. (4) Assignment of less mature transportees to regular elementary schools rather than high school buildings. (5) Giving mentally retarded transported pupils priority of assignment to special classes. (6) Provision for transported pupils to remain an educationally reasonable length of time at the same receiving school. (7) Positive efforts by those engaged in recruitment and assignment of personnel to secure additional teachers especially trained and qualified from the viewpoints of instructional efficiency and skills in human relations for service in this type of situation. (8) Continued teacher supervision for children in transit. (10) Provisions for inservice training in human relations. (11) At least one pilot demonstration program transporting pupils for relief of overcrowdedness by city blocks or areas rather than by grades. (12) Compilation in looseleaf form of policies and regulations governing various aspects of the operation of bus transportation for overcrowdedness.

gressively implemented, all 10 will expedite a realization of the basic two. The odds are good that litigation will be averted,⁵⁵ in view of the broad sweep of proposed action and the predictably contagious ethos of the committee's conclusion :

It is the consensus of the committee that the implementation of these recommendations under the leadership of the directors of elementary education and with the enthusiastic spirit of cooperation and community support which characterized the transition of 1954-55 would constitute a distinctly forward step in our educational program both from the angle of *instructional efficiency* and the angle of *improved human relations*. Judging from the splendid professional spirit of the teachers, principals, and directors in charge of the program, their sincere desire to implement in full the spirit as well as the letter of the Supreme Court's decision, their personal concern for the psychological well-being of all the pupils of their schools, their open-mindedness, creativity, and eagerness to discover new and better ways of achieving the socio-educational objectives to which we all subscribe, your committee is confident that step will be made.

OVERCROWDING: ADDITIONAL RELIEF MEASURES

Seventeen rooms of pupils were taught in rented space at five churches in 1961-62, and the same quarters will be used in 1962-63. Another technique to relieve overcrowding in the St. Louis elementary schools, second only to bus transportation in importance, is the growing use of portable classroom units. Sometimes called transportables, they have been in favor with the school administration since 1961. Seventy-seven of them were in operation for about 2,500 pupils last year at 18 different locations—with one exception, on the grounds of permanent elementary schools. Sixty-seven units, at 14 locations, housed pupils in all-Negro or predominantly Negro districts. The other 10 were established at schoolyards where enrollments were either white or substantially interracial. The main reaction from parent groups has been to request more transportables in order to reduce bus transportation for relief of overcrowding. Eighteen more transportables, or

⁵⁵ A lawsuit challenging intramural segregation at receiving schools would have an excellent prospect of success by a Negro plaintiff with proper standing. Even prior to the invalidation of racial segregation as such in 1954, the U.S. Supreme Court struck down a scheme of modified racial isolation at the university graduate level. *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950). See also *Jones v. Newton*, 253 Pac. 386 (Colo. 1927) (State constitution). It is true that the *McLaurin* situation differed in two noteworthy respects from intramural containment of St. Louis' bus transportees at receiving schools: (1) A close association of students and intellectual cross-pollination are arguably more critical in upper level education than in elementary schools. At any rate, the advantages of integration are not the same in both instances. (2) The sole administrative purpose in *McLaurin* was clearly to perpetuate a form of racial segregation, whereas it may be fairly inferred that segregation in the St. Louis receiving schools has been an adventitious incident of unprejudiced motivations.

In a court test of the St. Louis practice, however, neither of these differences, in all probability, would be decisive. The *School Segregation Cases* of 1954 wiped out any materiality the first distinction may have had. As for the second, a Federal judge today is not likely to be diverted by a school administration's bona fides where it has affirmatively adopted a course of action having the predictable, actual, and known consequence of racial segregation. Such a course, it seems, could not be constitutionally justified by a mere agglomeration of administrative conveniences.

a total of 95, will be operating in 1962-63 for the accommodation of about 3,325 pupils.

St. Louis' transportable clusters range in capacity from one to eight classrooms. The average cost of erecting the latest units has been \$10,000 to \$12,000 per room, and furnishings for each room have come to \$550. Basically, these structures are first-class prefabrications assembled on concrete footings. Structural steel members are precut and welded in place. Steel load-bearing wall units are manufactured to exacting specifications, and supplied with insulated panels, mechanical fastenings, and openings for metal window and doors. Enamel paint is baked onto wall panels in a variety of pastel shades selected by the commissioner of school buildings. Interior finishings include acoustical ceilings among other functional modernisms. The exterior view of one of the newest of St. Louis' transportables may be found in appendix D. Realism about pupil overcrowding and public school financing, particularly in light of the high quality built into these units, would suggest that they will be on the school landscape for a long time. One may also doubt that their portability will be tested very often in the foreseeable future.

Permanent school construction is clearly the best antidote for overcrowding, although not necessarily an avenue to optimum desegregation of pupils. Lagging in recent years, St. Louis' building activity received a potent stimulus in March 1962 by electoral approval of a bond issue of almost \$24 million for new construction and enlargement or refurbishing of some of the older schools. The location of Northwest General High School is shown in appendix B. Now under construction, the estimated cost of this building is \$3,174,700. Northwest will probably serve 15 to 20 elementary schools whose graduates now attend Beaumont and Sumner. Beaumont's enrollment is about 70 percent white, whereas Sumner's is heavily Negro. Northwest, moreover, will be situated in an area that seems destined for increasing Negro occupancy within a very few years. Any logical operation of Northwest High School will require significant redistricting for at least five of the existing high schools in the North Side of St. Louis, and there is a good chance that Northwest will have an interracial student body from the outset.

Major additions will be built at McKinley and Southwest High Schools.⁵⁶ The combined estimated cost of these is \$2,877,740. Two athletic fields, Soldan's and O'Fallon's, will be expanded at a cost of about \$154,000 in furtherance of a master plan to decentralize stadium facilities for interscholastic athletics. Modernization of instructional,

⁵⁶ Enrollment at McKinley is now about 70 percent white. Southwest's student body is practically all white.

athletic, and service equipment or furnishings will be financed by the 1962 bond issue at nine high schools: Beaumont, Cleveland, Hadley Technical, McKinley, O'Fallon Technical, Roosevelt, Soldan, Sumner, and Vashon. Aggregate expenditures for this part of the program will approximate \$722,000.

Seven new elementary schools will go up at the places marked on appendix C. These will provide a total of 174 classrooms plus kindergarten accommodations. They will cost more than \$12,500,000, or on the average about \$1,800,000 for each school. All seven will be built in all-Negro or predominantly Negro neighborhoods, including four in the West End sector where overcrowding has become most severe. In addition, the Carver school, now a rundown structure in the heart of the old Negro ghetto but adjacent to a large housing renewal development, will be replaced by a new 30-room and kindergarten plant, to cost an estimated \$1,770,000. Nine other elementaries, also identified on appendix C, will get multipurpose additions⁵⁷ for a total outlay of about \$1,665,300.⁵⁸

The superintendent's office anticipates a completion period of 3 to 4 years for all projects supported by the 1962 bonds.⁵⁹ With respect to proposed sites for new schools, the superintendent reports that no complaints have yet been lodged by any individual or group.⁶⁰ Although final site selections were made by the board of education in executive sessions, the board formulated all of its bond issue undertakings with the advice of a citizens' screening committee. Here

⁵⁷ These structures will be designed to serve such purposes as physical education, auditorium needs, and bad-weather recreation, as well as affording potential classroom space. They will also be retainable in the future if the older parent buildings should be torn down and replaced.

⁵⁸ The nine schools referred to here are Adams, Cole, Fremont, Hodgen, Jackson, Marquette, Marshall, Simmons, and Webster. As shown by app. C, four of them are located in Negro districts, three in white neighborhoods, and two in racially mixed situations.

⁵⁹ Another important item in the bond issue budget is an estimated \$2,500,000 to effect compliance with St. Louis' fire safety ordinance of 1961 and to correct a number of electrical deficiencies in the older school buildings.

⁶⁰ Of course, no one quarrels with the abstract proposition that school boards are lawfully empowered to select locations for new schools. But, obviously, the power might be exercised in such a way as to violate the 14th amendment. Two recent cases distinctly conceded this, while upholding proposed school construction after specific findings of non-discriminatory and independently rational administrative intent. *Sealy v. Dep't. of Public Instruction of Penn.*, 159 F. Supp. 561 (E.D. Pa. 1957), *aff'd.*, 252 F. 2d 898 (3d Cir. 1958), *cert. denied*, 356 U.S. 975 (1958), 3 *Race Rel. L. Rep.* 455 (1958); *Henry v. Godsell*, 165 F. Supp. 87 (E.D. Mich. 1958), 3 *Race Rel. L. Rep.* 914 (1958). *Cf. Clemons v. Bd. of Educ. of Hillsboro*, 228 F. 2d 853 (6th Cir. 1956), *cert. denied*, 350 U.S. 1006 (1956), 1 *Race Rel. L. Rep.* 311 (1956) ("temporary segregation," pending new school construction, was invalid). Moreover, the planned replacement at its existing site of a factually segregated Negro school, with proceeds from an approved bond issue, was plainly regarded as the back-breaking straw by both the Negro plaintiffs and the Federal district judge in the celebrated *New Rochelle* case. *Taylor v. Bd. of Educ. of New Rochelle*, 191 F. Supp. 181 (S.D.N.Y. 1961), *aff'd.*, 294 F. 2d 36 (2d Cir. 1961), *cert. denied*, 368 U.S. 940 (1961), 6 *Race Rel. L. Rep.* 90, 418, 700 (1961) (neighborhood segregation unconstitutional in light of past gerrymandering, transfers of white children, and board's prolonged failure to take corrective action).

again, careful planning and astute public relations probably yielded the dividend of averting unfavorable reaction.

If, however, as the school administration foresees, permanent construction and more transportables should greatly curtail and perhaps eliminate bus carriage of Negro elementary pupils for relief of overcrowding, the ironic byproduct will be an increase of de facto segregation.⁶¹ This rather gloomy prospect hinges on two assumptions; namely, that schools now receiving bus transportees soon will be resegregated effectively, and that the board of education will not adopt any fundamental departures from its neighborhood school system in the near future. Currently, there seems to be no pressure from the St. Louis Negro community in favor of such departures, as evidenced by parental requests for more neighborhood transportables in order to reduce bus transportation and by a lack of complaint about new school sites. This apparent apathy, on the other hand, is not inherently immutable. In fact, the apathy may be more apparent than real. In St. Louis, prevalent Negro acquiescence in neighborhood schools could reflect, at least in part, an inarticulate judgment that the school administration, and particularly *this* administration, ought not to have the main burden of curing ills obviously associated with residential segregation and not produced by deliberate educational policy. Furthermore, one may guess that many Negro parents, possibly most of them, would consciously prefer uniracial but uncrowded neighborhood schools, if the only feasible alternative were the daily transportation of their children to remote parts of the city.⁶² And, of course, some of them would probably be less than zealous

⁶¹ It will be recalled that all of the new elementary schools and most of the new transportables presently scheduled will be erected in all-Negro or largely Negro neighborhoods, simply because they are faced with the worst overcrowding.

⁶² The superintendent's committee investigating segregation of bus transportees at receiving schools in St. Louis made a few observations pertinent to this question: "Principals, teachers, and parents—as well as citizens—expressed conviction that elementary schools should be neighborhood institutions. Parents of elementary school children in the lower grades especially, were of the opinion that while transportation was unquestionably preferable to oversized classes and above all to double sessions, no effort should be spared to provide first-class basic education for every child in close proximity to his own home at the earliest possible date. Chief among the reasons stated for this belief were (a) the difficulty of school-parent cooperation for educational purposes and parental participation in PTA activities when schools were remote from their homes, (b) the problems created by a child becoming ill in a distant neighborhood, and above all (c) the feeling of rootedness and sense of belonging and security which come to a young child from attendance at a school which is an integral, dynamic part of his community environment. It should be noted, on the other hand, that parents of seventh and eighth grade children transported to high school buildings were not nearly as vocal in this respect as parents of smaller children. Several of them, in fact, indicated that their children had profited by the experience."

It may be assumed that most, if not all, of the parents interviewed were Negroes. But one wishes that the committee had been explicit about this, as well as specifying the numerical and locational scope of its effort to "sample the thinking" of parents and other groups.

about such a program of "social engineering" for reasons other than distance.⁶³

SPECIAL PUPIL TRANSFERS

Another nagging quantitative difficulty⁶⁴ is the matter of special pupil transfers. These are to be differentiated from transfers allowable as a matter of course when children move with their parents or guardians into another school district. The St. Louis Board of Education's announced policy regarding special transfers, that is, permission to live in one district and attend school in another, is both rational and restrictive: such permits will be granted only for reasons of clear educational need or personal hardship unrelated to race.

Negro parents and community leaders have voiced strong criticism of transfers within the high school system. Their suspicions of transfer abuse so as to aggravate racial imbalance in the schools appear to persist in spite of firm denials from the school administration. In December 1961, a special committee of upper-echelon school officials issued a 15-page report to Superintendent Hickey in response to an earlier letter from Dr. Jerome Williams, chairman of the Clark School Parents and Interested Friends Committee.⁶⁵ Among other complaints, Dr. Williams had been exercised over special transfers; and one of his inquiries had cited marked racial imbalances in the two technical high schools, Hadley and O'Fallon. The following explanation for this was supplied by the superintendent's assistant in charge of technical education:

When the O'Fallon Technical High School was opened in 1956 and the Washington Technical High School was moved into the Hadley building, we indicated to the board of education, the principals of elementary and secondary schools, and to a committee of citizens that we were going to offer some subjects at

⁶³ Deeply ingrained feelings of racial and individual inferiority would undoubtedly shape the reluctance of some Negro parents to have their children compete with culturally advantaged white children. There may well be another, and quite different, attitude retarding temporarily the Negro parents' enthusiasm for distant school attendance, namely, a growing pride in the remarkably accelerated achievements of their segregated neighborhood schools and in their equally remarkable personal contributions to those achievements. In St. Louis, "Operation Motivation" by the Banneker Group of elementary schools is a case in point. A major educational breakthrough, the Banneker story is dramatically recounted by William K. Wyant, Jr., in appendix E to this report. By the same token, of course, "bootstrap" successes of that magnitude, coupled with an aggressive attack on residential segregation by community and political leaders, will inevitably diminish the Negroes' initial timidity about interracial competition. This is becoming apparent in New York City's "open enrollment" system, under which the parents of more than 3,000 youngsters decided last year in favor of bus transportation to enable the education of their children in mixed ethnic situations. See U.S. Commission on Civil Rights, *Fourth Annual Education Conference on Problems of Segregation and Desegregation of Public Schools* 127 (Washington, 1962). (Hereinafter cited as the *Washington Transcript*.)

⁶⁴ "Quantitative" here, as elsewhere in this report, is admittedly a somewhat arbitrary label.

⁶⁵ Clark is a regular elementary school, mostly Negro in enrollment, situated at Union Boulevard in St. Louis' West End area.

O'Fallon that were not to be offered at Hadley, and that we were going to offer some subjects at Hadley that would not be offered at O'Fallon. This was being done for several reasons—

- (1) To obtain maximum use of personnel—
- (2) To avoid duplication of expensive equipment for the training of students of advanced standing—and
- (3) To bring together in one building those students with high mechanical and technical aptitudes regardless of racial background.

For example, Aero-Mechanics was to be offered at O'Fallon, Dry Cleaning and Pressing and Shoe Repair was to be offered at Hadley; Advanced Machine Shop and Tool and Die Making was to be offered at O'Fallon, Cafeteria-Tearoom Practice was to be offered at Hadley; Practical Nursing was to be offered at O'Fallon and the Technical Education or Pre-Engineering course was to be offered at O'Fallon. We further indicated that we would permit and encourage transfers between the districts serving the two technical high schools for those pupils wishing to enroll in certain subject areas. We have done this on many occasions. Examinations of our file show that pupils of the entire city have been allowed to make these transfers on the basis of these early indications.

Transfers have also been issued on the basis of suspensions, marriage, change of address, personality clashes between pupils and teachers, return of pupils from institutions of correction, and the judgment of this office as to the success of a particular pupil in a specific school.

Some pupils in both the Hadley and the O'Fallon districts have elected to go to a general high school rather than a technical high school, and, after having had a year or more of Industrial Arts in the general high school, have asked to be transferred to the O'Fallon for the more advanced courses indicated in the preceding paragraphs.

The reporting assistant further affirmed that all technical high school transfers had been made with "complete racial impartiality."

As for special transfers among the general high schools, the superintendent's special committee quoted a statement by the director of secondary education:

We keep a record of all transfers. We have not allowed any transfers at all from any of these schools except in cases where the pupil has chosen, with the approval of his elementary principal, subjects which are not taught in the [high] school in the pupil's district. There were a few students, for instance, who chose German, and German is taught only at three south side schools.

The director apparently deemed it unnecessary to say whether or not German could be offered with practicable operating economy at some of the other high schools. Nor did he or the committee recognize the possibility of white students' "choosing" German and other subjects not taught in their home districts for the sole purpose of getting out of factually desegregated or predominantly Negro schools. A principal's approval would not seem to be a formidable obstacle to successful effectuation of such an undisclosed purpose.

Specific stricture from the Negro community has been aimed at allegedly "wholesale" special transfers of white students from Soldan High to Southwest High not long after desegregation of the general high schools in January 1955. It is certainly true that Soldan's enrollment has since changed from 74 percent white to about 90 percent Negro and that Southwest's has remained essentially all white. But accuracy of the Negroes' assertion is hard to confirm. It is unequivocally traversed by the superintendent, who attributes the resegregation of Soldan primarily to rapid emigration of the white population

from Soldan's West End district between 1950 and 1960 and to a jump in private school admissions after public school desegregation. The West End residential inversion, already mentioned in this report,⁶⁶ is an undeniable fact; and without much doubt it has been the leading cause of Soldan's progressive enrollment increase in Negro students. Some white students have also been specially transferred from Soldan to O'Fallon Technical upon their presumably legitimate decisions to take up a trade. The available statistics, however, throw little or no light upon the question of special transfers by white students from Soldan to Southwest during the relevant postdesegregation period:

Average Daily Enrollments, First Semester of School Years 1954-55 to 1958-59

	1954-55	Desegregation			
		1955-56	1956-57	1957-58	1958-59
Soldan.....	942	1,439	1,199	1,433	1,520
Southwest.....	1,629	1,598	1,571	1,702	1,772

Soldan's initial enrollment surge between 1954 and 1955 was clearly interracial and due to extensive transitional redistricting. The following year's decline, from 1,439 to 1,199, would seem a bit suspicious if Southwest's enrollment had not also dropped slightly. Subsequent increments at both schools suggest no meaningful bearing upon the issue of special transfers.

In brief, documented facts have not been produced to support the charge of large-scale special transfers among the general high schools. Regular Soldan-to-Southwest transfers, occasioned by almost phenomenal shifts in neighborhood occupancy, may have been misinterpreted. One may wish to infer that the school administration has been somewhat lax about special transfers for white students desiring courses, like German, not taught in their own districts. On the other hand, if a transfer applicant is academically qualified for such courses, a school director cannot lightly accuse him or his parents of racial bigotry. Even when that motivation exists, a reasonably unoppressive interrogation is not likely to bare it. An obvious solution to this particular problem—perhaps an expensive one—is to standardize the high school curricula.

Despite some earlier misgivings, most Negro leaders in St. Louis are now apparently convinced that special transfers have not been misused within the elementary system. In the late fall of 1961, the district directors concerned submitted tabulations of special transfers from schools whose enrollments had evolved from all-white or pre-

⁶⁶ See text *supra*, at note 32.

dominantly white to all-Negro or racially mixed. The period covered was September 1955 to June 1961. With a few exceptions, the receiving schools and reasons for transfer were also specified. A total of 21 transferring and 39 receiving schools were involved, although several schools fell into both categories. Over the 6-year period, 234 special transfers were reported,⁶⁷ or an average of less than 2 pupils per transferring school per year. Administrative files, of course, do not identify transferees by race; but perhaps it is of interest that about 31 percent of the 234 were transfers to schools where enrollments have been continuously all-white or virtually so.

A wide range of reasons were given for transfers within the latter group. The most frequent were sibling care or companionship at the receiving school, already attended by an older brother or sister; attendance of an older escort at the receiving school, or employment of a parent in the receiving school's vicinity; disciplinary trouble, truancy, or friction with schoolmates at the sending school; and "maladjustment" at the sending school. In some instances the maladjustment was recorded in terms of general emotional disturbances, in others as "intimidation," and in still others not explained at all. Only four transfers were expressly grounded on racial considerations. One was justified by a mother's prediction of "better adjustment in a school with some white children," and the other three were approved because the applicants were the only white children in their rooms. Standing alone, these last reasons would hardly be acceptable to an ardent desegregationist. By and large, however, the special transfer record does not establish a pattern of abused discretion, or even a significant degree of resegregation in result.

⁶⁷ One of the directors, however, reported only an alphabetical sampling (about 20 percent) of transferred pupils for 1956-59. An additional 31 transfers were reported for 1961 by the director of the Long Group, in the south side. This tabulation concerned three transferring schools, with all-white resident enrollments, which were receiving Negro bus transportees from other districts. But the director stated flatly that no resident pupils had been allowed transfers to schools not housing transportees.

Effect of Racial Imbalance on Quality of Education

TEACHER DISTRIBUTION

The board of education's transition plan of 1954 guaranteed the tenure rights of teachers then employed and assured future appointments from a single examination-rated list, without regard to race or color. Unlike some desegregating communities, the general shortage of teachers in St. Louis has consistently been such that adherence to the board's announced policy has not been difficult. No Negro teacher has involuntarily left the system as a consequence of desegregation. Nor, apparently, has any racial discrimination with respect to appointments, salaries, or promotion in the teaching ranks come to light since 1954, or even been charged. On the other hand, as previously mentioned, the racial distribution of teachers in the St. Louis schools still parallels racial concentrations of pupils rather closely.

This situation raises at least two questions about its special effect on Negro children attending all-Negro or predominantly Negro schools. The development of comparably segregated white children is also involved, of course. The first question is relatively easy to answer: If the psychological premise of the 1954 *School Segregation Cases* has any relevance to factual segregation, and if the inculcation of democratic and humanitarian values by example as well as precept is a major objective of public education, a majority of both Negro and white pupils in St. Louis are presently deprived of a full educational opportunity. This has not yet been held to be unconstitutional per se, but neither was the enforced segregation of teachers or pupils 9 years ago. The school administration is undoubtedly concerned about democracy in all aspects of the school system's operations. Its concern was evidenced by remarks of the superintendent's racial "trouble shooting" committee in reporting last June on bus transportees at receiving schools. Teachers and other school personnel are next on the committee's agenda.

The second question suggested by a racially unbalanced distribution of teachers has to do with a possible inequality in the caliber of teaching. This is not only a subject of some sensitivity, but in the absence

of exhaustive, firsthand investigation, the probative facts are elusive. There is a widespread belief among educators and researchers that Negro teachers in most compulsorily segregated Southern and Border States have been generally less qualified than their white colleagues. Lower admissions criteria and a comparative laxity of academic standards in some Negro colleges have been blamed in part for the alleged disparity. It has also been pointed out that nearly all of the Negro teachers in those States were educated in typically inferior segregated elementary and secondary schools. Certainly neither of these observations is baseless in fact. And a preponderance of the Negro teachers now employed in those Southern States which have desegregated in varying degrees since 1954 are products of the same relatively inadequate training circle.

Nevertheless, many great teachers of every race have surmounted such handicaps by native talent, strong motivation, teaching experience, and continuing self-education. Nor are the factors germane to professional quality among Negro and white teachers in St. Louis identical to the usual analytic elements found in communities of the Deep South. In the first place, non-certified teachers may no longer teach in the Missouri public schools. The State Department of Education restandardized teaching certificates in 1961, and at the same time adopted an exclusionary rule with respect to those not qualified. All teachers in the St. Louis system, including substitute teachers, were certified in 1961-62.

Moreover, a random sampling of teachers' credentials (not racially labeled of course) fails to reflect any discernibly inferior college training of the Negro teachers. A 275-person sample shows a background of 46 different colleges and universities for the public elementary teachers whose files were examined. Only 13.1 percent of the group graduated from all-Negro or predominantly Negro institutions, and some of the latter are institutions of good repute; for example, half went to Lincoln University at Jefferson City, Mo., which has a fine academic reputation and in recent years a substantial desegregation of both students and faculty. About 58 percent of the elementary teachers sampled graduated from St. Louis' own Harris Teachers College or from one of its pre-1954 segregated predecessors. Besides having almost an ideal racial composition today,⁶⁸ Harris is accredited by the North Central Association.⁶⁹ Although its offer-

⁶⁸ See *supra*, note 17.

⁶⁹ Harris and Stowe Teachers and Junior Colleges, merged and extended in curricula in September 1954, were previously so accredited. A detailed analysis of these ancestral schools was made by the Missouri Supreme Court in disposing of an unsuccessful lawsuit brought to compel admission of the Negro plaintiff to Harris (then all-white). *State ex rel. Toliver v. Board of Education of St. Louis*, 230 S.W. 2d 724, 727-30 (Mo. 1950).

ings are limited to undergraduate courses, it is regarded as an excellent teacher-education college.

A like sampling of the St. Louis high school faculties discloses an award of baccalaureate degrees from 43 colleges and universities among the group of 111 teachers. Nearly all of these institutions are located in Midwestern or Northern States, and none of them graduated a very large proportion of the random sample. Harris Teachers College, Washington University, Lincoln University, and the University of Illinois lead the list, with 14.4, 13.5, 9.9, and 6.3 percent, respectively. In the 11 St. Louis high schools last year, an average of 65.7 percent of the classroom teachers ⁷⁰ had earned a master's degree.⁷¹ The Soldan faculty, with 64 percent, was the only chiefly or entirely Negro staff to be at all below average in that regard. The others, at Hadley Technical (69 percent), Sumner (78 percent), and Vashon (85 percent), were either on a par with or better qualified than the predominantly white faculties in terms of graduate degrees. The Negro high school teaching corps also shows up well in years of teaching experience, which is perhaps more significant than academic degrees. For the 11 high schools, the average total service was 19.3 years as of June 1962. Teachers at two of the four predominantly Negro schools "scored" higher than that:

	School	Average Years of Teaching
Hadley Technical ⁷²	18
Soldan	16
Sumner	21
Vashon	23

A comparative analysis of costs per pupil sometimes tends to corroborate a general inferiority of Negro schools, particularly where segregation is or has been required by State law. Inasmuch as teachers' salaries normally comprise the largest single item in operating expenditures, a consistently larger outlay per pupil in the white schools supports a suspicion of unequal teacher-qualification, or understaffing of the Negro schools, or both.⁷³ This tentative inference is possible even where Negro teachers individually are in no

⁷⁰ Librarians and administrators were omitted from this survey.

⁷¹ Only two held a doctorate. One was teaching at McKinley (enrollment about 30 percent Negro) and the other at Roosevelt (enrollment about 2 percent Negro).

⁷² Hadley Technical, however, with about a 95 percent Negro enrollment, showed a faculty experience average superior to that of O'Fallon Technical, which has an enrollment and staff at least two-thirds white and probably higher. Average teaching experience at O'Fallon in June 1962 was 16 years. A similar difference between the two technical faculties appears in the master's degree statistics: Hadley had 69 percent, as against O'Fallon's 43 percent.

⁷³ Although not always reflecting instructional quality, a direct comparison of teachers' salaries by race would be a less diffused approach to the question of teacher qualification. Because of racial nondiscrimination of teachers, as well as some sensitivity about "public relations," these figures were not made available by the St. Louis school administration.

way subjected to economic discrimination because of race. Higher average salaries for white teachers, if such is the case, may have been based upon academic and experience factors. But per capita costs, no less than gross expenditures, must be viewed with caution. Discrepancies may and often do arise from school operating characteristics which are unrelated to teaching competence, pupil-teacher ratios, or anything else necessarily affecting educational quality. Variations in size of total school enrollment, utility and service costs, administrative needs, administrative efficiency, technical accounting allocations, special curricular or centralized programs, and expendable supply and equipment requirements are only some of the things that must be considered in weighing the relevance of operating costs per pupil to the adequacy of instruction. Uneven yearly fluctuations in most cost items will also occur.

Perhaps the foregoing caveat will minimize the risk of hasty conclusions from a tabulation of 1960-61 operating costs⁷⁴ at a categorized selection⁷⁵ of 37 elementary schools and all of the high schools in the St. Louis public system:

ELEMENTARY SCHOOLS

Smaller All-Negro Populations			Smaller All-White Populations		
School	Average daily attendance	Operating cost per pupil	School	Average daily attendance	Operating cost per pupil
Banneker.....	635	\$371.92	Irving.....	478	\$366.54
Curtis.....	416	333.42	Lindenwood.....	351	353.05
Turner.....	400	358.54	Longfellow.....	222	407.12
Vashon (elem.).....	503	304.65	Nottingham.....	260	467.78
Waring.....	389	440.41	Windsor.....	403	344.13
Averages.....	469	361.79	Averages.....	343	387.72

Larger All-Negro Populations			Larger All-White Populations		
School	Average daily attendance	Operating cost per pupil	School	Average daily attendance	Operating cost per pupil
Carr Lane.....	907	\$350.55	Fanning.....	620	\$346.34
Cole.....	716	352.51	Mullanphy.....	662	369.16
Cote Brillante.....	848	295.53	Scruggs.....	537	361.28
Dunbar.....	794	377.32	Sherman.....	614	310.52
Simmons.....	975	328.62	Woerner.....	494	340.03
Averages.....	848	340.91	Averages.....	585	345.47

⁷⁴ The figures given were furnished by the superintendent's office. They are based on total expenditures and average daily attendance at each school.

⁷⁵ It will be apparent here that the primary sampling and classification criteria adopted were size and racial composition of pupil populations. Geographic distribution was a secondary selection factor in the first four elementary tables, and of course economic-cultural environment was combined with race in the sixth elementary group (white slum schools).

ELEMENTARY SCHOOLS—Continued

Evenly Balanced (Estimated) Racial Populations

School	Average daily attendance	Operating cost per pupil
Ashland.....	800	\$305.77
Henry.....	688	363.52
Peabody.....	515	337.79
Rock Spring.....	386	352.20
Averages.....	597	339.82

White Slum Area Populations

School	Average daily attendance	Operating cost per pupil
Ames.....	645	\$327.92
Blair.....	595	322.35
Clay.....	602	369.22
Humboldt.....	502	421.53
Wade.....	303	447.99
Averages.....	529	377.80

Appreciably Mixed But Predominantly Negro Populations

School	Average daily attendance	Operating cost per pupil
Chouteau.....	484	\$312.93
Harrison.....	578	306.44
Scullin.....	466	340.58
Averages.....	509	319.98

Appreciably Mixed But Predominantly White Populations

School	Average daily attendance	Operating cost per pupil
Clinton.....	619	\$344.91
Lyon.....	380	354.39
Maddox.....	253	381.10
Webster.....	764	318.80
Wyman.....	729	333.28
Averages.....	549	346.50

GENERAL AND TECHNICAL HIGH SCHOOLS

All or Nearly All-Negro Populations

School	Average daily attendance	Operating cost per pupil
Soldan.....	1,320	\$571.00
Sumner.....	1,738	544.20
Vashon.....	934	636.37
Averages.....	1,331	600.52

All or Nearly All-White Populations

School	Average daily attendance	Operating cost per pupil
Cleveland.....	1,781	\$537.51
Roosevelt.....	1,907	570.26
Southwest.....	1,745	507.88
Averages.....	1,811	588.55

Substantially Interracial Populations

School	Average daily attendance	Operating cost per pupil
Beaumont (about 30% Negro).....	1,614	\$581.40
Central (about 15% Negro).....	1,146	555.69
McKinley (about 30% Negro).....	1,148	586.59
Averages.....	1,303	574.56

Technical High Schools

School	Average daily attendance	Operating cost per pupil
Hadley (about 95% Negro).....	1,500	\$676.08
O'Fallon (about 30% Negro).....	1,840	668.17

It is worth noting that all of the elementary listings show a considerable spread in operating cost per pupil within each classification. These intragroup ranges, in fact, invariably exceed the average differentials between those categories which permit a direct racial comparison. Equally noteworthy is a generally lower operating cost per pupil in schools having larger average attendances, irrespective of racial composition. That kind of variation, doubtless attributable in the main to economy in overhead costs as pupil populations go up, was to be expected in both the elementary and high schools, with

only occasional exceptions. Since the essentially Negro elementaries are consistently populated more heavily and the essentially Negro high schools less heavily than their white counterparts, the size-economy factor rather than race will apparently explain, at least in part, the opposing tendencies as between the St. Louis elementary and high schools. Vashon Elementary Center (all-Negro) in the first table is the most conspicuous of the occasional exceptions to turn up. Its per-pupil operating cost was much lower than at the larger Banneker school (all-Negro), and also lower than costs at two all-white schools, Irving and Woerner (second and fourth tables) which are comparable in size. The reported expenditures, however, cover but one fiscal year. And in any event Vashon Elementary's relative operating economy is presumably due in some degree to its utilizing a part of the Vashon High School physical plant.⁷⁶ Quite possibly, moreover, a 27 percent sampling does not reflect accurately every potentially meaningful variation in per capita operating costs among the regular elementary schools.⁷⁷

Apart from the teacher's knowledge and skill, educators generally assume that small classes facilitate the speed and depth of learning. If this is true, a great majority of the St. Louis Negro pupils fare in that qualitative dimension about as well as the white pupils. In several Negro elementary schools last year, the children had an advantageous pupil-teacher ratio compared with the average for all-white or predominantly white elementary schools. Overall, the latter group enjoyed a slight superiority: Their average ratio was 29.67 to 1 during the first semester of 1961-62, whereas the average in all-Negro or predominantly Negro schools at the same time was 30.20 to 1. The high school pupil-teacher ratio was good, averaging about 21 to 1, and was very close to uniformity throughout the system.⁷⁸

Upon the known evidence, then, it cannot be said that Negro pupils in the St. Louis public schools suffer as a class from comparatively inferior instructional standards merely because most of their teachers are Negroes. A close scrutiny of teacher-qualifications, operating costs per pupil, and pupil-teacher ratios does not sustain such a proposition. An undiscovered average disparity of teaching effectiveness between Negro and white teachers in St. Louis, which is by no means assumed here, could be dismissed as negligible if a really significant racial heterogeneity were achieved among teaching staffs at a major-

⁷⁶ In this connection, it should be observed that Vashon High's operating cost per pupil in 1960-61 was far higher than that of any other general high school.

⁷⁷ The author was advised in the summer of 1962 that the St. Louis school board's auditing department did not maintain a periodic breakdown of operating costs per pupil in each of the elementary schools. In view of time limitations, the sampling used here was then requested by the author and prepared by the auditing department.

⁷⁸ Average pupil-teacher ratios were computed from average daily attendances per teacher as reported for each school by the St. Louis Board of Education's Official Report of February 13, 1962. The reported figures were used in conjunction with unofficial estimates of racial composition.

ity of the city's schools. That objective, as noted previously, may be justified easily on other grounds. And it need not wait on massive change in the pattern of pupil segregation. There is no sacrosanct educational virtue in a "neighborhood" system of teaching assignments.

But the first step of inducing a substantial number of white teachers to work willingly in densely Negro districts will be a hard one, even for St. Louis. A clear trend in the racial distribution of teachers since 1954 will have to be reversed. Salary raises as a lure to attract white teachers into more demanding and frequently overcrowded Negro schools would almost surely encounter opposition from the National Education Association and American Teachers Association, to say nothing of the teachers' unions.⁷⁹ Until residential segregation is overcome, the most realistic hope would seem to lie in an intensified program of teacher-education and persuasion. Teachers in general, and white teachers in particular, may be motivated to serve more often in the areas of greatest underprivilege and cultural need if they are given an understanding of the special professional problems they will confront and specific training in techniques of attacking those problems.⁸⁰ Such a program should be relatively easy to develop in St. Louis, in view of its favorable experience in human relations, among teachers and other organized groups. Furthermore, supporting stimuli may come from remarkable upsurges in pupil performance at many of the Negro schools, like the Banneker Group,⁸¹ and from an early prospect of "middle income" housing renewal at the fringes of some Negro neighborhoods.

ABILITY GROUPING OF PUPILS

Although not avant-gardist, the St. Louis public school administration in the last few years has experimented on a large scale with flexible curricula and teaching methods in relation to various classifications of learning capacity and measured achievement. Despite many unsolved problems in the accurate appraisal of young minds and motivations, especially for predictive application, St. Louis' educational philosophy now conforms in this aspect to a growing, perhaps dominant, body of informed opinion.⁸² Of course present-day educators have not ceased

⁷⁹ Most of the St. Louis teachers are members of the N.E.A. or its all-Negro affiliate, the A.T.A. Only a few have joined a union.

⁸⁰ The urgency of teacher training along these lines was articulated forcefully by Dr. John H. Fischer, dean of Teachers College, Columbia University. See *Washington Transcript* 34-36.

⁸¹ See app. E.

⁸² See, e.g. Conant, *The American High School Today* 46-47, 49-50, 51-55, 57-60, 62-63 (1959); Morse, *Schools of Tomorrow—Today* 29-40, 180-87 (1960). Rieckover, *Education and Freedom* 111-30, 134-36 (1959); Trump and Baynham, *Focus on Change—Guide to Better Schools* 45-46, 53-57 (1961).

to disagree over the value priorities they perceive in curricular structures, pedagogical approaches, scheduling, and individualization of pupil programs. The ferment is just reaching a full bubble.

Flexibility for more efficient and productive education, however, is beyond the scope of this survey except as it may hamper racial heterogeneity in the schools, either purposefully or casually. One of the national experts on human relations in education, Dr. Dan Dodson of New York University, adverted to this matter at a conference last May:⁸³

Some [desegregated] school systems capitalize on the disadvantage of the Negro youth because of his traumas of the past, and group on so-called ability bases, and provide a high degree of segregation. Sometimes one is led to think it is only coracial education in the same building.

There is not a shred of evidence that ability grouping has been used in St. Louis with segregative intent centered on race. But the possible reinforcement of de facto segregation by such grouping should not be ignored.

Ability groupings within a school add nothing directly to racially segregated situations created in the first place by unracial neighborhoods and neighborhood school attendance. Achievement and test comparisons between all-Negro and all-white schools conceivably may impede major changes in neighborhood patterns. Ability grouping of pupils, however, is immediately significant in the racially mixed schools if in fact it leads to racial stratification or "horizontal" segregation. Racial proportion estimates are reliable enough to say that St. Louis' public system has three general high schools, one technical high school, and 15 to 18 regular elementary schools with substantially interracial enrollments. More than 13,000 pupils attended these schools last year.

It has been noted that St. Louis operates 65 special elementary schools for retarded but educable children. A Binet I.Q. below 80 is the main basis of selection. At age 16 these pupils are promoted to a 2-year "terminal education" program at the general high schools.⁸⁴

⁸³ *Washington Transcript* 140.

⁸⁴ The St. Louis Director of Special Education summarized the terminal program in a memorandum of 1960: "The Terminal Education course is planned with emphasis upon prevocational and trade-training, rather than vocational training. The program of each pupil is scheduled so that he spends approximately one-half of the school day with a special teacher and the other half in regular high school classes. The special teacher serves as guidance counsellor to each student and works out a course program in relation to the abilities of the individual. High school courses frequently chosen for the mentally retarded include: general shop, driver education, foods, clothing, art, music, personal safety, physical education, general math, etc. The academic work with the special teacher stresses the language arts, arithmetic, everyday science, citizenship, human relations and vocational information. During the second year of the program wider opportunity is given the individual to devote time and energy to those situations which he will face in the labor market. The program is coordinated with Vocational Rehabilitation and the Missouri Employment Office. During the second year of the Terminal Education program, counsellors from both the Vocational Rehabilitation Office and the Missouri Employment Office contact each pupil at the school and assist in the vocational planning, vocational training, and job placement. Appointments for interviews with employment counsellors are made."

In 1961-62 the 65 special elementaries had a total enrollment of about 2,200 and the 8 high school terminal groups about 430. By rough current estimates, 75 percent and at least 50 percent of the retarded elementary pupils and terminal high school students, respectively, are Negroes. Constant progress is being made in the test-achievement identification and fruitful training of retarded children in St. Louis. It is also as important for these youngsters as for their more fortunate contemporaries to receive healthy interracial exposures in their daily routines. On the other hand, there would seem to be very little, if anything, the school administration can do to change a racial imbalance within retarded groupings. The interplay of ability categories and de facto racial segregation at "normal" levels of mental capacity is clearer in the sense that the schools themselves can do something about it. There is no longer any doubt that motivation to learn is receptive to amazing advancement among culturally deprived children, or that deficiencies in acquired learning can be made up by compensatory instruction.

At the other end of the scale, gifted children in St. Louis not only get a suitably challenging academic offering but a highly favorable racial consolidation as well.⁸⁵ These children attend special, group-segregated classes in elementary grades five through eight. In June 1962, there were 825 pupils in the gifted-child program, conducted at seven selected, and generally all-white, elementary schools. Most of the gifted group will go into high school track 1-A, an unusually intensive college-preparatory curriculum which is presently limited to three of the general high schools⁸⁶—Beaumont (total enrollment about 30 percent Negro), Cleveland (essentially all-white), and Southwest (essentially all-white).⁸⁷ These schools last year had an aggregate of 720 track 1-A students. In terms of racial composition, the main problem now is that only about 5 to 10 percent of those able to qualify for the gifted child grouping are Negroes. Their gross number if not proportion could be increased by a slight lowering of the I.Q. prerequisite, and perhaps also by a greater flexibility of entrance into the elementary program which could be justified by the well-known fact that I.Q. scores sometimes go up as children develop mentally and emotionally.⁸⁸

⁸⁵ A Binet I.Q. above 130, supported by superior achievement in the first four grades, is the qualification for St. Louis' gifted ability grouping.

⁸⁶ Curricula at the St. Louis technical high schools may lead to college if the student and counselors are careful in their selection of elective courses. For example, the pre-engineering sequence at O'Fallon is designed for college preparation. Of course the quality of performance is a critical factor in latitude of choice and eventual college qualification at the technical high schools.

⁸⁷ It is not known whether an appreciable number of the gifted Negro elementary graduates go on to Cleveland or Southwest. In view of the typical residential proximities, it is assumed that most of them go to Beaumont.

⁸⁸ Nor is there much doubt that even the brightest, best-adjusted child—like Stan Musial—can have a "bad day."

Thus it appears that ability grouping in the St. Louis scheme does not accentuate de facto segregation among regular elementary pupils, or produce racially segregated strata at the relatively few interracial schools. From the fifth grade through high school, gifted Negro children are actually assured of integrated situations. All of the regular pupils are promoted by achievement levels in each basic subject during the first three elementary years (the "ungraded primary"), but the non-gifted majority are not otherwise pigeonholed by ability indices. If, as estimated, a preponderance of the retarded pupils are Negro, the grouping is still justified beyond rational dispute; and the racial composition is significantly changeable, it is believed, only by social forces outside the school milieu. St. Louis public educators, however, do have a present opportunity to harmonize more closely the benefits of ability grouping and racially dispersed stratification in the three interracial general high schools, Beaumont, Central, and McKinley.⁸⁹

Apart from the academic elite in track 1-A and the terminal education group, all general high school students have been channeled since 1957 into three achievement tracks, beginning with the ninth grade. Track I is for "major learning pupils," track II for "average pupils," and track III for "low achieving pupils." Placement in the first instance turns on performance in the Iowa Basic Skill Tests (reading, language usage, and arithmetic), which are given during the last elementary year. Track I students follow a precollege program. The track II or "average" group may choose from six different curricula: college preparatory, industrial arts, home economics, business education, art, drawing, or music. Except for college preparation, the track III low achievers have the same curricular options; but their classes are typically separate from those of track II students. Track enrollments for the nine general high schools in 1961-62 are shown in the following tabulation:

All or nearly all-Negro schools

	Track I	Track II	Track III
Soldan.....	273 (16.7%)	815 (50%)	543 (33.3%)
Sumner.....	218 (11.7%)	953 (51.3%)	686 (36.9%)
Vashon.....	166 (18.1%)	532 (57.9%)	221 (24%)
Averages.....	219 (15.5%)	767 (53.1%)	483 (31.4%)

⁸⁹ It will also be recalled that the prospect of a substantially interracial student body at the new Northwest High School is excellent.

All or nearly all-white schools

Cleveland.....	721 (42.1%)	909 (53.1%)	83 (4.8%)
Roosevelt.....	749 (35.2%)	1,285 (60.3%)	96 (4.5%)
Southwest.....	718 (43.4%)	836 (50.5%)	102 (6.1%)
Averages.....	729 (40.2%)	1,010 (54.6%)	94 (5.1%)

Substantially interracial schools

Beaumont.....	496 (33%)	847 (56.3%)	161 (10.7%)
Central.....	226 (18.5%)	860 (70.6%)	133 (10.9%)
McKinley.....	341 (20.9%)	1,087 (66.7%)	202 (12.4%)
Averages.....	354 (24.1%)	931 (64.5%)	165 (11.3%)

No estimates of racial makeup have been ventured for each track at the third group of schools. But inasmuch as tracking standards are uniform throughout the system, regardless of racial distribution, statistics in the other two categories are probably instructive. They suggest that at Beaumont, Central, and McKinley (the substantially interracial high schools) a disproportionate percentage of students in track I have been white and a similar disproportion in track III have been Negro. It should be kept in mind, of course, that overall majorities at all three schools are white. Scholastic tracking, moreover, does not necessarily hinder an erosion of the racial barrier in athletics and other extracurricular activities. At most, one may infer a tendency toward horizontal racial segregation in those schools as a consequence of achievement grouping.

William K. Wyant's account of "Operation Motivation"⁹⁰ in the 23-school Banneker Elementary Group, however, inspires a prediction that the tendency will disappear in a few years. The proportion of Banneker Group track I qualifiers jumped from 7 percent in 1957 to 22 percent in 1961; at the same time track III graduates declined from 47 to 10.8 percent. The initiative, drive, and methods of group director Dr. Samuel Shepard (now an assistant superintendent) are fast catching hold in the other Negro elementary schools.⁹¹ Of significance too is a prospective liberalization of techniques for the shifting of high school students from one track to another. This is already possible, but so far has rarely occurred beyond the ninth grade.

⁹⁰ See app. E.

⁹¹ New York City's "Higher Horizons" program has likewise produced some instances of spectacular achievement gains by pupils in the Harlem schools. See *Christian Science Monitor*, July 12, 1962, p. 11. The St. Louis and New York experiences are proving to be contagious in other northern cities. See *Time*, Mar. 16, 1962, p. 53 (Detroit); *id.*, Aug. 24, 1962, p. 55 (Philadelphia).

Prognosis and Conclusion

Inequality of housing opportunity is at the core of de facto segregation in northern city schools. St. Louis is no exception. Residential discrimination spawns Negro ghettos; and the neighborhood school philosophy in that matrix inevitably creates a prevalence of all-Negro and all-white schools, especially at the elementary level. No doubt the St. Louis pattern will be broken ultimately. The breaking, however, promises to be slow, halting, and painful. In this writer's judgment, some of the top school people in St. Louis are far too sanguine, or appear to be, concerning the growth of heterogeneous neighborhoods in their community in the near future.

The Negro who aspires to move into a presently white middle- or upper-class environment, irrespective of his economic standing or personal attributes, is almost invariably confronted by one or more extra-legal hurdles erected by prejudice, fear, or greed. Notwithstanding the United States Supreme Court's decision in a St. Louis case, *Shelley v. Kraemer*,⁹² racially restrictive covenants are still practically effective in some parts of the city and St. Louis County. Such agreements may be formal or informal, and defections may be tightly curbed by all-white "protective associations." Attempted judicial enforcement of these agreements does not arise.⁹³ Other obstacles are equally formidable: (1) addiction of many white citizens to the stereotyped assumption, often seconded if not suggested by real estate agents, that an entry of Negroes will depress property values; (2) denial of loans to Negroes for residential construction or purchase in exclusively white areas; (3) inflated pricing of homes to prospective Negro purchasers; (4) refusal of landlords to rent housing, even old housing, in white neighborhoods to Negroes; (5) exclusion of qualified Negroes from the St. Louis Real Estate Exchange and its parent, the National Association of Real Estate Boards.⁹⁴

Negro ghettos also are fostered and extended by other forces, both aggressive and inertial. There is a widespread belief that powerful groups within the real estate community are allowing slums, Negro and

⁹² 334 U.S. 1 (1948).

⁹³ The local pre-*Shelley* background and some of its aftermath are discussed informally in a book published in 1959. See Vose, *Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases*, 100-21 (1959).

⁹⁴ For most of the housing information used in this report, in addition to a helpful background regarding the Negro's vocational opportunity in St. Louis, the author is indebted to J. Phillip Waring, Executive Secretary of the St. Louis Council on Human Relations.

white, to spread for profit. "Block-busting" promotion by real estate agents has been enormously profitable, although probably not as much so in St. Louis as in Chicago⁹⁵ and one or two other cities. Low-cost public housing, besides ameliorating slum blight, has been interracially occupied in a few locations in St. Louis; but it has barely affected the denser Negro concentrations.⁹⁶ Private housing renewal, as in the huge Mill Creek Valley project of east-central St. Louis, is far beyond the means of all except a few Negro families, even when theoretically open to all races. "Middle-income" housing of this quality, involving high-rise apartment buildings and two-story "garden type" units, is illusory enough for many white families who are tolerably prosperous. Bright spots for the Negro in the total St. Louis housing picture are scarce indeed.⁹⁷ A long-range program—legislative, administrative, organizational, economic, and educational—will be necessary fairly to disperse the Negro population of St. Louis within the city or its suburbs. And race prejudice itself, whether bigotry or merely the white man's "ego crutch," must be the foremost assault victim. Great strides, however, are possible and essential if racial intolerance is to be banished from the St. Louis and American scene.

A pervasive denial of equal vocational opportunity is another tough, long, and perhaps fundamental strand in the seamless web of the Negro's second-class American citizenship. St. Louis is little different from other northern cities in this respect. The average white family income there is now about double that of the average Negro family. But St. Louis does loom as a major battleground in one critical sector of the job front, namely, the enrollment of Negroes in trade apprenticeship training and their consequent qualification for skilled employment in the construction industry. The *Post-Dispatch* reported on April 1, 1962, that the NAACP had selected St. Louis as a "test city" in its national campaign to accelerate the hiring of Negroes in building and other construction projects. This decision, no doubt, was prompted in part by the city's billion-dollar urban

⁹⁵ See Vitcheck. "Confessions of a Block-Buster." *Saturday Evening Post*, July 14-21, 1962, pp. 15-19 (Chicago). Various other analyses of housing "re-segregation" have appeared recently in the press. See, e.g., O'Donnell, "Race & Residence," *Wall Street Journal*, Aug. 13, 1962, pp. 1, 4.

⁹⁶ *The 50 States Report: 1961 Report to the Commission on Civil Rights from the State [Mo.] Advisory Committee* 332. This report listed several needs for action by the Federal Government to insure nondiscrimination in the availability of federally-assisted housing projects. *Id.* at 332-33.

⁹⁷ A few encouraging instances have occurred lately, and their frequency curve seems to be inching upward. Probably a half-dozen Negro professional people reside in the downtown Plaza Apartments, a 3-year-old group of six upper middle-class apartment structures. A Negro doctor and his wife were among the first to occupy one of the new "garden type" units in Mill Creek Valley. The neighbors of Windemere Place, a relatively secluded street in the West End graced by some 30 large mansions, have maintained an almost even racial balance for about 5 years. At least two Negro families, with children, succeeded in buying and occupying homes during the past year in University City, a formerly all-white St. Louis County suburb just beyond the west-central city limits. After one of these entries, the white residents held a block party to welcome their new Negro neighbors.

renewal program, just getting underway. Racial discrimination in most of the St. Louis craft unions is a notorious fact. It was acknowledged in the spring of 1962 by Boris Shishkin, national director of the AFL-CIO's Civil Rights Committee, in a speech to the St. Louis Labor Council.

Although apprenticeship training has been conducted at public and private school facilities in St. Louis for more than 20 years, no Negroes were enrolled by the jointly-operating unions and employers until October 1961. By April 1962, only 7 Negroes were among 797 apprentices in 16 different programs at O'Fallon Technical High School. Unobstructed employment opportunity will not come overnight, but the NAACP and allied groups are almost certain to win this battle. Early in 1962 the St. Louis Board of Education ordered a full investigation of allegedly discriminatory practices in the apprenticeship training at O'Fallon, and resolved to withdraw the school's participation if such discrimination were discovered and not quickly remedied.⁹⁸ The NAACP has assurance from the President's Committee on Equal Employment Opportunity that the Federal Government will withdraw certification of any apprenticeship operation found to have racially discriminatory features. Among other things, noncertification would disqualify all apprentices enrolled in the offending program from working on construction projects for which the Secretary of Labor predetermines prevailing wages under the Davis-Bacon Act. The U.S. Department of Labor has already withdrawn registration from apprenticeship courses using the facilities of the Ranken School of Mechanical Trades in St. Louis, a privately-endowed institution restricted to male Caucasians.

Beyond the skilled trades and service jobs, manufacturing in St. Louis offers a rich and challenging opportunity for employment of Negroes. Some human relations progress has been made in that segment of the local economy, but the potential for both Negro and white wage earners in industrial production is still great. Eventually, moreover, the city's Negro population should reap material benefits from administration of Missouri's Fair Employment Practices statute,⁹⁹ enacted in 1961. The point of real urgency in the meantime is an equal opportunity for broadly-based employment qualification.

But what of the political machinery, the school administration, and the courts while the circle-pursuing Negro in St. Louis is struggling for equality of education so that he can have equality in housing and employment so that he can get equality in education? The civic and political backdrop is much more favorable for great social change than in most other American metropolises, perhaps more favorable

⁹⁸ See St. Louis Council on Human Relations Newsletter, Mar. 1962. The programs are partly financed with State and Federal funds which are available only if the courses are taught on public school premises.

⁹⁹ Mo. Rev. Stat. secs. 296.010-296.070 (Vernon, Supp. 1961).

than in any other city except New York. Since July 1961, St. Louis has had an increasingly effective ordinance outlawing racial discrimination in all public accommodations. Enforcement of the criminal law is unusually efficient and progressive.¹⁰⁰ The Board of Aldermen has six Negroes among its 29 members and a Negro Director of Legislative Research. Both the St. Louis Director of Welfare and the Executive Secretary of the St. Louis Council on Human Relations are Negroes. One circuit judge, one assistant city counselor, two magistrates, two constables, one State senator and three State representatives from St. Louis, and nine members of the Democratic City Committee are Negroes. The same is true of one member of the Missouri Board of Education, one commissioner in the Housing and Land Clearance Authority, an assistant Missouri attorney general from St. Louis, and one member of the President's Committee on Fair Employment Practices, chaired by the Vice President. At policy-making and top executive levels in the St. Louis public school system, two members of the board of education are Negroes, as well as four assistant superintendents and one director of secondary education.

Furthermore, the school leadership has been notably successful in removing racial barriers in two important operating spheres. Under a special Missouri statute of 1961, presently applicable by its population terms to St. Louis only and "relating to [school district] employees other than teachers and superintendent," the school board has improved considerably the nonwhite proportion of its clerical and other noncertificated personnel. The public summer schools, which included about 1,400 Negro and 1,800 white students in 1962, also have been less segregated than the regular sessions. In 1962 an 8-week summer program was offered at each of three high schools, Central, Roosevelt, and Sumner. As in recent summers, district boundaries were ignored and students given complete freedom of choice. They have tended in fact to elect the school nearest their homes; but the high school summer session enrollment has nevertheless been more interracial than is characteristic of pupil distribution during the regular academic year. One 6-week summer elementary program, somewhat less biracial than the high schools', was operated in 1962 at the normally all-Negro Clark school.

This experience, along with certain other previously-observed features of the St. Louis system, makes one wonder why the school administration is dedicated to the neighborhood school theory. True, it is viewed as a "positive concept" because of its obvious convenience and economy and the fact that out-of-district attendance permits are occasionally sought and granted. It is also true that the neighborhood school policy is supported by eminent authority¹⁰¹ and the weight of

¹⁰⁰ See *Time*, Aug. 24, 1962, pp. 12-13.

¹⁰¹ See Conant, *Slums and Suburbs* 28-32 (1961).

actual practice around the country. In St. Louis a majority of Negro parents seem to prefer neighborhood schools, regardless of their all-Negro enrollment. On the other hand, even discontented people are inclined to prefer the status quo, especially if it happens to be an improving status quo. Disruptive, untried alternatives may seem too burdensome to shoulder when the rewards are intangible, and perhaps not fully understood, and tangible benefits lie over a limited horizon.

In any event, much greater freedom of choice in school attendance could be allowed and even encouraged in St. Louis. Large Negro concentrations pose special transfer problems, but in 1961-62, 3,000 Negro children were bused daily, to distant and for the most part, white schools to relieve overcrowding in their neighborhood schools. Several thousand more could escape from segregated schools in like fashion if the St. Louis "transportables" were moved to other locations. New York City transports some 50,000 children daily.¹⁰² In some respects the Baltimore system of free choice of schools is even more impressive. A Baltimore school official reported in May 1962 that more than 51,000 of the city's 93,000 Negro pupils are in biracial schools as a result of the free choice policy. He estimated that less than 20,000 of them would be so situated in an orthodox neighborhood operation.¹⁰³

While the *School Segregation Cases* of 1954 clearly did not reach the question whether a constitutional duty exists to desegregate factually segregated schools, not created or maintained by deliberate local law or policy, the Supreme Court's condemnation of enforced segregation turned explicitly on the nine justices' persuasion that separate Negro schools are inherently inferior. The measure was not tangible disparity, but psychological and motivational disadvantage. It is hard to believe that the Court was attributing *all* of that disadvantage to the circumstance of State compulsion. On the other hand, the Court may never saddle northern big-city school administrations with the task of singlehandedly tilting at an ogre like segregated ghetto schools. Segregation in formal education is only one of many elements in the lingering curse of American slavery. The judicial process, potent for narrowly-focused attack, is not likely to dominate the long and tedious solution of such a gigantic social problem.

De facto segregation in relatively small communities is quite different. Litigation of manageable issues is more likely to arise there, as it did in the *New Rochelle* case.¹⁰⁴ The Federal district court's opinion in a later case, originating this year in Hempstead, Long Island,¹⁰⁵

¹⁰² Most of this number are moved to schools other than those nearest their homes in order to relieve overcrowding and to utilize school space more uniformly. The group is not confined to minority ethnic categories. With respect to additional transfers with the specific objective of increased racial desegregation, see note 63 *supra*.

¹⁰³ See *Washington Transcript* 53, 55.

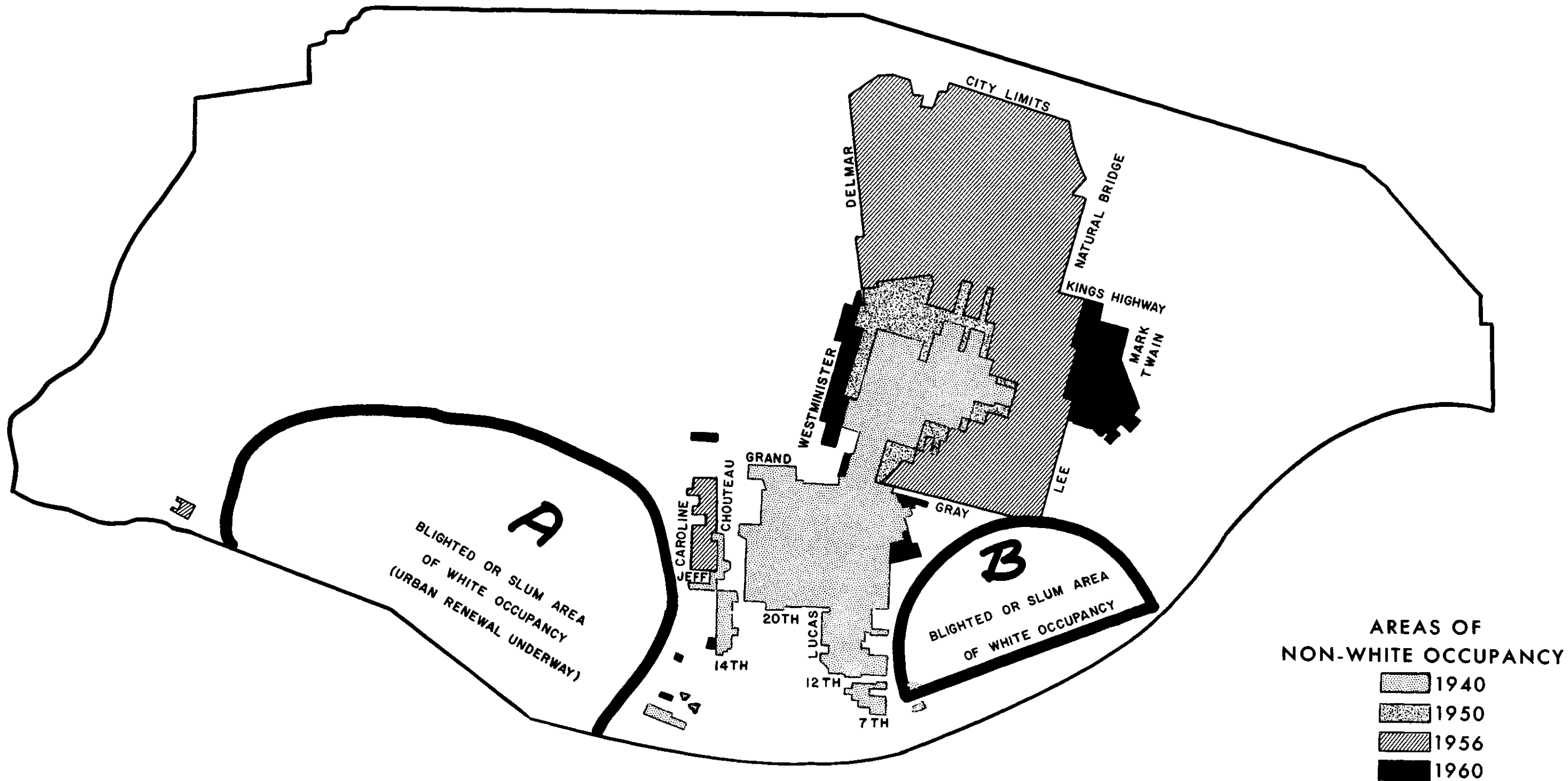
¹⁰⁴ See *supra*, note 60.

¹⁰⁵ *Blanche v. Hempstead Board of Education*, 204 F. Supp. 150 (E.D.N.Y. 1962).

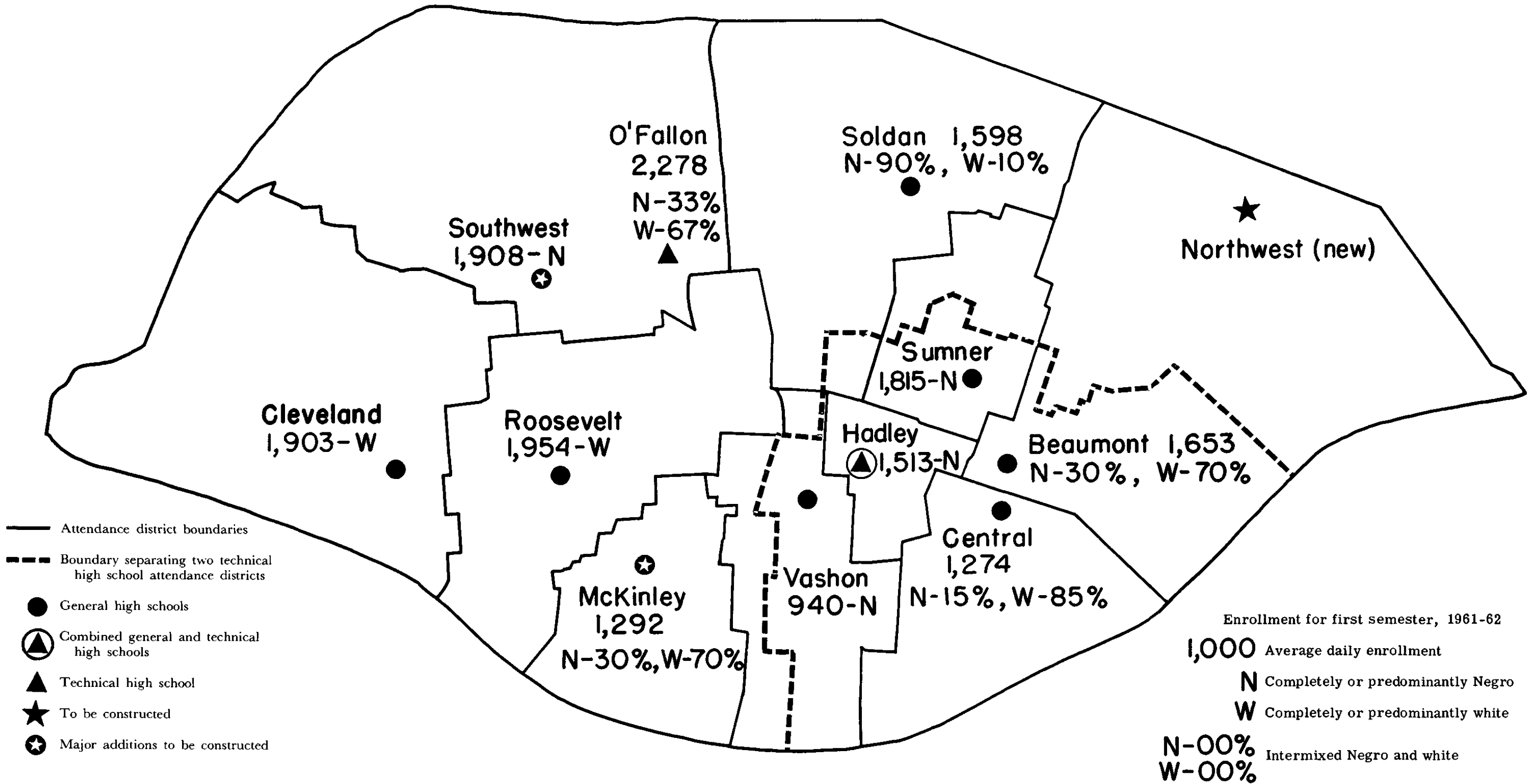
may be read as going even further than *New Rochelle*. The court's language, though guarded, apparently recognizes a general duty in the school board to rectify factual segregation caused entirely by residential patterns and neighborhood schools. This view is unquestionably shared by a rising tide of opinion among the new and impatiently aggressive Negro leaders in both North and South. But imputing a general duty to the school board may not produce concrete change. Specific remedial action must be workable in the circumstances. The United States Supreme Court may yet see racially discriminatory State action in the maintenance of a neighborhood school system, and in doing so may give little or no heed to administrative purpose or good faith. But the Court will not order, or suffer a lower court to order, the impossible on pain of contempt. In the absence of a local policy of segregation, the burdensome steps leading to racial balance in the schools may not be required in complex cities like St. Louis.

That, at least, would seem to be a reasonable and well-earned hope for the St. Louis school administration. It deserves praise for the conscientious and intelligent progress it has accomplished with difficulty during the past 8 years. Indeed, the entire community deserves praise for its remarkable achievements in human relations since Dred Scott lost his case in the old St. Louis courthouse a century ago.

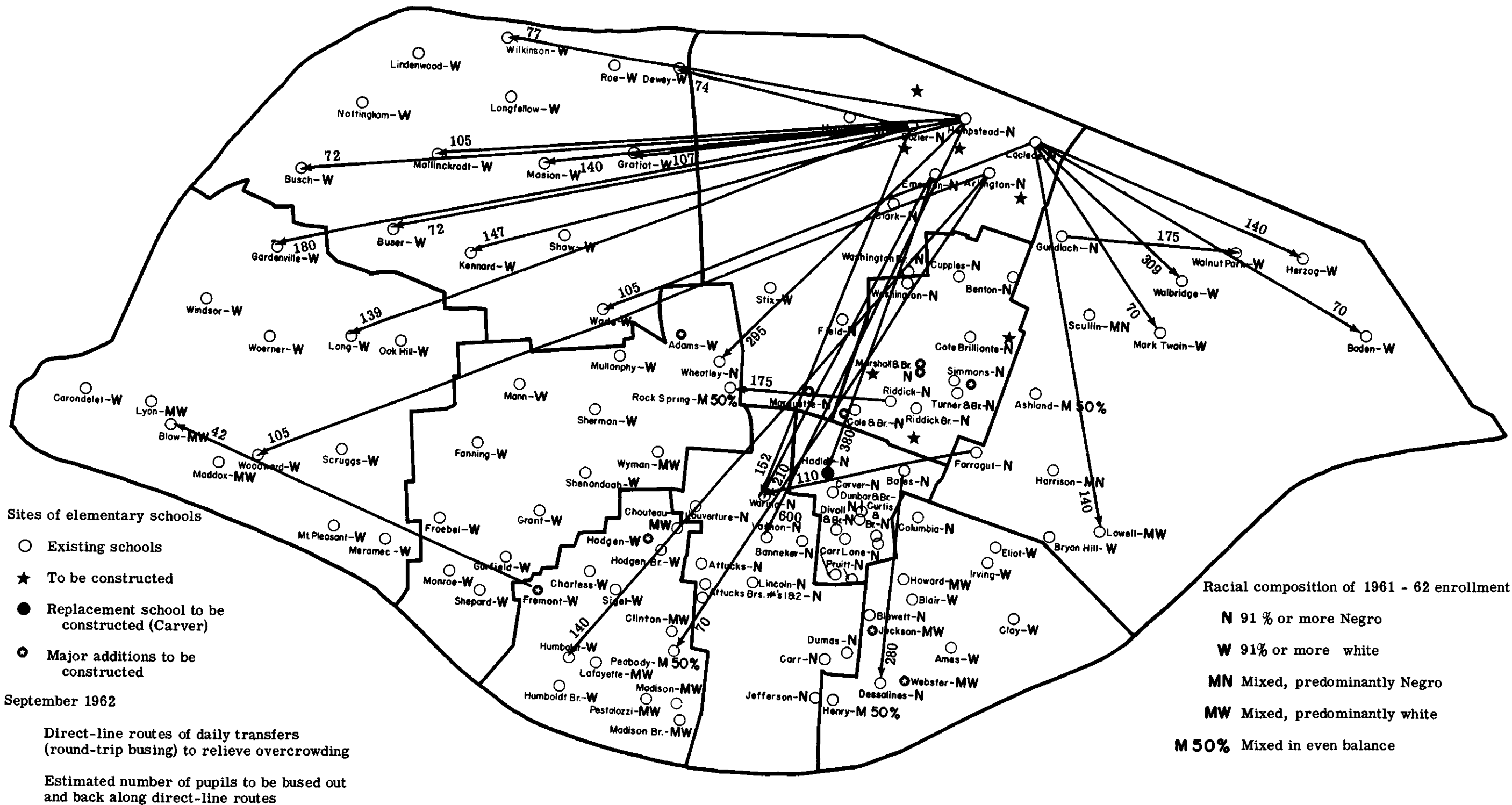
APPENDIX A
SAINT LOUIS, MISSOURI



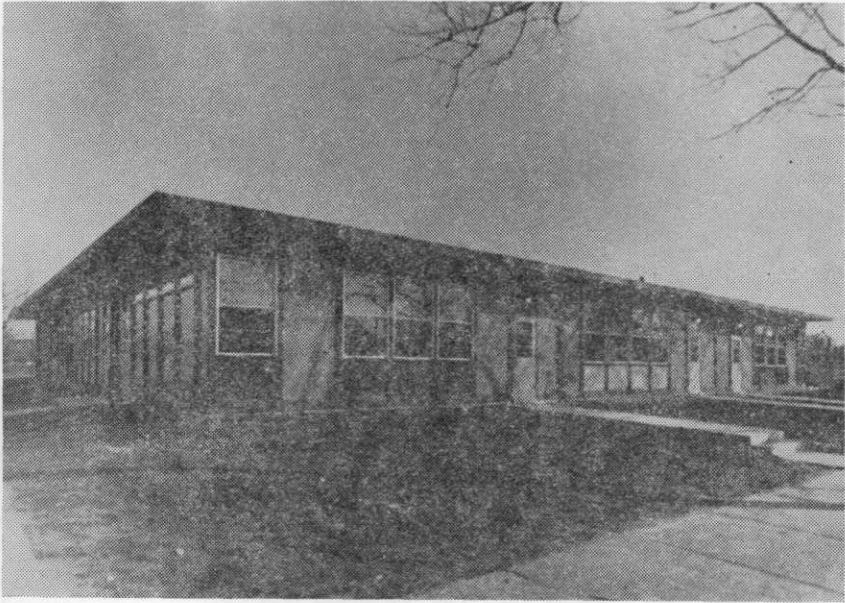
APPENDIX B
ST. LOUIS HIGH SCHOOLS



ST. LOUIS GENERAL ELEMENTARY SCHOOLS



APPENDIX D



ST. LOUIS MOBILE SCHOOL FACILITY

APPENDIX E

“Reading: A Way Upward”

By WILLIAM K. WYANT, JR.

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publisher and the author.

Reading: A Way Upward

By William K. Wyant, Jr.

One rainy evening recently the lights burned late in George Washington Carver Elementary School, an old red-brick structure in the poorest district of St. Louis. Surrounding the school is a wilderness of slums that calls to mind the prophet Ezekiel's desolate Valley of Dry Bones.

Who could breathe life or hope into such a place? This is the very citadel of urban blight, the cancer at the core of major American cities. Here are the dispossessed, the culturally deprived, the unskilled, the ignorant, the Negro migrants from the rural South. No district could be less promising from the standpoint of educational advancement. Yet in this barren St. Louis area, spectacular educational progress is being made.

The lights of the Carver School were burning for a meeting of parents, faculty members and a team of educators led by Samuel Shepard, Jr., director of the Banneker Group of 23 elementary schools. The Banneker Group is one of five areas into which St. Louis's 150 elementary schools are divided. Covering 15 square miles, it embraces a railroad yard and five low-income public-housing projects.

In the Banneker schools more than 95 percent of the students are Negroes. St. Louis's four other school groupings include one other that is heavily Negro, two that are from 25 to 30 percent Negro, and one that, because of residential segregation, is almost totally white. None of them has made any better headway than the Banneker Group, which is named after Benjamin Banneker, an 18th century Negro mathematician, surveyor and astronomer.

By sheer drive and determination Samuel Shepard, a Negro himself, has succeeded in the last 4 years in raising the student achievement level in his schools as much as 2 years, measured at the eighth grade. What is the secret behind this accomplishment? One searches in vain for sleight-of-hand innovations in teaching; there are only hard work, high morale and excellent leadership.

"You are not going to find any gimmicks," says one of Shepard's superiors, "except facing reality."

Where second-rate performance has been accepted in the past, Shepard demands first-rate performance. For a Negro school administrator in a slum district this is not easy. It requires forcefulness and character of a high order. Shepard has insisted that the poorer children of St. Louis could do school work as well as more fortunate children, if they were made to realize that school is important.

To watch Shepard and a team of educators handle a meeting such as the one at Carver School is to learn a great deal about a hardheaded, unsentimental and effective method of solving a thorny educational problem.

At the meeting I attended, parents of children in the Carver School filed up a worn stairway to an old-fashioned, second-floor gymnasium. For the most part they were cooks, domestics, laborers. On the walls were posters made by the children: "Honor Is Purchased by the Deeds We Do."

"What You Do Now Decides Tomorrow." Women at a desk pinned paper name tags on the parents, but there was not much chitchat or milling around. People merely took their seats and waited in silence.

Carver School, built in 1882, is one of the older schools in Shepard's domain. Because of new schools built in connection with the area's new housing projects, the Banneker Group compares favorably with the city's other districts in physical plant and facilities. Shepard also has a slight advantage in teacher-pupil ratio. Banneker schools have 1 teacher to about 34 children. Citywide, the ratio is 1 to 35.

Carver principal John H. Hunter, Jr. introduced Shepard, a strong, self-assured man in his early fifties who holds a doctorate from the University of Michigan. He gets quickly to the point.

"This is no entertainment," he says. "This is a work session with you. We have made wonderful gains, but we haven't quite reached a point where we can say—'This is as far as we want to go.'"

What are the gains to which Shepard refers? The little girls of the Banneker Group have not sprouted wings; the boys do not fight to quote Shakespeare in class. The gains made are more pedestrian, and more practical.

In 1957, the St. Louis public schools instituted a "Three Track" program in high schools, providing separate levels of instruction for children of three levels of apparent ability—track I for above average, track II for average, and track III for below average. To determine which track children should follow, St. Louis schools began giving children the Iowa Basic Skills tests in the eighth month of the eighth grade.

The Iowa tests reflect a child's competence in three subjects: reading, arithmetic, and language. Since scores are expressed conveniently in terms of grade level, it is possible to tell at a glance whether a child is ahead of his grade or behind it, and by how much. A par score for

the eighth grade, eighth month, is 8-8. A child a year behind would score 7-8, a year ahead, 9-8.

When the tests were first given late in 1957, the Banneker eighth-graders fell on their faces, as had been expected. They were a year to 2 years behind the national norm. Their median scores were a year and 1 month short of par in reading (7-7), a year behind in arithmetic (7-8) and a year and 2 months behind in language (7-6). Essentially, the typical Banneker child in 1957 was so far behind that he needed another year of work in all three basic subjects to enter high school and compete equally with most other children.

With the onset of the tests, comparative figures were published within the school system. It was possible for each group of schools—and for individual schools—to see precisely where they ranked. Far from concealing the figures, Shepard displayed them on large charts and graphs.

By last spring's examinations, Banneker's eighth-graders had made impressive strides. On the average, they had gained a year and a month in reading (8-8), 9 months in arithmetic (8-7) and a year and 5 months in language (9-1). The Banneker medians equaled or surpassed national levels in reading and language, and were only a month short of par in arithmetic. (Grade-level scores are figured in terms of a 10-month school year.)

"We've got to keep on doing this long enough so that we can say, 'This is our standard,'" Shepard says. He explains that Negroes were behind, for various reasons, when the U.S. Supreme Court ordered public schools desegregated in 1954. They must continue to demonstrate that their presence in a school, along with more fortunate children, will not lower academic standards.

Shepard's theme is that education provides the way out of poverty. In business, success hinges on being able to qualify, to take examinations, to read maturely, to speak fluently. It is a reading world, and the road ahead is lined with books. Children must be made to understand this, and be persuaded to make the best of what chance they have.

At the meeting I attended, these points were emphasized by three of Shepard's assistants. Negro educators, they were primed to discuss the relationship between education and earning power, and the academic progress Carver children have made.

Charts of the U.S. Department of Labor were displayed, showing the sad fate in store for the unskilled and the unlettered; the indisputable relationship between what a man knows and how much he earns. A soft sigh goes up when parents read how it takes \$6,000 a year, by Government estimate, to provide a decent living for a family of four. In the Carver School neighborhood the average family income—with both parents working—is \$3,100, and families are large.

One of the speakers told the audience that her father was a manual laborer who had eight children. He had little money but believed in school, she said, and he went without many things to educate his children. The anecdote cut down the distance between this neatly dressed, well-spoken professional and her audience.

Shepard introduced his boss, William Kottmeyer, deputy superintendent of St. Louis schools in charge of elementary education, an internationally known authority on reading instruction—and a white man. This was the 14th evening in recent weeks that Kottmeyer had left his home to address a parent's meeting in the Banneker district.

Kottmeyer, a salty, down-to-earth speaker, made his pitch. In his hand was a mimeographed sheet of paper: the Parent's Pledge of Cooperation. The people listening to him had copies. The pledge lists specific things parents should do to help their children do well in school. It is a simple, practical list of tasks spelled out under the motto: "Success in School is My Child's Most Important Business."

Kottmeyer quickly established that he knows what parents of slum children are up against. He is aware of the frailties all human beings have in common. No pie-in-the-sky educator, he mixes humor and cajolery with passionate exhortation. He has a habit of saying "Huh?" at the end of a statement, as if to seek agreement and drive the point home.

"Let us not," says Kottmeyer, "just read this pledge and forget about it. Tack it up on the back of your kitchen door. You might have all the good intentions in the world, but you need a reminder. We've got to do this for the kids, huh? They need a little help."

Kottmeyer tells the parents how he and Shepard frequently see children, who ought to be in school, walking around in department stores with their parents. How they know that daughters who ought to be in class are kept home to look after smaller children or help with the wash. How they know it is hard for parents who are tired to keep after the children in the evening, to see that homework gets done.

"You don't need a mahogany table," Kottmeyer exhorts. "The kitchen table will do. But there must be a place to study."

The part of the Parent's Pledge that has to do with reading gets intensive treatment from Kottmeyer. His forte is teaching reading and spelling. St. Louis' elementary schools have an elaborate program in remedial reading, with clinics in all five districts. The underlying theory is that if a child cannot read, he cannot get much out of school. When weakness in reading shows up, it is dealt with promptly.

"Get him a library card and see that he uses it," says Kottmeyer. "If he loses his card, go down there with him and get him another. I know you've had a hard day's work and your feet hurt—but go with him anyway. And when you buy him a present, get him a book. If

he's interested in baseball, get him a book on baseball. If he's interested in elephants, get him a book about elephants."

By now there was much laughter at the meeting along with nods and murmurs of assent. Kottmeyer's flat, uncompromising, midwestern voice rang out about sacrifices that must be made for the young if they are to have the opportunity of living better lives.

Summing up, Shepard told the Carver parents, "We have demonstrated that the color of your skin, where you live, and how much money there is in your pocketbook have nothing to do with whether your child can learn. We want to help you convince your youngster that success in school is his or her most important business. Children must understand that every hour they have in school is precious."

There is more to education than oratory, and the Banneker effort is backed up by a highly effective system of instruction. But the attitude and morale of the parents are of paramount importance. In the last year, Deputy Superintendent Kottmeyer, Shepard, and various assistants have staged three meetings at each of the Banneker schools. Between January 15 and May 1, Kottmeyer spoke at 57 such rallies to consolidate gains and guard against relapses. The effort has not been spent in vain.

At the Franklin School, another venerable red-brick structure set in the slums, nearly a third of the eighth-graders are entering high school on tract I, compared with 3 percent in 1957. For the 23 Banneker schools as a group, the track I proportion has increased from 7 percent in 1957 to 22 percent last spring. The track III proportion decreased from 47 to 10.8 percent in the same period.

It is worth noting that the IQ of Banneker pupils bound for college tends to hover around a median of 105. This is 10 points lower than the IQ median for track I's who go on to college from more prosperous parts of St. Louis. Shepard says that IQ tests reflect cultural background as well as intelligence, and therefore in IQ as in other matters, the slum child is judged unfairly. Shepard tells his teachers: "Quit teaching by IQ and the neighborhood where the child lives. Teach the child all you can teach him." Throughout the Banneker schools Shepard's combination of candor and optimism prevails among principals and teachers. It is they, Shepard insists, who have won the victory.

But is the Banneker effort getting through to the parents and children? The evidence attests convincingly that it is. Lamentably, there are some parents who turn a deaf ear, and some children who refuse to be helped. But in parents' meetings, pupil assemblies, and talks with teachers one senses a spirit of genuine enthusiasm and enlightened eagerness. When Shepard discovered last semester that the board of education had thousands of old dictionaries in stock that were to be torn up for scrap paper, the Banneker District Council of

Parent Organizations quickly bought them for 20 cents a copy and sold 5,600 to school families at cost.

For a perspective beyond the schoolrooms, the charts and examinations, I paid a call to the 10th-floor apartment of Mr. and Mrs. Richard J. Smith, who have nine children ranging in age from 1 month to 16 years. The Smiths live in a large public housing project. Platoons of children were playing around the dingy ground-floor entrance. The self-service elevator I rode upstairs was scarred, dirty, and held a strong odor of urine. At the 10th floor more children played on a dimly lighted landing.

Mrs. Smith is a stout, cheerful woman of 32. Her apartment is neat and well furnished. Her husband, 33, has a job with a tire-and-supply concern, making brake shoes. She has been staying at home looking after her latest child, but ordinarily works at a laundry while her mother looks after the youngest children.

Five of the Smiths' nine children are in the St. Louis public schools. The eldest, Belton, 16, has just entered high school for a 2-year terminal program. His schoolwork has not been up to standard. He is overage for the ninth grade. Belton aspires to play baseball professionally. He is also contemplating a military career. His mother wants him to stay in school as long as possible.

Mrs. Smith has high hopes for 10-year-old Yvonne, who is in the fifth grade. Both Mrs. Smith and school officials regard Yvonne as an excellent student, headed for track I in high school. Richard Jr., 9; Glenn, 8; and Jenifer, 7, also are in the primary grades. Then there are Arnold, 5, just entering school; Alfred, 3; Vivian, nearly 2; and the baby, Bryan.

It is Mrs. Smith's ambition to get out of the housing project, out of the slums, and into a house on a modest piece of ground. But this is no simple accomplishment for a large Negro family in St. Louis. Meanwhile, she restricts her children to the 10th-floor landing most of the time, to keep them out of trouble.

Mrs. Smith is extremely conscious of the Banneker program. She reached only the 11th grade in school and regrets not going further. Her husband finished high school.

"I tell the children every day," she says, "'Please go to school if you don't do anything else.' Education is important," she adds. "But most of our color are not interested. Most of them drop out. They say, 'If I live in a bad neighborhood, I'm going to be bad.' But I tell my children: 'Any place will be bad if you make it bad.'"

The family's apartment has three bedrooms. In one of them a place is set out for study, and Yvonne helps the other children with their lessons there. They go to the nearby public library on Tuesday evenings. They have a dictionary handy.

"The teachers keep after the children now," Mrs. Smith says. "The children have more homework, and I know mine really have to get down and scuffle with it. They didn't before."

At the doorway of the Smith apartment is a prayer plaque in plaster and gilt letters: "Bless This Home, O Lord, We Pray, Make It Safe by Night and Day." Beside it is a small reproduction of Da Vinci's painting, "The Last Supper." Outside in the hall I noticed that the walls of the stairway to the lower floor were penciled and scratched with innocent and not-so-innocent words. Downstairs on a weed-grown sidewalk I saw a man open a wine bottle within view of children coming home from school.

By no means do all of the Banneker parents and their children live in public housing projects. But the pattern of their lives, for the most part, follows closely that of the Smith family.

The upgrading of academic achievement among Negro children in the St. Louis slums is not a miracle, but it has profound national significance in relation to the desegregation of public schools, and to the seemingly intractable problem of education in the big-city slum.

Under the direction of St. Louis's able superintendent of instruction, Philip J. Hickey, the city's schools were desegregated in a planned, orderly fashion shortly after the court ruling. Measures were taken to cope with disparities in cultural backgrounds. Within this system where the school population is from 40 to 50 percent Negro, and where southern traditions and attitudes are still widely espoused, desegregation has been achieved with remarkable peace and efficiency.

In St. Louis, as in Chicago, Detroit, Washington, and other cities of the East and Midwest, the last decade has brought a massive increase in Negro population in the central-city area as white citizens moved to the suburbs. In 1950, St. Louis had a Negro population of 18 percent; in 1960 the proportion had grown to about 29 percent. The greatest part of the immigration has been from the South.

Concentrated in specific areas by neighborhood segregation and poverty, Negro migrants form a large part of the 1 million "disadvantaged children" that the National Education Association estimates are presently attending large-city schools. Educators believe this is the gravest challenge now facing the public-school system.

Samuel Shepard's approach to the problems of the Banneker school area—the most culturally deprived, most depressed, and most heavily Negro section of St. Louis—is practical and utilitarian. It also has its transcendental aspects: The winds of change and hope stirring in this 20th-century Valley of Dry Bones cause one to think of the Old Testament lines in Ezekiel, "Come from the four winds, O breath, and breathe upon these slain, that they may live."



A Report To

The United States Commission on Civil Rights

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