Briefing:
Review of Elementary and Secondary School Desegregation

U.S. Commission on Civil Rights

Thursday, December 14, 2006
Washington, D.C.

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

December 5, 2006

MEMORANDUM FOR GERALD REYNOLDS, CHAIRMAN
ABIGAIL THERNSTROM, VICE CHAIR
COMMISSIONERS

FROM: KENNETH L. MARCUS
Staff Director

SUBJECT: December 14, 2006 Briefing:
Review of Elementary and Secondary School Desegregation

Enclosed please find the briefing book for the Review of Elementary and Secondary School Desegregation Briefing to be held Thursday, December 14, 2006.

The biographical information and written statements of the panelists will follow.

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Project Concept and Panelists' Biographical Information and Statements

A. Project concept, unanimously approved at the March 10, 2006 Commission meeting.

B. Panelists' Biographical Information and Statements.

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Relevant Court Cases

C. *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

D. *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237 (1991).

E. *Freeman v. Pitts*, 503 U.S. 467 (1992).

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Legal Perspectives

F. Monika L. Moore, "Unclear Standards Create an Unclear Future: Developing a Better Definition of Unitary Status," *112 Yale L.J. 311,* November 2002.

G. Erwin Chemerinsky, "The Segregation and Resegregation of American Public Education: The Courts' Role," pp. 29–47 in John Charles Boger and Gary Orfield, editors, *School Resegregation: Must the South Turn Back?* (Chapel Hill, NC: The University of North Carolina Press, 2005).

H. Maree Sneed and Carmel Martin, "Practical Guide to Issues Related to Unitary Status," National School Boards Association, Inquiry & Analysis, March 1997, <http://www.nsba.org/site/doc_cosa.asp?TrackID=&SID=1&DID=3713&CID=164&VID=50> (last accessed Nov. 30, 2006).

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Social Science on the Effects of Obtaining Unitary Status

I. Charles T. Clotfelter, Helen F. Ladd, and Jacob L. Vigdor, *Federal Oversight, Local Control, and the Specter of 'Resegregation' in Southern Schools*, January 20, 2005, <http://www.s4.brown.edu/s4/colloquia/Fall05/PUBrowndraft20905.pdf#search=%22%22federal%20oversight%20local%20control%20and%20the%20specter%20of%20resegregation%20in%20southern%20schools%22%22> (last accessed Nov. 30, 2006).

J. Byron F. Lutz, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, *Post Brown vs. the Board of Education: The Effects of the End of Court-Ordered Desegregation,* Federal Reserve Board's Finance and Economics Discussion Series, 2005-64, December 2005.

General Social Science on Desegregation

K. Gary Orfield and Chungmei Lee, *Racial Transformation and the Changing Nature of Segregation,* (Cambridge, MA: The Civil Rights Project at Harvard University, January 2006) <http://www.civilrightsproject.harvard.edu/research/deseg/deseg06.php#fullreport> (last accessed Nov. 30, 2006).

L. David J. Armor and Christine H. Rossell, "Desegregation and Resegregation in the Public Schools," pp. 219–258 in Abigail Thernstrom and Stephan Thernstrom, editors, *Beyond the Color Line: New Perspectives on Race and Ethnicity in America* (Hoover Institution Press, 2002).

M. Stephan Thernstrom and Abigail Thernstrom, *America in Black and White: One Nation, Indivisible,* Chapter 12, "With All Deliberate Speed," (New York, NY: Simon & Schuster, 1997), pp. 315–347.

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Department of Justice's Enforcement Activities on School Desegregation

N. U.S. Department of Justice, Civil Rights Division, "Educational Opportunities Section, Overview," <http://www.usdoj.gov/crt/edo/overview.htm> (last accessed Nov. 30, 2006).

O. Annual Department of Justice Budget submissions on its Civil Rights Division's Educational Opportunities Section for fiscal years 2002 to 2007. Note that fiscal year 2003 was the last submission to include detailed performance measures for the Educational Opportunities Section. Also, fiscal year 2007 contains almost no specific information on the Educational Opportunities Section.

- U.S. Department of Justice, Civil Rights Division, Financial Operations Staff, *FY 2002 Congressional Budget Submission,* pp. G-24–G-26, and G-52–G-53.
- U.S. Department of Justice, Civil Rights Division, Financial Operations Staff, *FY 2003 Congressional Budget Submission,* pp. G-42–G-46.
- U.S. Department of Justice, Civil Rights Division, Financial Operations Staff, *FY 2004 Congressional Budget Submission,* pp. G-20–G-21.
- *Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 2005: Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives,* 108th Cong. 542, 557, 560–562 (2004).
- *Science, The Departments of State, Justice, and Commerce, and Related Agencies Appropriations for 2006: Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives,* 109th Cong. 580, 597 (no date).
- Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2007,* "Department of Justice, FY2007 Budget and Performance Summary," selected pages <http://www.whitehouse.gov/omb/budget/fy2007/justice.html> (last accessed Nov. 30, 2006).

The Status of Elementary and Secondary School Desegregation

It is estimated that there may be as many as 400 school districts nationwide whose desegregation efforts are still under federal court supervision even 50 years after *Brown v. Board of Education.* The United States Department of Justice is a party to many of those cases. The Office for Civil Rights in the U.S. Department of Education is responsible for ensuring that school districts receiving federal financial assistance comply with Title VI of the Civil Rights Act of 1964, often through the use of 441(b) desegregation plans. Some experts believe that many schools under federal court supervision remain so because of the difficulties of challenging that supervision in federal courts. Others believe that school districts remain under various types of desegregation plans to remain eligible for certain state education funding. Still others believe that *de facto* segregation persists in elementary and secondary schools. It is difficult to examine the nature and extent of elementary and secondary school desegregation, as no definitive source of information exists on the number of school districts in this context.

Scope: The Commission will seek information to address the following issues:

- The status of government desegregation efforts
- The standards for federal enforcement agency resolution of cases
- Impediments to achieving unitary or desegregated status
- Research conducted by Commission regional staff and State Advisory Committees on the schools within their jurisdictions
- The possible causes of continuing court supervision of school districts, including perverse financial incentives, the costs of court challenges to desegregation orders, and persistent segregation or discrimination

Methodology: The Commission will host a briefing to address the above issues. If panelists fail to appear voluntarily, the Commission will conduct a hearing on these issues and subpoena the panelists as witnesses. Speakers may include but are not limited to the following:

- Speaker from the Office for Civil Rights, Department of Education
- Speakers from the Civil Rights Division, Department of Justice
- Peter Minarik, Director, Southern Regional Office, U.S. Commission on Civil Rights

The briefing would last approximately 90 minutes to two hours, with two to three speakers allotted 10 to 15 minutes each, and the remaining time allotted for questions and answers. Projected out-of-pocket costs would range from approximately $1,300 to $2,100.

Commissioners will receive panelists' biographical information and any written statements via e-mail when they are available.

LEXSEE 391 U.S. 430

GREEN ET AL. v. COUNTY SCHOOL BOARD OF NEW KENT COUNTY ET AL.

No. 695

SUPREME COURT OF THE UNITED STATES

391 U.S. 430; 88 S. Ct. 1689; 20 L. Ed. 2d 716; 1968 U.S. LEXIS 1551

April 3, 1968, Argued
May 27, 1968, Decided

PRIOR HISTORY:

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

DISPOSITION:

382 F.2d 338, vacated in part and remanded.

SUMMARY:

This case presents the question whether, under all the circumstances, a county school board's adoption of a "freedom-of-choice" plan, which allows a pupil to choose his own public school, constitutes adequate compliance with the board's responsibility to achieve a system of determining admission to the public schools on a nonracial basis. The school system in question had only two schools (each a combined elementary and high school), and under the segregated system initially established and maintained, one was for white children and the other for Negro children. The United States District Court for the Eastern District of Virginia approved the "freedom-of-choice" plan. The United States Court of Appeals for the Fourth Circuit affirmed the District Court's approval of the plan, but remanded the case on other grounds. *(382 F2d 326; 382 F2d 338.)*

On certiorari, the United State Supreme Court vacated the judgment of the Court of Appeals insofar as it affirmed the District Court. In an opinion by Brennan, J., expressing the unanimous views of the court, it was held that the "freedom-of-choice" plan could not be accepted as a sufficient step to effectuate the transition to a unitary system, where, in the period of operation of the plan, not a single white child had chosen to attend the Negro school, and, although a number of Negro children had enrolled in the white school, 85 percent of the Negro children in the system still attended the Negro school.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [1]

In implementing the decision of the United States Supreme Court that racial discrimination in public education is unconstitutional, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the problems of desegregation; the courts will also consider the adequacy of any plans the defendants may propose to meet this problem and to effectuate a transition to a racially nondiscriminatory school system.

[***LEdHN2]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [2]

In determining the adequacy of the adoption, by a school board operating an unconstitutional dual, racially segregated school system, of a "freedom- of-choice" plan, which allows a pupil to choose his own public school, the question is whether the board has achieved the racially non-discriminatory school system which must be effectuated in order to remedy the established unconstitutional deficiencies of its segregated system, and not whether the Fourteenth Amendment is to be interpreted

as universally requiring compulsory integration so as to require invalidation of the "freedom-of-choice" plan.

[***LEdHN3]
ERROR § 1331.5
review -- racial discrimination in schools --
Headnote: [3]

In the context of a state-imposed segregated school system of long standing, the fact that a school board opened the doors of a former white school to Negro children and of a Negro school to white children pursuant to a "freedom-of-choice" plan, which allows a pupil to choose his own public school, merely begins, not ends, the United States Supreme Court's inquiry as to whether the board has taken steps adequate to abolish its dual, segregated system.

[***LEdHN4]
RIGHTS § 6
racial discrimination in schools --
Headnote: [4]

While the decision of the United States Supreme Court calling for the dismantling of well-entrenched dual, racially segregated school systems was tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution, nevertheless school boards operating state-compelled dual school systems are clearly charged with the affirmative duty to take whatever steps may be necessary to convert to a unitary system in which racial discrimination will be eliminated root and branch.

[***LEdHN5]
RIGHTS § 12.5
racial discrimination in schools -- decree --
Headnote: [5]

In a suit involving the question whether a school board operating a dual, racially segregated school system, has complied with the command of the United States Supreme Court to effectuate a transition to a racially nondiscriminatory school system, the court has not merely the power but the duty to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future.

[***LEdHN6]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [6]

In determining whether a school board operating an unconstitutional dual, racially segregated school system, by adopting a "freedom-of-choice" plan, which allows a pupil to choose his own public school, has complied with the command of the United States Supreme Court to effectuate a transition to a racially nondiscriminatory school system, it is relevant that such plan, the first step toward compliance, did not come until some 11 years after the United States Supreme Court had decided that a racially segregated school system violated the Federal Constitution and 10 years after the United States Supreme Court had directed the making of a prompt and reasonable start toward a racially nondiscriminatory school system; such deliberate perpetuation of the unconstitutional dual system can only have compounded the harm of such a system.

[***LEdHN7]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [7]

Delays by a school board in dismantling an unconstitutional dual, racially segregated school system as required by a decision of the United States Supreme Court, are no longer tolerable, for the governing constitutional principles no longer bear the imprint of newly enunciated doctrine; moreover, a plan which, 10 years after such decision, fails to provide meaningful assurance of prompt and effective disestablishment of a dual system, is also intolerable.

[***LEdHN8]
RIGHTS § 6
racial discrimination in schools --
Headnote: [8]

The burden on a school board in dismantling an unconstitutional dual, racially segregated school system is to come forward with a plan that promises realistically to work and to work now.

[***LEdHN9]
COURTS § 155.5
racial discrimination in schools --
Headnote: [9]

The obligation of Federal District Courts in actions seeking approval of a proposed plan by a school board operating a dual, racially segregated school system, to achieve desegregation, is to assess the effectiveness of the proposed plan in so achieving desegregation, and to assess the matter in light of the circumstances present and the options available in each instance.

[***LEdHN10]
RIGHTS § 6

COURTS § 155.5
racial discrimination -- schools --
Headnote: [10]

It is incumbent upon a school board, in seeking approval by a Federal District Court of a proposed plan to achieve desegregation in a school system, to establish that the proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation; it is incumbent upon a Federal District Court to weigh such claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness.

[***LEdHN11]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [11]

A proposed plan by a school board to desegregate its school system may be said to provide effective relief, where a Federal District Court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling a state-imposed dual system at the earliest practicable date.

[***LEdHN12]
RIGHTS § 6
racial discrimination in schools --
Headnote: [12]

A lack of good faith on the part of a school board in proposing a plan to desegregate its school system may be indicated where other more promising courses of action are open to the board; at least in such case the board has a heavy burden to explain its preference for an apparently less effective method.

[***LEdHN13]
RIGHTS § 6
COURTS § 155.5
racial discrimination in schools --
Headnote: [13]

Whatever plan by a school board to desegregate its school system is adopted requires evaluation in practice, and a Federal District Court which approves such a plan should retain jurisdiction until it is clear that state- imposed segregation has been completely removed.

[***LEdHN14]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [14]

In desegregating a dual, racially segregated school system, a plan utilizing "freedom of choice" is not an end in itself, but it is only a means to a constitutionally required end--the abolition of the system of segregation and its effects; if the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end.

[***LEdHN15]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [15]

There might be no objection to allowing a "freedom of choice" plan, which permits a pupil to choose his own public school, to prove itself in operation, where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual school system to a unitary, nonracial system, but such a plan must be held unacceptable if there are reasonably available other ways, such as zoning, promising speedier and more effective conversion to a unitary, nonracial system.

[***LEdHN16]
RIGHTS § 12.5
relief -- racial discrimination in schools --
Headnote: [16]

A "freedom of choice" plan, which allows a pupil to choose his own public school, and which was adopted by a school board operating a dual school system consisting of one white school and one Negro school, cannot be accepted as a sufficient step to effectuate a transition to a unitary, nonracial system, where, in 3 years of operation of the plan, not a single white child has chosen to attend the Negro school, and, although a number of Negro children have enrolled in the white school, 85 percent of the Negro children in the system still attend the Negro school; and the board must be required to formulate a new plan, and, in light of other courses, such as zoning, which appear open, must fashion steps which promise realistically to convert promptly to a system without a white school and a Negro school, but just schools.

[***LEdHN17]
ERROR § 1750
remand -- proceedings below -- racial discrimination in schools --
Headnote: [17]

On remand from the United States Supreme Court to the Federal District Court of a case wherein the Supreme Court held that a school board's "freedom of choice" plan, which allowed a pupil to choose his own public school, and which the District Court approved, cannot be

accepted as a sufficient step to effectuate a transition to a unitary, nonracial school system, the District Court should take into account suggestions that nonracial geographical zoning or consolidation of schools might serve to eliminate the dual, racially segregated school system, along with any other proposed alternatives and in light of considerations respecting other aspects of the school system, such as the matter of faculty and staff desegregation remanded to the District Court by the United States Court of Appeals.

SYLLABUS:

Respondent School Board maintains two schools, one on the east side and one on the west side of New Kent County, Virginia. About one-half of the county's population are Negroes, who reside throughout the county since there is no residential segregation. Although this Court held in *Brown v. Board of Education, 347 U.S. 483 (Brown I)*, that Virginia's constitutional and statutory provisions requiring racial segregation in schools were unconstitutional, the Board continued segregated operation of the schools, presumably pursuant to Virginia statutes enacted to resist that decision. In 1965, after this suit for injunctive relief against maintenance of allegedly segregated schools was filed, the Board, in order to remain eligible for federal financial aid, adopted a "freedom-of-choice" plan for desegregating the schools. The plan permits students, except those entering the first and eighth grades, to choose annually between the schools; those not choosing are assigned to the school previously attended; first and eighth graders must affirmatively choose a school. The District Court approved the plan, as amended, and the Court of Appeals approved the "freedom-of-choice" provisions although it remanded for a more specific and comprehensive order concerning teachers. During the plan's three years of operation no white student has chosen to attend the all-Negro school, and although 115 Negro pupils enrolled in the formerly all-white school, 85% of the Negro students in the system still attend the all-Negro school. *Held*:

1. In 1955 this Court, in *Brown v. Board of Education, 349 U.S. 294 (Brown II)*, ordered school boards operating dual school systems, part "white" and part "Negro," to "effectuate a transition to a racially nondiscriminatory school system," and it is in light of that command that the effectiveness of the "freedom-of-choice" plan to achieve that end is to be measured. Pp. 435-438.

2. The burden is on a school board to provide a plan that promises realistically to work *now*, and a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is intolerable. Pp. 438-439.

3. A district court's obligation is to assess the effectiveness of the plan in light of the facts at hand and any alternatives which may be feasible and more promising, and to retain jurisdiction until it is clear that state-imposed segregation has been completely removed. P. 439.

4. Where a "freedom-of-choice" plan offers real promise of achieving a unitary, nonracial system there might be no objection to allowing it to prove itself in operation, but where there are reasonably available other ways, such as zoning, promising speedier and more effective conversion to a unitary school system, "freedom of choice" is not acceptable. Pp. 439-441.

5. The New Kent "freedom-of-choice" plan is not acceptable; it has not dismantled the dual system, but has operated simply to burden students and their parents with a responsibility which *Brown II* placed squarely on the School Board. Pp. 441-442.

COUNSEL:

Samuel W. Tucker and Jack Greenberg argued the cause for petitioners. With them on the brief were James M. Nabrit III, Henry L. Marsh III, and Michael Meltsner.

Frederick T. Gray argued the cause for respondents. With him on the brief were Robert Y. Button, Attorney General of Virginia, Robert D. McIlwaine III, First Assistant Attorney General, and Walter E. Rogers.

Louis F. Claiborne argued the cause for the United States, as amicus curiae. With him on the brief were Solicitor General Griswold, Assistant Attorney General Pollak, Lawrence G. Wallace, and Brian K. Landsberg.

Joseph B. Robison filed a brief for the American Jewish Congress, as amicus curiae, urging reversal.

JUDGES: Warren, Black, Douglas, Harlan, Brennan, Stewart, White, Fortas, Marshall

OPINION BY:

BRENNAN

OPINION:

[*431] [***720] [**1691] MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question for decision is whether, under all the circumstances here, respondent School Board's adoption of a "freedom-of-choice" plan which allows a pupil to choose [*432] his own public school constitutes adequate compliance with the Board's responsibility "to achieve a system of determining admission to the public schools on a nonracial basis . . . ." *Brown v. Board of Education, 349 U.S. 294, 300-301 (Brown II)*.

Petitioners brought this action in March 1965 seeking injunctive relief against respondent's continued maintenance of an alleged racially segregated school system. New Kent County is a rural county in Eastern Virginia. About one-half of its population of some 4,500 are Negroes. There is no residential segregation in the county; persons of both races reside throughout. The school system has only two schools, the New Kent school on the east side of the county and the George W. Watkins school on the west side. In a memorandum filed May 17, 1966, the District Court found that the "school system serves approximately 1,300 pupils, of which 740 are Negro and 550 are White. The School Board operates one white combined elementary and high school [New Kent], and one Negro combined elementary and high school [George W. Watkins]. There are no attendance zones. Each school serves the entire county." The record indicates that 21 school buses -- 11 serving the Watkins school and 10 serving the New Kent school -- travel overlapping routes throughout the county to transport pupils to and from the two schools.

The segregated system was initially established and maintained under the compulsion of Virginia constitutional and statutory provisions mandating racial segregation in public education, Va. Const., Art. IX, § 140 (1902); Va. Code § 22-221 (1950). These provisions were held to violate the Federal Constitution in *Davis* v. *County School Board of Prince Edward County*, decided with *Brown v. Board of Education, 347 U.S. 483, 487* (*Brown I*). The respondent School Board continued the segregated operation of the system after the *Brown* [*433] decisions, presumably on the authority of several statutes enacted by Virginia in resistance to those decisions. Some of these statutes were held [***721] to be unconstitutional on their face or as applied. n1 One statute, the Pupil Placement Act, Va. Code § 22-232.1 *et seq.* (1964), not repealed until 1966, divested local boards of authority to assign children to particular schools and placed that authority in a State Pupil Placement Board. Under that Act children were each year automatically reassigned to the school previously attended unless upon their application the State Board assigned them to another school; students seeking enrollment for the first time were also assigned [**1692] at the discretion of the State Board. To September 1964, no Negro pupil had applied for admission to the New Kent school under this statute and no white pupil had applied for admission to the Watkins school.

n1 *E. g., Griffin v. County School Board of Prince Edward County, 377 U.S. 218; Green v. School Board of City of Roanoke, 304 F.2d 118 (C. A. 4th Cir. 1962); Adkins v. School Board of City of Newport News, 148 F.Supp. 430* (D. C. E. D. Va.), aff'd, *246 F.2d 325 (C. A. 4th Cir. 1957); James v. Almond, 170 F.Supp. 331 (D. C. E. D. Va. 1959); Harrison v. Day, 200 Va. 439, 106 S. E. 2d 636 (1959).*

The School Board initially sought dismissal of this suit on the ground that petitioners had failed to apply to the State Board for assignment to New Kent school. However on August 2, 1965, five months after the suit was brought, respondent School Board, in order to remain eligible for federal financial aid, adopted a "freedom-of-choice" plan for desegregating the schools. n2 Under that [*434] plan, each pupil, except those entering the first and eighth grades, may annually choose between the New Kent and Watkins schools and pupils not making a choice are assigned to the school previously attended; first and eighth grade pupils must affirmatively choose a school. After the plan was filed the District Court denied petitioners' prayer for an injunction and granted respondent leave to submit an amendment to the plan with respect to employment and assignment of teachers and staff on a racially nondiscriminatory basis. The amendment was duly filed and on June 28, 1966, the District Court approved [***722] the "freedom-of-choice" plan as so amended. The Court of Appeals for the Fourth Circuit, *en banc*, *382 F.2d 338, n3* affirmed the District Court's approval of the "freedom-of-choice" provisions of the plan but remanded the case to the District Court for entry of an order regarding faculty [*435] "which is much more specific and more comprehensive" and which would incorporate in addition to a "minimal, objective time table" some of the faculty provisions of the decree entered by the Court of Appeals for the Fifth Circuit in *United States v. Jefferson County Board of Education, 372 F.2d 836,* aff'd *en banc*, *380 F.2d 385 (1967).* Judges Sobeloff and Winter concurred with the remand on the teacher issue but otherwise disagreed, expressing the view "that the District Court should be directed . . . also to set up procedures for periodically evaluating the effectiveness of the [Board's] 'freedom of choice' [plan] in the elimination of other features of a segregated school system." *Bowman v. County School Board of Charles City County, 382 F.2d 326, at 330.* We granted certiorari, *389 U.S. 1003.*

n2 Congress, concerned with the lack of progress in school desegregation, included provisions in the Civil Rights Act of 1964 to deal with the problem through various agencies of the Federal Government. 78 Stat. 246, 252, 266, *42 U. S. C. § § 2000c et seq.*, 2000d *et seq.*, 2000h-2. In Title VI Congress declared that

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *42 U. S. C. § 2000d.*

The Department of Health, Education, and Welfare issued regulations covering racial discrimination in federally aided school systems, as directed by *42 U. S. C. § 2000d-1,* and in a statement of policies, or "guidelines," the Department's Office of Education established standards according to which school systems in the process of desegregation can remain qualified for federal funds. *45 CFR § § 80.1-80.13,* 181.1-181.76 (1967). "Freedom-of-choice" plans are among those considered acceptable, so long as in operation such a plan proves effective. 45 CFR § 181.54. The regulations provide that a school system "subject to a final order of a court of the United States for the desegregation of such school . . . system" with which the system agrees to comply is deemed to be in compliance with the statute and regulations. *45 CFR § 80.4 (c).* See also 45 CFR § 181.6. See generally Dunn, Title VI, the Guidelines and School Desegregation in the South, *53 Va. L. Rev. 42 (1967);* Note, *55 Geo. L. J. 325 (1966);* Comment, *77 Yale L. J. 321 (1967).*

n3 This case was decided *per curiam* on the basis of the opinion in *Bowman v. County School Board of Charles City County, 382 F.2d 326,* decided the same day. Certiorari has not been sought for the *Bowman* case itself.

The [**1693] pattern of separate "white" and "Negro" schools in the New Kent County school system established under compulsion of state laws is precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed, and which *Brown I* declared unconstitutionally denied Negro school children equal protection of the laws. Racial identification of the system's schools was complete, extending not just to the composition of student bodies at the two schools but to every facet of school operations -- faculty, staff, transportation, extracurricular activities and facilities. In short, the State, acting through the local school board and school officials, organized and operated a dual system, part "white" and part "Negro."

[***LEdHR1] [1]It was such dual systems that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were *required* by *Brown II* "to effectuate a transition to a racially nondiscriminatory school system." *349 U.S., at 301.* It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern of excluding [*436] Negro children from schools attended by white children. The principal focus was on obtaining for those Negro children courageous enough to break with tradition a place in the "white" schools. See, *e. g., Cooper v. Aaron, 358 U.S. 1.* Under *Brown II* that immediate goal was only the first step, however. The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about; it was because of the "complexities arising from the transition to a system of public education freed of racial discrimination" that we provided for "all deliberate speed" in the implementation of the principles of *Brown I. 349 U.S., at 299-301.* Thus we recognized the task would necessarily involve solution of "varied local school problems." *Id., at 299.* In referring to the "personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis," we also noted that "to effectuate this interest may call for elimination of a variety of obstacles in making the transition . . . ." [***723] *Id., at 300.* Yet we emphasized that the constitutional rights of Negro children required school officials to bear the burden of establishing that additional time to carry out the ruling in an effective manner "is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." *Ibid.* We charged the district courts in their review of particular situations to

"consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the [*437] defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system." *Id., at 300-301.*

[***LEdHR2] [2] [***LEdHR3] [3] [***LEdHR4] [4] [***LEdHR5] [5]It is against this background that 13 years after *Brown II* commanded the abolition of dual systems we must measure the effectiveness of respondent School Board's "freedom-of-choice" plan to achieve that end. The School Board contends that it has fully discharged its obligation by adopting a plan by which every

student, regardless of race, may "freely" choose the school he will attend. The Board attempts to cast the issue in its broadest form by arguing that its "freedom-of-choice" plan may be faulted only by reading the Fourteenth Amendment as universally requiring "compulsory [**1694] integration," a reading it insists the wording of the Amendment will not support. But that argument ignores the thrust of *Brown II*. In the light of the command of that case, what is involved here is the question whether the Board has achieved the "racially nondiscriminatory school system" *Brown II* held must be effectuated in order to remedy the established unconstitutional deficiencies of its segregated system. In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former "white" school to Negro children and of the "Negro" school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system. *Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to [*438] convert to a unitary system in which racial discrimination would be eliminated root and branch. See *Cooper v. Aaron, supra, at 7; Bradley v. School Board, 382 U.S. 103;* cf. *Watson v. City of Memphis, 373 U.S. 526.* The constitutional rights of Negro school children articulated in *Brown I* permit no less than this; and it was to this end that *Brown II* commanded school boards to bend their efforts. n4

> n4 "We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States, 380 U.S. 145, 154.* Compare the remedies discussed in, *e. g., NLRB v. Newport News Shipbuilding & Dry Dock Co., 308 U.S. 241; United States v. Crescent Amusement Co., 323 U.S. 173; Standard Oil Co.* v. *United States, 221 U.S. 1.* See also *Griffin v. County School Board, 377 U.S. 218, 232-234.*

[***LEdHR6] [6] [***LEdHR7] [7] [***LEdHR8] [8]In determining whether [***724] respondent School Board met that command by adopting its "freedom-of-choice" plan, it is relevant that this first step did not come until some 11 years after *Brown I* was decided and 10 years after *Brown II* directed the making of a "prompt and reasonable start." This deliberate perpetuation of the unconstitutional dual system can only have compounded the harm of such a system. Such delays are no longer tolerable, for "the governing constitutional principles no longer bear the imprint of newly enunciated doctrine." *Watson v. City of Memphis, supra, at 529;* see *Bradley v. School Board, supra; Rogers v. Paul, 382 U.S. 198.* Moreover, a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is also intolerable. "The time for mere 'deliberate speed' has run out," *Griffin v. County School Board, 377 U.S. 218, 234;* "the context in which we must interpret and apply this language [of *Brown II*] to plans for desegregation has been significantly altered." [*439] *Goss v. Board of Education, 373 U.S. 683, 689.* See *Calhoun v. Latimer, 377 U.S. 263.* The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now.*

[**1695]

[***LEdHR9] [9] [***LEdHR10] [10] [***LEdHR11] [11] [***LEdHR12] [12] [***LEdHR13] [13]The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed. See No. 805, *Raney* v. *Board of Education, post,* at 449.

[***LEdHR14] [14] [***LEdHR15] [15]We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan

might of itself be unconstitutional, [***725] although that argument has been urged upon us. Rather, [*440] all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself. As Judge Sobeloff has put it,

"'Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end -- the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to create a 'unitary, nonracial system.'" *Bowman v. County School Board, 382 F.2d 326, 333 (C. A. 4th Cir. 1967)* (concurring opinion).

Accord, *Kemp v. Beasley, 389 F.2d 178 (C. A. 8th Cir. 1968); United States v. Jefferson County Board of Education, supra.* Although the general experience under "freedom of choice" to date has been such as to indicate its ineffectiveness as a tool of desegregation, n5 there [**1696] may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation [*441] program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, "freedom of choice" must be held unacceptable.

n5 The views of the United States Commission on Civil Rights, which we neither adopt nor refuse to adopt, are as follows:

"Freedom of choice plans, which have tended to perpetuate racially identifiable schools in the Southern and border States, require affirmative action by both Negro and white parents and pupils before such disestablishment can be achieved. There are a number of factors which have prevented such affirmative action by substantial numbers of parents and pupils of both races:

"(a) Fear of retaliation and hostility from the white community continue to deter many Negro families from choosing formerly all-white schools;

"(b) During the past school year [1966-1967], as in the previous year, in some areas of the South, Negro families with children attending previously all-white schools under free choice plans were targets of violence, threats of violence and economic reprisal by white persons and Negro children were subjected to harassment by white classmates notwithstanding conscientious efforts by many teachers and principals to prevent such misconduct;

"(c) During the past school year, in some areas of the South public officials improperly influenced Negro families to keep their children in Negro schools and excluded Negro children attending formerly all-white schools from official functions;

"(d) Poverty deters many Negro families in the South from choosing formerly all-white schools. Some Negro parents are embarrassed to permit their children to attend such schools without suitable clothing. In some districts special fees are assessed for courses which are available only in the white schools;

"(e) Improvements in facilities and equipment . . . have been instituted in all-Negro schools in some school districts in a manner that tends to discourage Negroes from selecting white schools."

Southern School Desegregation, 1966-1967, at 88 (1967). See *id.*, at 45-69; Survey of School Desegregation in the Southern and Border States 1965-1966, at 30-44, 51-52 (U.S. Comm'n on Civil Rights 1966).

[***LEdHR16] [16] [***LEdHR17] [17]The New Kent School Board's "freedom-of-choice" plan cannot be accepted as a sufficient step to "effectuate a transition" to a unitary system. In three years of operation not a single white child has chosen to attend Watkins school and although 115 Negro children enrolled in New Kent school in 1967 (up from 35 in 1965 and 111 in 1966) 85% of the Negro children [***726] in the system still attend the all-Negro Watkins school. In other words, the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents [*442] with a responsibility which *Brown II* placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, n6 fashion steps which promise realistically to convert promptly to a system without a "white" school and a "Negro" school, but just schools.

n6 "In view of the situation found in New Kent County, where there is no residential segregation, the elimination of the dual school system and the establishment of a 'unitary, non-racial system' could be readily achieved with a minimum of administrative difficulty by means of geographic zoning -- simply by assigning students living in the eastern half of the county to the New Kent School and those living in the western half of the county to the Watkins School. Although a geographical formula is not universally appropriate, it is evident that here the Board, by separately busing Negro children across the entire county to the 'Negro' school, and the white children to the 'white' school, is deliberately maintaining a segregated system which would vanish with non-racial geographic zoning. The conditions in this county present a classical case for this expedient." *Bowman v. County School Board, supra, n. 3, at 332* (concurring opinion).

Petitioners have also suggested that the Board could consolidate the two schools, one site (*e. g.*, Watkins) serving grades 1-7 and the other (*e. g.*, New Kent) serving grades 8-12, this being the grade division respondent makes between elementary and secondary levels. Petitioners contend this would result in a more efficient system by eliminating costly duplication in this relatively small district while at the same time achieving immediate dismantling of the dual system.

These are two suggestions the District Court should take into account upon remand, along with any other proposed alternatives and in light of considerations respecting other aspects of the school system such as the matter of faculty and staff desegregation remanded to the court by the Court of Appeals.

The judgment of the Court of Appeals is vacated insofar as it affirmed the District Court and the case is remanded to the District Court for further proceedings consistent with this opinion.

It is so ordered.

REFERENCES: Return To Full Text Opinion

15 Am Jur 2d, Civil Rights 38 et seq.

6 Am Jur Pl & Pr Forms, Civil Rights, Forms 6:181, 6:181.1, 6:181.1.75, 6:181.5, 6:182

18 Am Jur Pl & Pr Forms, Schools, Forms 18:154, 18:155

US L Ed Digest, Civil Rights 6, 12.5

ALR Digests, Civil Rights 3; Schools 52

L Ed Index to Anno, Civil Rights; Schools

ALR Quick Index, Discrimination; Schools

Annotation References:

Race discrimination. 94 L Ed 1121, 96 L Ed 1291, 98 L Ed 882, 100 L Ed 488, 3 L Ed 2d 1556, 6 L Ed 2d 1302, 10 L Ed 2d 1105, 15 L Ed 2d 990; 38 ALR2d 1188.

De facto segregation of races in public schools. 11 ALR3d 780.

Discrimination because of race, color, or creed in respect of appointment, duties, compensation, etc., of schoolteachers or other public officers or employees. 130 ALR 1512.

LEXSEE 498 US 237

BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA, PETITIONER v. ROBERT L. DOWELL ET AL.

No. 89-1080

SUPREME COURT OF THE UNITED STATES

498 U.S. 237; 111 S. Ct. 630; 112 L. Ed. 2d 715; 1991 U.S. LEXIS 484; 59 U.S.L.W. 4061; 91 Cal. Daily Op. Service 502; 91 Daily Journal DAR 673

October 2, 1990, Argued
January 15, 1991, Decided

PRIOR HISTORY:

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

DISPOSITION: *890 F. 2d 1483,* reversed and remanded.

DECISION:

Federal Court of Appeals held to have applied overly stringent standard in determining whether to dissolve prior injunctive decree imposing desegregation plan for Oklahoma City's public schools.

SUMMARY:

Several black students and their parents brought suit in 1961 in the United States District Court for the Western District of Oklahoma against the board of education of Oklahoma City, and sought to end alleged, de jure segregation of the city's public schools. In 1972, the District Court--having previously determined that the city, in violation of the equal protection clause of the Federal Constitution's Fourteenth Amendment, had intentionally segregated both schools and housing in the past, and had been operating a "dual," racially segregated school system--(1) ruled that previous efforts had not been successful in eliminating such state-imposed segregation; and (2) ordered the adoption of a desegregation plan whose elements included (a) mandatory student assignments for many specified schools and grades, and (b) school busing *(338 F Supp 1256).* On appeal, the United States Court of Appeals for the Tenth Circuit affirmed *(465 F2d 1012),* and the United States Supreme Court denied certiorari *(409 US 1041, 34 L Ed 2d 490, 93 S Ct 526).* In 1977, the District Court, issuing an unpublished, unappealed "Order Terminating Case," expressed the view that (1) the desegregation plan had worked; (2) substantial compliance with the constitutional requirements had been achieved; and (3) a "unitary" school system had been accomplished. Later, the board, under allegedly changed conditions, adopted a student reassignment plan to begin in the 1985-1986 school year. Although the reassignment plan continued some busing, the plan also included provisions for (1) some neighborhood assignments, and (2) a student's voluntary transfer from a school in which the student was in the majority to a school in which the student would be in the minority. The black students and their parents then asserted that the school district had not achieved "unitary" status and that the reassignment plan was a return to segregation, but the District Court, in refusing to reopen the case, expressed the view that (1) the 1977 finding of unitariness was res judicata as to the parties, and (2) the school district remained unitary *(606 F Supp 1548).* On appeal, the Court of Appeals, reversing, expressed the view that while the 1977 order was binding on the parties, nothing in the 1977 order indicated that the 1972 injunction itself was terminated *(795 F2d 1516).* The Supreme Court again denied certiorari *(479 US 938, 93 L Ed 2d 370, 107 S Ct 420).* On remand, the District Court, in 1987, concluded that the 1972 decree should be vacated and the school district returned to local control, where, according to the District Court, (1) demographic changes had made the desegregation plan unworkable; (2) the board had done nothing for 25 years to promote residential segregation; (3) the school district had bused students for more than a decade in good-faith compliance with the District Court's orders; (4) the city's existing residential segregation was the result of private decisionmaking and economics, rather than a vestige of former school segregation; (5) the district had maintained its unitary status; and

(6) the reassignment plan was not designed with discriminatory intent *(677 F Supp 1503)*. On appeal, the Court of Appeals, again reversing, expressed the view that (1) a desegregation decree generally remains in effect until a school district can show a "grievous wrong" evoked by new and unforeseen conditions; and (2) the circumstances in the case at hand had not changed enough to justify modification of the 1972 decree, where, according to the Court of Appeals, a number of schools would return to being primarily one-race schools under the reassignment plan *(890 F2d 1483)*.

On certiorari, the Supreme Court reversed the Court of Appeals' judgment and remanded the case to the District Court for further proceedings. In an opinion by Rehnquist, Ch. J., joined by White, O'Connor, Scalia, and Kennedy, JJ., it was held that (1) the District Court's unappealed 1977 order did not bar the black students and their parents from contesting the District Court's 1987 order dissolving the 1972 injunctive decree, where (a) the 1977 order did not dissolve the 1972 decree, and (b) the 1977 order's unitariness finding was too ambiguous to bar the students and their parents from challenging later action by the school board; but (2) in the case at hand, a finding by the District Court--that the school district was being operated in compliance with the commands of the Fourteenth Amendment's equal protection clause and that it was unlikely that the school board would return to its former ways--would be a finding that the purposes of the desegregation litigation had been fully achieved, and would thus be sufficient to justify dissolution of the desegregation decree, without any additional requirement for the school board to show a "grievous wrong" evoked by new and unforeseen conditions; (3) the District Court, on remand, was to decide, in accordance with the Supreme Court's opinion, whether the school board had made a sufficient showing of constitutional compliance as of 1985, when the school board had adopted the student reassignment plan, so as to allow the injunction to be dissolved; and (4) the District Court ought to address itself as to whether (a) the board had complied in good faith with the desegregation decree since it had been entered, and (b) the vestiges of past discrimination had been eliminated to the extent practicable.

Marshall, J., joined by Blackmun and Stevens, JJ., dissenting, expressed the view that (1) the District Court's 1977 order did not contain a sufficiently precise statement to bar review of the District Court's 1987 order expressly dissolving the 1972 decree; and (2) the proper standard for determining whether a school desegregation decree should be dissolved is whether the purposes of the desegregation litigation, as incorporated in the decree, have been fully achieved; but (3) such a standard must (a) take into account the unique harm associated with a system of racially identifiable schools, and (b) expressly demand the elimination of such schools; and (4) while it was possible that some modification of the 1972 decree might be appropriate, the purposes of the 1972 decree had not yet been achieved, and the Court of Appeals' reinstatement of the decree ought to be affirmed, because the record showed, and the Court of Appeals had found, that feasible steps could be taken to avoid one-race schools.

Souter, J., did not participate.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]
CIVIL RIGHTS § 50
INJUNCTION § 136
dissolution of decree -- school desegregation -- local control --
Headnote:[1A][1B][1C][1D][1E]

With respect to a city school board's seeking dissolution of a Federal District Court's prior injunctive decree which imposed a desegregation plan for the city's schools, a finding by the District Court--that the school district is being operated in compliance with the commands of the equal protection clause of the Federal Constitution's Fourteenth Amendment and that it is unlikely that the school board would return to its former ways--is a finding that the purposes of the desegregation litigation have been fully achieved, and is thus sufficient to justify dissolution of the desegregation decree, without any additional requirement for the school board to show a "grievous wrong" evoked by new and unforeseen conditions, because (1) such desegregation decrees are not intended to operate in perpetuity; (2) local control over the education of children allows (a) citizen participation in decisionmaking, and (b) innovations so that school programs can fit local needs; (3) the legal justification for the displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities; (4) the dissolution of a desegregation decree after the authorities have operated in compliance with the decree for a reasonable period of time properly recognizes that necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems does not extend beyond the time required to remedy the effects of past intentional discrimination; (5) even though the personnel of school boards change over time, and even though the same passage of time enables a District Court to observe the good faith of a school board in complying with such a decree, the addition of such a "grievous wrong" requirement would condemn a school district, once governed by a board which intentionally discriminated, to judicial tutelage for

the indefinite future; and (6) neither the principles governing the entry and dissolution of injunctive decrees nor the commands of the equal protection clause require such a draconian result. (Marshall, Blackmun, and Stevens, JJ., dissented from this holding.)

[***LEdHN2]
CIVIL RIGHTS § 51
INJUNCTION § 141
JUDGMENT § 146
school desegregation -- dissolution of decree -- unappealed finding of unitary status -- conclusiveness --
Headnote:[2]

Even though the plaintiffs--several black students and their parents--did not appeal from a Federal District Court's 1977 order finding that a previously segregated school system had achieved "unitary" status, the 1977 order does not bar the students and their parents from contesting the District Court's 1987 order dissolving a 1972 injunctive decree which imposed a desegregation plan, where (1) the 1977 order did not dissolve the 1972 decree; (2) the 1977 order's unitariness finding was too ambiguous to bar the students and their parents from challenging later action by the defendant school board; and (3) even though courts have used the term "dual" to denote a school system which has engaged in intentional segregation of students by race, and the term "unitary" to describe a school system which has been brought into compliance with the command of the equal protection clause of the Federal Constitution's Fourteenth Amendment, (a) the words "dual" and "unitary" are not actually found in the equal protection clause, (b) the lower courts have been inconsistent in their use of the term "unitary," (c) the 1977 order was unclear with respect to what it meant by "unitary" and the necessary result of that finding, (d) it has been held that a school board is entitled to a precise statement of its obligations under a desegregation decree, and (e) if such a decree is to be terminated or dissolved, the students and their parents, as well as the school board, are entitled to a like statement from the court.

[***LEdHN3]
INJUNCTION § 142
change --
Headnote:[3]

An injunctive decree may be changed upon an appropriate showing, but such a decree may not be changed if the purposes of the litigation, as incorporated in the decree, have not been fully achieved.

[***LEdHN4]
EVIDENCE § 852
relevancy -- weight -- modification of school desegregation decree --
Headnote:[4A][4B]

A Federal District Court, in deciding whether to modify or dissolve a previously entered decree for the desegregation of local public schools, need not accept at face value the profession of a school board which has intentionally discriminated that the board will cease to do so in the future, but the board's compliance with previous court orders is relevant; the District Court, in considering whether the vestiges of de jure segregation of such schools have been eliminated as far as practicable, should look at not only school assignments, but also every facet of school operations--faculty, staff, transportation, extracurricular activities, and facilities. (Marshall, Blackmun, and Stevens, JJ., dissented in part from this holding.)

[***LEdHN5]
APPEAL § 1692.3
dissolution of injunction -- erroneous standard -- remand to District Court -- what may be considered --
Headnote:[5A][5B][5C][5D]

On certiorari to review a Federal Court of Appeals' reversal of a Federal District Court's 1987 decision terminating a 1972 injunctive decree imposing a desegregation plan for a particular city's public schools, the United States Supreme Court--having decided that the Court of Appeals used an overly stringent standard in reviewing such termination decisions, and having reversed the Court of Appeals' judgment--will not reinstate the District Court's decision, but will remand the case to the District Court so that the District Court may decide, in accordance with the Supreme Court's opinion, whether the defendant school board made a sufficient showing of constitutional compliance as of 1985, when the school board adopted a student reassignment plan, so as to allow the injunction to be dissolved; the District Court should address itself as to whether (1) the board had complied in good faith with the desegregation decree since it was entered, and (2) the vestiges of past discrimination had been eliminated to the extent practicable; even though the board's adoption of the reassignment plan may technically have been a violation of the 1972 decree, the District Court, on remand, should not treat the adoption of the reassignment plan as a breach of good faith on the part of the board, because the board should not be penalized for relying on the express language of the District Court's 1977 purported "Order Terminating Case," which order was later determined, by hindsight, to be ambiguous; with respect to a 1987 finding by the District Court--that present residential segregation in the city was the result of private decisionmaking and economics, and that

such residential segregation was too attenuated to be a vestige of former school segregation--the District Court and the Court of Appeals must treat that residential-segregation issue as a new matter upon further consideration of the case, where the Court of Appeals' opinion was at least ambiguous as to whether the District Court's finding was clearly erroneous; after the District Court decides whether the board is entitled to have the decree terminated, the District Court should proceed to decide the challenge by the plaintiffs--several black students and their parents--to the student reassignment plan; if the board was entitled to have the 1972 decree terminated as of 1985, the District Court should then evaluate the board's decision to implement the reassignment plan under appropriate principles pursuant to the equal protection clause of the Federal Constitution's Fourteenth Amendment. (Marshall, Blackmun, and Stevens, JJ. dissented from this holding.)

[***LEdHN6]
CIVIL RIGHTS § 6
INJUNCTION § 141
school desegregation decree -- release -- effect --
Headnote:[6]

A local school district which has been released from an injunction imposing a desegregation plan (1) no longer requires court authorization for the promulgation of policies and rules regulating matters such as the assignment of students and the like; but (2) remains subject to the mandate of the equal protection clause of the Federal Constitution's Fourteenth Amendment.

SYLLABUS: In 1972, finding that previous efforts had not been successful at eliminating *de jure* segregation, the District Court entered a decree imposing a school desegregation plan on petitioner Oklahoma City Board of Education (Board). In 1977, finding that the school district had achieved "unitary" status, the court issued an order terminating the case, which respondents, black students and their parents, did not appeal. In 1985, the Board adopted its Student Reassignment Plan (SRP), under which a number of previously desegregated schools would return to primarily one-race status for the asserted purpose of alleviating greater busing burdens on young black children caused by demographic changes. The District Court thereafter denied respondents' motion to reopen the terminated case, holding, *inter alia*, that its 1977 unitariness finding was res judicata. The Court of Appeals reversed, holding that respondents could challenge the SRP because the school district was still subject to the desegregation decree, nothing in the 1977 order having indicated that the 1972 injunction itself was terminated. On remand, the District Court dissolved the injunction, finding, among other things, that the original plan was no longer workable, that the Board had complied in good faith for more than a decade with the court's orders, and that the SRP was not designed with discriminatory intent. The Court of Appeals again reversed, holding that a desegregation decree remains in effect until a school district can show "'grievous wrong evoked by new and unforeseen conditions,'" *United States v. Swift & Co., 286 U.S. 106, 119, 76 L. Ed. 999, 52 S. Ct. 460,* and that circumstances had not changed enough to justify modification of the 1972 decree.

Held:

1. Respondents may contest the District Court's order dissolving the 1972 injunction. Although respondents did not appeal from the court's 1977 order, that order did not dissolve the desegregation decree, and, since the order is unclear with respect to what it meant by "unitary" and the necessary result of that finding, it is too ambiguous to bar respondents from challenging later action by the Board. If a desegregation decree is to be terminated or dissolved, the parties are entitled to a rather precise statement to that effect from the court. Pp. 244-246.

2. The Court of Appeals' test for dissolving a desegregation decree is more stringent than is required either by this Court's decisions dealing with injunctions or by the Equal Protection Clause of the Fourteenth Amendment. Pp. 246-251.

(a) Considerations based on the allocation of powers within the federal system demonstrate that the *Swift* test does not provide the proper standard to apply to injunctions entered in school desegregation cases. Such decrees, unlike the one in *Swift*, are not intended to operate in perpetuity, federal supervision of local school systems always having been intended as a temporary measure to remedy past discrimination. The legal justification for displacement of local authority in such cases is a violation of the Constitution, and dissolution of a desegregation decree after local authorities have operated in compliance with it for a reasonable period is proper. Thus, in this case, a finding by the District Court that the school system was being operated in compliance with the Equal Protection Clause, and that it was unlikely that the Board would return to its former ways, would be a finding that the purposes of the desegregation litigation had been fully achieved, and no additional showing of "grievous wrong evoked by new and unforeseen conditions" would be required of the Board. Pp. 246-248.

(b) The Court of Appeals also erred in relying on *United States v. W. T. Grant Co., 345 U.S. 629, 633, 97 L. Ed. 1303, 73 S. Ct. 894,* for the proposition that "compliance alone cannot become the basis for modifying or dissolv-

ing an injunction." That case did not involve the dissolution of an injunction, but the question whether an injunction should be issued in the first place in light of the wrongdoer's promise to comply with the law. Although a district court need not accept at face value a school board's profession that it will cease to intentionally discriminate in the future, the board's compliance with previous court orders is obviously relevant in deciding whether to modify or dissolve a desegregation decree, since the passage of time results in changes in board personnel and enables the court to observe the board's good faith in complying with the decree. The Court of Appeals' test would improperly condemn a school district to judicial tutelage for the indefinite future. Pp. 248-249.

(c) In deciding whether the Board made a sufficient showing of constitutional compliance as of 1985, when the SRP was adopted, to allow the injunction to be dissolved, the District Court, on remand, should address itself to whether the Board had complied in good faith with the desegregation decree since it was entered, and whether, in light of every facet of school operations, the vestiges of past *de jure* segregation had been eliminated to the extent practicable. If it decides that the Board was entitled to have the decree terminated, the court should proceed to decide whether the Board's decision to implement the SRP complies with appropriate equal protection principles. Pp. 249-251.

COUNSEL: Ronald L. Day argued the cause for petitioner. With him on the briefs were Laurie W. Jones and Charles J. Cooper.

Solicitor General Starr argued the cause for the United States as amicus curiae urging reversal. With him on the brief were Assistant Attorney General Dunne, Deputy Solicitor General Roberts, Deputy Assistant Attorney General Clegg, Lawrence S. Robbins, David K. Flynn, and Mark L. Gross.

Julius LeVonne Chambers argued the cause for respondents. With him on the brief were Charles Stephen Ralston, Norman J. Chachkin, Lewis Barber, Jr., Janell M. Byrd, and Anthony G. Amsterdam. *

* Briefs of amici curiae urging reversal were filed for the DeKalb County Board of Education by Rex E. Lee, Carter G. Phillips, Mark D. Hopson, Gary M. Sams, Charles L. Weatherly, and J. Stanley Hawkins; for the Intervenors in Carlin v. Board of Education of San Diego Unified School District by Elmer Enstrom, Jr.; and for the Landmark Legal Foundation Center for Civil Rights by Clint Bolick, Jerald L. Hill, Gary Lawson, Daniel Polsby, Charles E. Rice, Robert A. Anthony, Thomas C. Arthur, Peter J. Ferrara, Lino A. Graglia, and Henry Mark Holzer.

Briefs of amici curiae urging affirmance were filed for the American Jewish Committee et al. by Samuel Rabinove, Richard T. Foltin, and William B. Duffy, Jr.; for the Lawyers' Committee for Civil Rights Under Law et al. by Paul Vizcarrondo, Jr., Norman Redlich, Robert F. Mullen, John A. Powell, Steven R. Shapiro, and Marc D. Stern; for the National Association for the Advancement of Colored People et al. by David J. Burman, William L. Taylor, and Susan M. Liss; and for the National Education Association by Robert H. Chanin and Jeremiah A. Collins.

Briefs of amici curiae were filed for the Council of the Great City Schools et al. by David S. Tatel, Walter A. Smith, Jr., and Patricia A. Brannan; and for the Mountain States Legal Foundation by William Perry Pendley.

JUDGES: REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which BLACKMUN and STEVENS, JJ., joined, post, p. 251. SOUTER, J., took no part in the consideration or decision of the case.

OPINION BY: REHNQUIST

OPINION:

[*240] [***723] [**633] CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

[***LEdHR1A] [1A]Petitioner Board of Education of Oklahoma City (Board) sought dissolution of a decree entered by the District Court imposing a school desegregation plan. The District Court granted relief over the objection of respondents Robert L. Dowell et al., black students and their parents. The Court of Appeals for the Tenth Circuit reversed, holding that the Board would be entitled to such relief only upon "'nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions . . . .'" *890 F.2d 1483, 1490 (1989)* (citation omitted). We hold that the Court of Appeals' test is more stringent than is required either by our cases dealing with injunctions or by the Equal Protection Clause of the Fourteenth Amendment.

I

This school desegregation litigation began almost 30 years ago. In 1961, respondents, black students and their parents, sued the Board to end *de jure* segregation in the public schools. In 1963, the District Court found that

Oklahoma City had intentionally segregated both schools and housing in the past, and that Oklahoma City was operating a "dual" school system -- one that was intentionally segregated by race. *Dowell v. School Board of Oklahoma City Public Schools, 219 F. Supp. 427* (WD Okla.). In 1965, the District Court found that the Board's attempt to desegregate by using neighborhood zoning failed to remedy past segregation because residential segregation resulted in one-race schools. *Dowell v. School Board of Oklahoma City Public Schools, 244 F. Supp. 971, 975* (WD Okla.). Residential segregation had once been state imposed, and it lingered due to discrimination by some realtors and financial institutions. *Ibid.* The District Court found that school segregation had caused [*241] [***724] some housing segregation. *Id., at 976-977.* In 1972, finding that previous efforts had not been successful at eliminating state-imposed segregation, the District Court ordered the Board to adopt the "Finger Plan," *Dowell v. Board of Education of Oklahoma City Public Schools, 338 F. Supp. 1256,* aff'd, *465 F.2d 1012* (CA10), cert. denied, *409 U.S. 1041, 34 L. Ed. 2d 490, 93 S. Ct. 526 (1972),* under which kindergartners would be assigned to neighborhood schools unless their parents opted otherwise; children in grades 1-4 would attend formerly all white schools, and thus black children would be bused to those schools; children in grade 5 would attend formerly all black schools, and thus white children would be bused to those schools; students in the upper grades would be bused to various areas in order to maintain integrated schools; and in integrated neighborhoods there would be stand-alone schools for all grades.

In 1977, after complying with the desegregation decree for five years, the Board made a "Motion to Close Case." The District Court held in its "Order Terminating Case":

> "The Court has concluded that [the Finger Plan] worked and that substantial compliance with the constitutional requirements has been achieved. The School Board, under the oversight of the Court, has operated the Plan properly, and the Court does not foresee that the termination of its jurisdiction will result in the dismantlement of [**634] the Plan or any affirmative action by the defendant to undermine the unitary system so slowly and painfully accomplished over the 16 years during which the cause has been pending before the court. . . .
>
> ". . . The School Board, as now constituted, has manifested the desire and intent to follow the law. The court believes that the present members and their successors on the Board will now and in the future continue to follow the constitutional desegregation requirements.
>
> "Now sensitized to the constitutional implications of its conduct and with a new awareness of its responsibility [*242] to citizens of all races, the Board is entitled to pursue in good faith its legitimate policies without the continuing constitutional supervision of this Court. . . .
>
> . . . .
>
> ". . . Jurisdiction in this case is terminated ipso facto subject only to final disposition of any case now pending on appeal." No. Civ-9452 (WD Okla., Jan. 18, 1977); App. 174-176.

This unpublished order was not appealed.

In 1984, the Board faced demographic changes that led to greater burdens on young black children. As more and more neighborhoods became integrated, more stand-alone schools were established, and young black students had to be bused farther from their inner-city homes to outlying white areas. In an effort to alleviate this burden and to increase parental involvement, the Board adopted the Student Reassignment Plan (SRP), which relied on neighborhood assignments for students in grades K-4 beginning in the 1985-1986 school year. Busing continued for students in grades 5-12. [***725] Any student could transfer from a school where he or she was in the majority to a school where he or she would be in the minority. Faculty and staff integration was retained, and an "equity officer" was appointed.

In 1985, respondents filed a "Motion to Reopen the Case," contending that the school district had not achieved "unitary" status, and that the SRP was a return to segregation. Under the SRP, 11 of 64 elementary schools would be greater than 90% black, 22 would be greater than 90% white plus other minorities, and 31 would be racially mixed. The District Court refused to reopen the case, holding that its 1977 finding of unitariness was res judicata as to those who were then parties to the action, and that the district remained unitary. *Dowell v. Board of Education of Oklahoma City Public Schools, 606 F. Supp. 1548 (WD Okla. 1985).* The District Court found that the Board, administration, faculty, support staff, and student body were integrated, and transportation, [*243] extracurricular activities, and facilities within the district were equal and nondiscriminatory. Because unitariness had been achieved, the District

Court concluded that court-ordered desegregation must end.

The Court of Appeals for the Tenth Circuit reversed, *Dowell v. Board of Education of Oklahoma City Public Schools, 795 F.2d 1516,* cert. denied, *479 U.S. 938, 93 L. Ed. 2d 370, 107 S. Ct. 420 (1986).* It held that, while the 1977 order finding the district unitary was binding on the parties, nothing in that order indicated that the 1972 injunction itself was terminated. The court reasoned that the finding that the system was unitary merely ended the District Court's active supervision of the case, and because the school district was still subject to the desegregation decree, respondents could challenge the SRP. The case was remanded to determine whether the decree should be lifted or modified.

On remand, the District Court found that demographic changes made the Finger Plan unworkable, that the Board had done nothing for 25 years to promote residential segregation, and that the school district had bused students for more than a decade in good-faith compliance with the court's orders. *677 F. Supp. 1503 (WD Okla. 1987).* The District Court found that present residential segregation [**635] was the result of private decisionmaking and economics, and that it was too attenuated to be a vestige of former school segregation. It also found that the district had maintained its unitary status, and that the neighborhood assignment plan was not designed with discriminatory intent. The court concluded that the previous injunctive decree should be vacated and the school district returned to local control.

The Court of Appeals again reversed, *890 F.2d 1483 (1989),* holding that "'an injunction takes on a life of its own and becomes an edict quite independent of the law it is meant to effectuate.'" *Id., at 1490* (citation omitted). That court approached the case "not so much as one dealing with desegregation, but as one dealing with the proper application [*244] of the federal law on injunctive remedies." *Id., at 1486.* Relying on *United States v. Swift & Co., 286 U.S. 106, 76 L. Ed. 999, 52 S. Ct. 460 (1932),* it held that a desegregation decree remains in effect until a [***726] school district can show "grievous wrong evoked by new and unforeseen conditions," *id., at 119,* and "'dramatic changes in conditions unforeseen at the time of the decree that . . . impose extreme and unexpectedly oppressive hardships on the obligor.'" *890 F.2d at 1490* (quoting Jost, From *Swift* to *Stotts* and Beyond: Modification of Injunctions in the Federal Courts, *64 Texas L. Rev. 1101, 1110 (1986)).* Given that a number of schools would return to being primarily one-race schools under the SRP, circumstances in Oklahoma City had not changed enough to justify modification of the decree. The Court of Appeals held that, despite the unitary finding, the Board had the "'affirmative duty . . . not to take any action that would impede the process of disestablishing the dual system and its effects.'" *890 F.2d at 1504* (quoting *Dayton Bd. of Education v. Brinkman, 443 U.S. 526, 538, 61 L. Ed. 2d 720, 99 S. Ct. 2971 (1979)).*

We granted the Board's petition for certiorari, *494 U.S. 1055 (1990),* to resolve a conflict between the standard laid down by the Court of Appeals in this case and that laid down in *Spangler v. Pasadena Board of Education, 611 F.2d 1239 (CA9 1979),* and *Riddick v. School Bd. of Norfolk, 784 F.2d 521 (CA4 1986).* We now reverse the Court of Appeals.

II

[***LEdHR2] [2]We must first consider whether respondents may contest the District Court's 1987 order dissolving the injunction which had imposed the desegregation decree. Respondents did not appeal from the District Court's 1977 order finding that the school system had achieved unitary status, and petitioner contends that the 1977 order bars respondents from contesting the 1987 order. We disagree, for the 1977 order did not dissolve the desegregation decree, and the District [*245] Court's unitariness finding was too ambiguous to bar respondents from challenging later action by the Board.

The lower courts have been inconsistent in their use of the term "unitary." Some have used it to identify a school district that has completely remedied all vestiges of past discrimination. See, *e. g., United States v. Overton, 834 F.2d 1171, 1175 (CA5 1987); Riddick v. School Bd. of Norfolk, supra, at 533-534; Vaughns v. Board of Education of Prince George's Cty., 758 F.2d 983, 988 (CA4 1985).* Under that interpretation of the word, a unitary school district is one that has met the mandate of *Brown v. Board of Education, 349 U.S. 294, 99 L. Ed. 1083, 75 S. Ct. 753 (1955),* and *Green v. New Kent County School Bd., 391 U.S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968).* Other courts, however, have used "unitary" to describe any school district that has currently desegregated student assignments, whether or not that status is solely the result of a court-imposed desegregation plan. See, *e. g., 890 F.2d at 1492, 1499* (case below). In other words, such a school district could be called unitary and nevertheless still contain vestiges of past discrimination. That there is such confusion is evident in *Georgia State Conference of Branches of NAACP v. Georgia,* [**636] *775 F.2d 1403 (CA11 1985),* where the Court of Appeals drew a distinction between a "unitary school district" and a district that has achieved "unitary status." The court explained [***727] that a school district that has not operated segregated schools as proscribed by *Green v. New Kent County School Bd., supra,* and *Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971),* "for a period of several years" is unitary, but that a school

district cannot be said to have achieved "unitary status" unless it "has eliminated the vestiges of its prior discrimination and has been adjudicated as such through the proper judicial procedures." *Georgia State Conference, supra, at 1413, n.12.*

We think it is a mistake to treat words such as "dual" and "unitary" as if they were actually found in the Constitution. The constitutional command of the Fourteenth Amendment [*246] is that "no State shall . . . deny to any person . . . the equal protection of the laws." Courts have used the terms "dual" to denote a school system which has engaged in intentional segregation of students by race, and "unitary" to describe a school system which has been brought into compliance with the command of the Constitution. We are not sure how useful it is to define these terms more precisely, or to create subclasses within them. But there is no doubt that the differences in usage described above do exist. The District Court's 1977 order is unclear with respect to what it meant by unitary and the necessary result of that finding. We therefore decline to overturn the conclusion of the Court of Appeals that while the 1977 order of the District Court did bind the parties as to the unitary character of the district, it did not finally terminate the Oklahoma City school litigation. In *Pasadena City Bd. of Education v. Spangler, 427 U.S. 424, 49 L. Ed. 2d 599, 96 S. Ct. 2697 (1976),* we held that a school board is entitled to a rather precise statement of its obligations under a desegregation decree. If such a decree is to be terminated or dissolved, respondents as well as the school board are entitled to a like statement from the court.

III

[***LEdHR1B] [1B] *The Court of Appeals, 890 F.2d at 1490,* relied upon language from this Court's decision in *United States v. Swift and Co., supra,* for the proposition that a desegregation decree could not be lifted or modified absent a showing of "'grievous wrong evoked by new and unforeseen conditions.'" *286 U.S. 106 at 119, 52 S. Ct. 460, 76 L. Ed. 999.* It also held that "compliance alone cannot become the basis for modifying or dissolving an injunction," *890 F.2d at 1491,* relying on *United States v. W. T. Grant Co., 345 U.S. 629, 633, 97 L. Ed. 1303, 73 S. Ct. 894 (1953).* We hold that its reliance was mistaken.

In *Swift*, several large meatpacking companies entered into a consent decree whereby they agreed to refrain forever from entering into the grocery business. The decree was by its terms effective in perpetuity. The defendant [*247] meatpackers and their allies had over a period of a decade attempted, often with success in the lower courts, to frustrate operation of the decree. It was in this context that the language relied upon by the Court of Appeals in this case was used.

[***LEdHR1C] [1C] [***LEdHR3] [3] *United States v. United Shoe Machinery Corp., 391 U.S. 244, 20 L. Ed. 2d 562, 88 S. Ct. 1496 (1968),* explained that the language used in *Swift* must be read in the context of the continuing danger of unlawful [***728] restraints on trade which the Court had found still existed. *Id., at 248.* "*Swift* teaches . . . a decree may be changed upon an appropriate showing, and it holds that it may not be changed . . . if the purposes of the litigation as incorporated in the decree . . . have not been fully achieved." *Ibid.* (emphasis deleted). In the present case, a finding by the District Court that the Oklahoma City School District was being operated in compliance with the commands of the Equal Protection Clause of the Fourteenth [**637] Amendment, and that it was unlikely that the Board would return to its former ways, would be a finding that the purposes of the desegregation litigation had been fully achieved. No additional showing of "grievous wrong evoked by new and unforeseen conditions" is required of the Board.

In *Milliken v. Bradley, 433 U.S. 267, 53 L. Ed. 2d 745, 97 S. Ct. 2749 (1977) (Milliken II),* we said:

> "Federal-court decrees must directly address and relate to the constitutional violation itself. Because of this inherent limitation upon federal judicial authority, federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation . . . ." *Id., at 282.*

From the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination. *Brown* considered the "complexities arising from the *transition* to a system of public education freed of racial discrimination" in holding that the implementation of [*248] desegregation was to proceed "with all deliberate speed." *349 U.S. at 299-301* (emphasis added). *Green* also spoke of the "*transition* to a unitary, nonracial system of public education." *391 U.S. at 436* (emphasis added).

[***LEdHR1D] [1D]Considerations based on the allocation of powers within our federal system, we think, support our view that the quoted language from *Swift* does not provide the proper standard to apply to injunctions entered in school desegregation cases. Such decrees, unlike the one in *Swift*, are not intended to operate in perpetuity. Local control over the education of chil-

dren allows citizens to participate in decisionmaking, and allows innovation so that school programs can fit local needs. *Milliken v. Bradley, 418 U.S. 717, 742, 41 L. Ed. 2d 1069, 94 S. Ct. 3112 (1974) (Milliken I); San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 50, 36 L. Ed. 2d 16, 93 S. Ct. 1278 (1973).* The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities. Dissolving a desegregation decree after the local authorities have operated in compliance with it for a reasonable period of time properly recognizes that "necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination. See *[Milliken II], 433 U.S. at 280-82.* [***729] " *Spangler v. Pasadena City Bd. of Education, 611 F.2d at 1245, n.5* (Kennedy, J., concurring).

The Court of Appeals, as noted, relied for its statement that "compliance alone cannot become the basis for modifying or dissolving an injunction" on our decision in *United States v. W. T. Grant Co., supra, at 633.* That case, however, did not involve the dissolution of an injunction, but the question whether an injunction should be issued in the first place. This Court observed that a promise to comply with the law on the part of a wrongdoer did not divest a district court of its [*249] power to enjoin the wrongful conduct in which the defendant had previously engaged.

[***LEdHR1E] [1E] [***LEdHR4A] [4A]A district court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future. But in deciding whether to modify or dissolve a desegregation decree, a school board's compliance with previous court orders is obviously relevant. In this case the original finding of *de jure* segregation was entered in 1963, the injunctive decree from which the Board seeks relief was entered in 1972, and the Board complied with the decree in good faith until 1985. Not only do the personnel of school boards change over time, but the same passage of time enables the district court to [**638] observe the good faith of the school board in complying with the decree. The test espoused by the Court of Appeals would condemn a school district, once governed by a board which intentionally discriminated, to judicial tutelage for the indefinite future. Neither the principles governing the entry and dissolution of injunctive decrees, nor the commands of the Equal Protection Clause of the Fourteenth Amendment, require any such Draconian result.

[***LEdHR5A] [5A]Petitioner urges that we reinstate the decision of the District Court terminating the injunction, but we think that the preferable course is to remand the case to that court so that it may decide, in accordance with this opinion, whether the Board made a sufficient showing of constitutional compliance as of 1985, when the SRP was adopted, to allow the injunction to be dissolved. n1 The District Court should address itself to whether the Board had complied in good faith with the [*250] desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable. n2

[***LEdHR5B] [5B]

n1 The Court of Appeals viewed the Board's adoption of the SRP as a violation of its obligation under the injunction, and technically it may well have been. But just as the Court of Appeals held that respondents should not be penalized for failure to appeal from an order that by hindsight was ambiguous, we do not think that the Board should be penalized for relying on the express language of that order. The District Court in its decision on remand should not treat the adoption of the SRP as a breach of good faith on the part of the Board.

[***LEdHR5C] [5C]

n2 As noted above, the District Court earlier found that present residential segregation in Oklahoma City was the result of private decisionmaking and economics, and that it was too attenuated to be a vestige of former school segregation. Respondents contend that the Court of Appeals held that this finding was clearly erroneous, but we think its opinion is at least ambiguous on this point. The only operative use of "clearly erroneous" language is in the final paragraph of Subpart VI-D of its opinion, and it is perfectly plausible to read the clearly-erroneous findings as dealing only with the issues considered in that part of the opinion. To dispel any doubt, we direct the District Court and the Court of Appeals to treat this question as *res nova* upon further consideration of the case.

[***730]

[***LEdHR4B] [4B]In considering whether the vestiges of *de jure* segregation had been eliminated as far as practicable, the District Court should look not only at

student assignments, but "to every facet of school operations -- faculty, staff, transportation, extracurricular activities and facilities." *Green, 391 U.S. at 435.* See also *Swann, 402 U.S. at 18* ("Existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities" are "among the most important indicia of a segregated system").

[***LEdHR5D] [5D] [***LEdHR6] [6]After the District Court decides whether the Board was entitled to have the decree terminated, it should proceed to decide respondents' challenge to the SRP. A school district which has been released from an injunction imposing a desegregation plan no longer requires court authorization for the promulgation of policies and rules regulating matters such as assignment of students and the like, but it of course remains subject to the mandate of the Equal Protection Clause of the Fourteenth Amendment. If the Board was entitled to have the decree terminated as of 1985, the District Court should then evaluate the Board's decision to implement the SRP under appropriate equal protection principles. See *Washington v. Davis, 426 U.S. 229, 48 L. Ed. 2d 597, 96 S. Ct. 2040 (1976); Arlington Heights v.* [*251] *Metropolitan Housing Development Corp., 429 U.S. 252, 50 L. Ed. 2d 450, 97 S. Ct. 555 (1977).*

The judgment of the Court of Appeals is reversed, and the case is remanded to the District Court for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOUTER took no part in the consideration or decision of this case.

DISSENT BY: MARSHALL

DISSENT:

[**639] JUSTICE MARSHALL, with whom JUSTICE BLACKMUN and JUSTICE STEVENS join, dissenting.

Oklahoma gained statehood in 1907. For the next 65 years, the Oklahoma City School Board (Board) maintained segregated schools -- initially relying on laws requiring dual school systems; thereafter, by exploiting residential segregation that had been created by legally enforced restrictive covenants. In 1972 -- 18 years after this Court first found segregated schools unconstitutional -- a federal court finally interrupted this cycle, enjoining the Board to implement a specific plan for achieving actual desegregation of its schools.

The practical question now before us is whether, 13 years after that injunction was imposed, the same Board should have been allowed to return many of its elementary schools to their former one-race status. The majority today suggests that 13 years of desegregation was enough. The Court remands the case for further evaluation of whether the purposes of the injunctive decree [***731] were achieved sufficient to justify the decree's dissolution. However, the inquiry it commends to the District Court fails to recognize explicitly the threatened reemergence of one-race schools as a relevant "vestige" of *de jure* segregation.

In my view, the standard for dissolution of a school desegregation decree must reflect the central aim of our school desegregation precedents. In *Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686 (1954) (Brown I)*, a unanimous Court declared that racially "separate educational facilities are inherently [*252] unequal." *Id., at 495.* This holding rested on the Court's recognition that state-sponsored segregation conveys a message of "inferiority as to the status [of Afro-American school children] in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Id., at 494.* Remedying this evil and preventing its recurrence were the motivations animating our requirement that formerly *de jure* segregated school districts take all feasible steps to *eliminate* racially identifiable schools. See *Green v. New Kent County School Bd., 391 U.S. 430, 442, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968); Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 25-26, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971).*

I believe a desegregation decree cannot be lifted so long as conditions likely to inflict the stigmatic injury condemned in *Brown I* persist and there remain feasible methods of eliminating such conditions. Because the record here shows, and the Court of Appeals found, that feasible steps could be taken to avoid one-race schools, it is clear that the purposes of the decree have not yet been achieved and the Court of Appeals' reinstatement of the decree should be affirmed. I therefore dissent. n1

n1 The issue of decree *modification* is not before us. However, I would not rule out the possibility of petitioner demonstrating that the purpose of the decree at issue could be realized by less burdensome means. Under such circumstances a modification affording petitioner more flexibility in redressing the lingering effects of past segregation would be warranted. See *infra*, at 268.

I

In order to assess the full consequence of lifting the decree at issue in this case, it is necessary to explore

more fully than does the majority the history of racial segregation in the Oklahoma City schools. This history reveals nearly unflagging resistance by the Board to judicial efforts to dismantle the city's dual education system.

When Oklahoma was admitted to the Union in 1907, its Constitution mandated separation of Afro-American children [*253] from all other races in the public school system. *Dowell v. School Bd. of Oklahoma City Public Schools, 219 F. Supp. 427, 431 (WD Okla. 1963).* In addition to laws enforcing segregation in the schools, racially restrictive covenants, [**640] supported by state and local law, established a segregated residential pattern in *Oklahoma City. 677 F. Supp. 1503, 1506 (WD Okla. 1987).* Petitioner Board exploited this residential segregation to enforce school segregation, locating "all-Negro" schools in the heart of the city's [***732] northeast quadrant, in which the majority of the city's Afro-American citizens resided. *Dowell, supra, at 433-434.*

Matters did not change in Oklahoma City after this Court's decision in *Brown I* and *Brown v. Board of Education, 349 U.S. 294, 99 L. Ed. 1083, 75 S. Ct. 753 (1955) (Brown II).* Although new school boundaries were established at that time, the Board also adopted a resolution allowing children to continue in the schools in which they were placed or to submit transfer requests that would be considered on a case-by-case basis. *Dowell, 219 F. Supp. at 434.* Because it allowed thousands of white children each year to transfer to schools in which their race was the majority, this transfer policy undermined any potential desegregation. See *id., at 440-441, 446.*

Parents of Afro-American children relegated to schools in the northeast quadrant filed suit against the Board in 1961. Finding that the Board's special transfer policy was "designed to perpetuate and encourage segregation," *id., at 441,* the District Court struck down the policy as a violation of the Equal Protection Clause, *id., at 442.* Undeterred, the Board proceeded to adopt another special transfer policy which, as the District Court found in 1965, had virtually the same effect as the prior policy -- "perpetuation [of] a segregated system." *Dowell v. School Bd. of Oklahoma City Public Schools, 244 F. Supp. 971, 975 (WD Okla. 1965),* aff'd in part, *375 F.2d 158* (CA10), cert. denied, *387 U.S. 931 (1967).*

[*254] The District Court also noted that, by failing to adopt an affirmative policy of desegregation, the Board had reversed the desegregation process in certain respects. For example, eight of the nine new schools planned or under construction in 1965 were located to serve all-white or virtually all-white school zones. *244 F. Supp. at 975.* Rather than promote integration through new school locations, the District Court found that the Board destroyed some integrated neighborhoods and schools by adopting inflexible neighborhood school attendance zones that encouraged whites to migrate to all-white areas. *Id., at 976-977.* Because the Board's pupil assignments coincided with residential segregation initiated by law in Oklahoma City, the Board also preserved and augmented existing residential segregation. *Ibid.*

Thus, by 1972, 11 years after the plaintiffs had filed suit and 18 years after our decision in *Brown I,* the Board continued to resist integration and in some respects the Board had worsened the situation. Four years after this Court's admonition to formerly *de jure* segregated school districts to come forward with realistic plans for *immediate* relief, see *Green v. New Kent County School Bd., supra, at 439,* the Board still had offered no meaningful plan of its own. Instead, "it rationalized its intransigence on the constitutionally unsound basis that public opinion [was] opposed to any further desegregation." *Dowell v. Board of Education of Oklahoma City Public Schools, 338 F. Supp. 1256, 1270* (WD Okla.), aff'd, *465 F.2d 1012* (CA10), cert. denied, *409 U.S. 1041, 34 L. Ed. 2d 490, 93 S. Ct. 526 (1972).* The District Court concluded: "This litigation has been frustratingly interminable, not because of [***733] insuperable difficulties of implementation of the commands of the Supreme Court . . . and the Constitution . . . but because of the unpardonable recalcitrance of the . . . Board." *338 F. Supp. at 1271.* Consequently, the District Court ordered the Board to implement the only available plan that exhibited the promise of achieving actual desegregation -- the "Finger Plan" offered by the plaintiffs. *Id., at 1269.* [*255]

[**641] In 1975, after a mere three years of operating under the Finger Plan, the Board filed a "Motion to Close Case," arguing that it had "'eliminated all vestiges of state imposed racial discrimination in its school system.'" *Dowell v. Board of Education of Oklahoma City Public Schools, 606 F. Supp. 1548, 1551 (WD Okla. 1985)* (quoting motion), rev'd, *795 F.2d 1516* (CA10), cert. denied, *479 U.S. 938, 93 L. Ed. 2d 370, 107 S. Ct. 420 (1986).* In 1977, the District Court granted the Board's motion and issued an "Order Terminating Case." The court concluded that the Board had "operated the [Finger] Plan properly" and stated that it did not "foresee that the termination of . . . jurisdiction will result in the dismantlement of the [Finger] Plan or any affirmative action by the defendant to undermine the unitary system." App. 174-175. The order ended the District Court's active supervision of the school district but did not dissolve the injunctive decree. The plaintiffs did not appeal this order.

The Board continued to operate under the Finger Plan until 1985, when it implemented the Student Reassignment Plan (SRP). The SRP superimposed attendance zones over some residentially segregated areas. As a

result, considerable racial imbalance reemerged in 33 of 64 elementary schools in the Oklahoma City system with student bodies either greater than 90% Afro-American or greater than 90% non-Afro-American. *Dowell, 606 F. Supp. at 1553.* More specifically, 11 of the schools ranged from 96.9% to 99.7% Afro-American, and approximately 44% of all Afro-American children in grades K-4 were assigned to these virtually all-Afro-American schools. See *890 F.2d 1483, 1510, n.4.* (CA10 1989) (Baldock, J., dissenting). n2

n2 As a result of school closings, currently there are 10 all-Afro-American elementary schools in the system, *890 F.2d at 1512, n.7* (Baldock, J., dissenting). According to respondents, all but one of these schools are located in the northeast quadrant. Brief for Respondents 17.

In response to the SRP, the plaintiffs moved to reopen the case. Ultimately, the District Court dissolved the desegregation [*256] decree, finding that the school district had been "unitary" since 1977 and that the racial imbalances under the SRP were the consequence of residential segregation arising from "personal preferences." *677 F. Supp. at 1512.* The Court of Appeals reversed, finding that the Board had not met its burden to establish that "the condition the [decree] sought to alleviate, a constitutional violation, has been eradicated." *890 F.2d at 1491.*

II

I agree with the majority that the proper standard for determining whether a school desegregation decree should be dissolved is whether the purposes of the desegregation litigation, as incorporated in the decree, have been fully achieved. *Ante,* [***734] at 247, citing *United States v. Swift & Co., 286 U.S. 106, 76 L. Ed. 999, 52 S. Ct. 460 (1932).* See *United States v. United Shoe Machinery Corp., 391 U.S. 244, 248, 20 L. Ed. 2d 562, 88 S. Ct. 1496 (1968); Pasadena City Bd. of Education v. Spangler, 427 U.S. 424, 436-437, 49 L. Ed. 2d 599, 96 S. Ct. 2697 (1976); id., at 444* (MARSHALL, J., dissenting) ("We should not compel the District Court to modify its order unless conditions have changed so much that 'dangers, once substantial, have become attenuated to a shadow,'" quoting, *Swift, supra, at 119).* n3 I strongly disagree with the majority, however, on what must be shown to demonstrate that a decree's [**642] purposes [*257] have been fully realized. n4 In my view, a standard for dissolution of a desegregation decree must take into account the unique harm associated with a system of racially identifiable schools and must expressly demand the elimination of such schools.

n3 I also strongly agree with the majority's conclusion that, prior to the dissolution of a school desegregation decree, plaintiffs are entitled to a precise statement from a district court. *Ante,* at 246. Because of the sheer importance of a desegregation decree's objectives, and because the dissolution of such a decree will mean that plaintiffs will have to mount a new constitutional challenge if they wish to contest the segregative effects of the school board's subsequent actions, the district court must give a detailed explanation of how the standards for dissolution have been met. Because the District Court's 1977 order terminating its "active jurisdiction" did not contain such a statement, that order does not bar review of its 1987 order expressly dissolving the decree.

n4 Perhaps because of its preoccupation with overturning the Court of Appeals' invocation of the "grievous wrong" language from *United States v. Swift, 286 U.S. 106, 76 L. Ed. 999, 52 S. Ct. 460 (1932),* see *ante,* at 243-244, the majority's conception of the purposes of a desegregation decree is not entirely clear. See *infra,* at 263-264.

A

Our pointed focus in *Brown I* upon the stigmatic injury caused by segregated schools explains our unflagging insistence that formerly *de jure* segregated school districts extinguish all vestiges of school segregation. The concept of stigma also gives us guidance as to what conditions must be eliminated before a decree can be deemed to have served its purpose.

In the decisions leading up to *Brown I,* the Court had attempted to curtail the ugly legacy of *Plessy v. Ferguson, 163 U.S. 537, 41 L. Ed. 256, 16 S. Ct. 1138 (1896),* by insisting on a searching inquiry into whether "separate" Afro-American schools were genuinely "equal" to white schools in terms of physical facilities, curricula, quality of the faculty, and certain "intangible" considerations. See, *e. g., Sweatt v. Painter, 339 U.S. 629, 94 L. Ed. 1114, 70 S. Ct. 848 (1950); Sipuel v. Board of Regents of Univ. of Okla., 332 U.S. 631, 92 L. Ed. 247, 68 S. Ct. 299 (1948).* In *Brown I,* the Court finally liberated the Equal Protection Clause from the doctrinal tethers of *Plessy,* declaring that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *347 U.S. at 495.*

The Court based this conclusion on its recognition of the particular social harm that racially segregated schools inflict on Afro-American children.

> [*258] " [***735] To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:
>
> "'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.'" *Id., at 494.*

Remedying and avoiding the recurrence of this stigmatizing injury have been the guiding objectives of this Court's desegregation jurisprudence ever since. These concerns inform the standard by which the Court determines the effectiveness of a proposed desegregation remedy. See *Green v. New Kent County School Bd., 391 U.S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968).* In *Green*, a school board sought to implement the mandate of *Brown I* and *Brown II* by adopting a "freedom of choice" plan under which individual students could specify which of two local schools they would attend. The Court held that this plan was inadequate because it failed to redress the effect of segregation upon "every facet of school operations -- faculty, staff, transportation, extracurricular activities and facilities." *391 U.S. at 435.* By so construing the extent of a school board's obligations, the Court [**643] made clear that the Equal Protection Clause demands elimination of every indicium of a "racially identifiable" school system that will inflict the stigmatizing injury that *Brown I* sought to cure. *Ibid.* [*259] Accord, *Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. at 15.*

Concern with stigmatic injury also explains the Court's requirement that a formerly *de jure* segregated school district provide its victims with "make whole" relief. In *Milliken v. Bradley, 418 U.S. 717, 41 L. Ed. 2d 1069, 94 S. Ct. 3112 (1974) (Milliken I)*, the court concluded that a school desegregation decree must "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." *Id., at 746.* In order to achieve such "make whole" relief, school systems must redress any *effects* traceable to former *de jure* segregation. See *Milliken v. Bradley, 433 U.S. 267, 281-288, 53 L. Ed. 2d 745, 97 S. Ct. 2749 (1977) (Milliken II)* (upholding remedial education programs and other measures to redress the substandard communication skills of Afro-American students formerly placed in segregated schools). The remedial education upheld in *Milliken II* was needed to help prevent [***736] the stamp of inferiority placed upon Afro-American children from becoming a self-perpetuating phenomenon. See *id., at 287.*

Similarly, avoiding reemergence of the harm condemned in *Brown I* accounts for the Court's insistence on remedies that ensure lasting integration of formerly segregated systems. Such school districts are required to "make every effort to achieve the *greatest possible degree of actual desegregation* and [to] be concerned with the elimination of one-race schools." *Swann, supra, at 26* (emphasis added). See *Dayton Bd. of Education v. Brinkman, 443 U.S. 526, 538, 61 L. Ed. 2d 720, 99 S. Ct. 2971 (1979); Columbus Bd. of Education v. Penick, 443 U.S. 449, 460, 61 L. Ed. 2d 666, 99 S. Ct. 2941 (1979); Raney v. Board of Education of Gould School Dist., 391 U.S. 443, 449, 20 L. Ed. 2d 727, 88 S. Ct. 1697 (1968)* (endorsing the "'goal of a desegregated, non-racially operated school system [that] is rapidly and *finally* achieved,'" quoting *Kelley v. Altheimer, 378 F.2d 483, 489 (CA8 1967)* (emphasis added)). This focus on "achieving and *preserving* an integrated school system," *Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189, 251, n.31, 37 L. Ed. 2d 548, 93 S. Ct. 2686 (1973)* (Powell, J., concurring in part and dissenting [*260] in part) (emphasis added), stems from the recognition that the reemergence of racial separation in such schools may revive the message of racial inferiority implicit in the former policy of state-enforced segregation. n5

> n5 Because of the relative indifference of school boards toward all-Afro-American schools, many of these schools continue to suffer from high student-faculty ratios, lower quality teachers, inferior facilities and physical conditions, and lower quality course offerings and extracurricular programs. See Note, *87 Colum. L. Rev. 794, 801 (1987);* see also Camp, Thompson, & Crain,

Within-District Equity: Desegregation and Microeconomic Analysis, in The Impacts of Litigation and Legislation on Public School Finance 273, 282-286 (J. Underwood & D. Verstegen eds. 1990) (citing recent studies indicating that because of systematic biases, predominately minority public schools typically receive fewer resources than other schools in the same district).

Indeed, the poor quality of a system's schools may be so severe that nothing short of a radical transformation of the schools within the system will suffice to achieve desegregation and eliminate all of its vestiges. See *Jenkins v. Missouri, 855 F.2d 1295, 1301-1307 (CA8 1988),* aff'd in part and rev'd in part on other grounds, *495 U.S. 33 (1990)* (desegregation plan required every high school, every middle school, and half of the elementary schools in the school system to become magnet schools).

Just as it is central to the standard for evaluating the formation of a desegregation decree, so should the stigmatic injury associated with segregated schools be central to [**644] the standard for dissolving a decree. The Court has indicated that "the ultimate end to be brought about" by a desegregation remedy is "a unitary, nonracial system of public education." *Green, supra, at 436.* We have suggested that this aim is realized once school officials have "eliminated from the public schools *all* vestiges of state-imposed segregation," *Swann, supra, at 15* (emphasis added), whether they inhere in the school's "faculty, staff, transportation, extracurricular activities and facilities," *Green, supra, at 435,* or even in "the community and administration['s] attitudes toward [a] school," *Keyes,* [***737] *supra, at 196.* Although the Court has never explicitly defined what constitutes a "vestige" of state-enforced segregation, the function that this concept has performed [*261] in our jurisprudence suggests that it extends to any condition that is likely to convey the message of inferiority implicit in a policy of segregation. So long as such conditions persist, the purposes of the decree cannot be deemed to have been achieved.

B

The majority suggests a more vague and, I fear, milder standard. Ignoring the harm identified in *Brown I,* the majority asserts that the District Court should find that the purposes of the decree have been achieved so long as "the Oklahoma City School District [is now] being operated in compliance with the commands of the Equal Protection Clause" and "it [is] unlikely that the Board would return to its former ways." *Ante,* at 247. Insofar as the majority instructs the District Court, on remand, to "consider whether the vestiges of *de jure* segregation have been eliminated as far as practicable," *ante,* at 250, the majority presumably views elimination of vestiges as part of "operating in compliance with the commands of the Equal Protection Clause." But as to the scope or meaning of "vestiges," the majority says very little.

By focusing heavily on present and future compliance with the Equal Protection Clause, the majority's standard ignores how the stigmatic harm identified in *Brown I* can persist even after the State ceases actively to enforce segregation. n6 It was not enough in *Green,* for example, for the school district to withdraw its own enforcement of segregation, leaving it up to individual children and their families to "choose" [*262] which school to attend. For it was clear under the circumstances that these choices would be shaped by and perpetuate the state-created message of racial inferiority associated with the school district's historical involvement in segregation. In sum, our school-desegregation jurisprudence establishes that the *effects* of past discrimination remain chargeable to the school district regardless of its lack of continued enforcement of segregation, and the remedial decree is required until those effects have been finally eliminated.

n6 Faithful compliance with the decree admittedly is relevant to the standard for dissolution. The standard for dissolution should require that the school district have exhibited faithful compliance with the decree for a period sufficient to assure the District Court that the school district is committed to the ideal of an integrated system. Cf. *Morgan v. Nucci, 831 F.2d 313, 321 (CA1 1987)* (addressing whether the school district has exhibited sufficient good faith "to indicate that further oversight of [student] assignments is not needed to forestall an imminent return to the unconstitutional conditions that led to the court's intervention").

III

Applying the standard I have outlined, I would affirm the Court of Appeals' decision ordering the District Court to restore the desegregation decree. For it is clear on this record that removal of the decree will result in a significant number of racially identifiable schools that could be eliminated.

[***738] As I have previously noted:

"Racially identifiable schools are one of the primary vestiges of state-imposed segregation which an effective desegrega-

> tion [**645] decree must attempt to eliminate. In *Swann, supra,* for example, we held that 'the district judge or school authorities . . . will thus necessarily be concerned with the elimination of one-race schools.' *402 U.S. at 26.* There is 'a presumption,' we stated, 'against schools that are substantially disproportionate in their racial composition.' *Ibid.* And in evaluating the effectiveness of desegregation plans in prior cases, we ourselves have considered the extent to which they discontinued racially identifiable schools. See, *e. g., Green v. County School Board of New Kent County, supra; Wright v. Council of the City of Emporia, [407 U.S. 451, 33 L. Ed. 2d 51, 92 S. Ct. 2196 (1972)].* For a principal end of any desegregation remedy is to ensure that it is no longer 'possible to identify a "white school" or a "Negro school,"' *Swann, supra, at 18.* The evil to be remedied in the dismantling of a dual system is the 'racial identification of the [*263] system's schools.' *Green, 391 U.S. at 435.* The goal is a system without white schools or Negro schools -- a system with 'just schools.' *Id., at 442.* A school authority's remedial plan or a district court's remedial decree is to be judged by its effectiveness in achieving this end. See *Swann, supra, at 25; Davis [v. Board of School Comm'rs of Mobile County, 402 U.S. 33, 37, 28 L. Ed. 2d 577, 91 S. Ct. 1289 (1971)]; Green, supra, at 439.*" *Milliken I, 418 U.S. at 802-803* (MARSHALL, J., dissenting).

Against the background of former state-sponsorship of one-race schools, the persistence of racially identifiable schools perpetuates the message of racial inferiority associated with segregation. Therefore, such schools must be eliminated whenever feasible.

It is undisputed that replacing the Finger Plan with a system of neighborhood school assignments for grades K-4 resulted in a system of racially identifiable schools. Under the SRP, over one-half of Oklahoma City's elementary schools now have student bodies that are either 90% Afro-American or 90% non-Afro-American. See *supra*, at 255. Because this principal vestige of *de jure* segregation persists, lifting the decree would clearly be premature at this point. See *Davis v. East Baton Rouge Parish School Bd., 721 F.2d 1425, 1434 (CA5 1983)* ("The continued existence of one-race schools is constitutionally unacceptable when reasonable alternatives exist").

The majority equivocates on the effect to be given to the reemergence of racially identifiable schools. It instructs the District Court to consider whether those "'most important indicia of a segregated system'" have been eliminated, reciting the facets of segregated school operations identified in *Green* -- "'faculty, staff, transportation, extracurricular activities and facilities.'" *Ante*, at 250. And, by [***739] rendering "*res nova*" the issue whether *residential* segregation in Oklahoma City is a vestige of former *school* segregation, *ante* at 250, n.2, the majority accepts at least as a theoretical possibility [*264] that vestiges may exist beyond those identified in *Green.* Nonetheless, the majority hints that the District Court could ignore the effect of residential segregation in perpetuating racially identifiable schools if the court finds residential segregation to be "the result of private decisionmaking and economics." *Ibid.* Finally, the majority warns against the application of a standard that would subject formerly segregated school districts to the "Draconian" fate of "judicial tutelage for the indefinite future." *Ante*, at 249. n7

> n7 The majority also instructs the District Court to consider whether dissolution was appropriate "as of 1985," *ante*, at 249, prior to the Board's adoption of the SRP. However, the effect of the Board's readoption of neighborhood attendance zones cannot be ignored arbitrarily. A district court, in evaluating whether dissolution of a desegregation decree is warranted, must consider whether conditions exist that are capable of inflicting the stigmatic harms associated with the original violation. The SRP demonstrates that lifting the decree would result in one-race schools which the decree was designed to eliminate. Even in cases lacking such tangible evidence of unremoved vestiges, a district court must anticipate what effect lifting a decree will have in order to assess dissolution.

[**646] This equivocation is completely unsatisfying. First, it is well established that school segregation "may have a profound reciprocal effect on the racial composition of residential neighborhoods." *Keyes, 413 U.S. at 202;* see also *Columbus Bd. of Education, 443 U.S. at 465, n.13* (acknowledging the evidence that "school segregation is a contributing cause of housing segregation"). The record in this case amply demonstrates this form of complicity in residential segregation on the part of the Board. n8 The District Court [*265] found as early as 1965 that the Board's use of neighbor-

hood schools "served to . . . extend areas of all Negro housing, destroying in the process already integrated neighborhoods and thereby increasing the number of segregated schools." *244 F. Supp. at 977.* It was because of the Board's responsibility for residential segregation that the District Court refused to permit the Board to superimpose a neighborhood plan over the racially isolated northeast quadrant. See *id., at 976-977.*

n8 Again, our commitment to "make whole" relief requires that *any* injurious condition flowing from the constitutional violation must be remedied to the maximum extent practicable. See *Milliken II, 433 U.S. 267, 280-281, 287-288, 53 L. Ed. 2d 745, 97 S. Ct. 2749 (1977).* Therefore, beyond eliminating vestiges concerning "faculty, staff, transportation, extracurricular activities and facilities," *Green v. New Kent County School Bd., 391 U.S. 430, 435, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968),* other measures may be necessary to treat a "root condition shown by [the] record." *Milliken II, supra, at 288.* The remedial obligations of a school board, therefore, are defined by the effects of the board's past discriminatory conduct. On the issue whether residential segregation is a vestige, the relevant inquiry is whether the record shows that the board's past actions were a "contributing cause" to residential segregation. *Columbus Bd. of Education v. Penick, 443 U.S. 449, 465, n.13, 61 L. Ed. 2d 666, 99 S. Ct. 2941 (1979).*

Second, there is no basis for the majority's apparent suggestion that the result should be different if residential segregation is now perpetuated by "private decisionmaking." [***740] The District Court's conclusion that the racial identity of the northeast quadrant now subsists because of "personal preference[s]," *677 F. Supp. at 1512,* pays insufficient attention to the roles of the State, local officials, and the Board in creating what are now self-perpetuating patterns of residential segregation. Even more important, it fails to account for the *unique* role of the School Board in creating "all-Negro" schools clouded by the stigma of segregation -- schools to which white parents would not opt to send their children. That such negative "personal preferences" exist should not absolve a school district that played a role in creating such "preferences" from its obligation to desegregate the schools to the maximum extent possible. n9

n9 Resistance to busing and the desire to attract white students to the public school system have been among the key motivations for incorporating magnet schools into desegregation plans. See Selig, The Reagan Justice Department and Civil Rights: What Went Wrong, *1985 U. Ill. L. Rev. 785, 802, n.57* (noting the Reagan Administration's touting of "'special magnet schools'" as a means of improving education for all children without "'forced transportation'"). The absence of magnet schools in the Oklahoma City desegregation plan suggests much untapped potential for changing attitudes towards schools in the system.

[*266] I also reject the majority's suggestion that the length of federal judicial supervision is a valid factor in assessing a dissolution. The majority is correct that the Court has never contemplated perpetual judicial oversight of former *de jure* segregated school districts. Our jurisprudence requires, however, that the job of school desegregation be fully completed and maintained so that the stigmatic harm identified in *Brown I* will not recur upon lifting the decree. Any doubt on [**647] the issue whether the School Board has fulfilled its remedial obligations should be resolved in favor of the Afro-American children affected by this litigation. n10

n10 The majority does not discuss the burden of proof under its test for dissolution of a school desegregation decree. However, every presumption we have established in our school desegregation cases has been *against* the school district found to have engaged in *de jure* segregation. See *Dayton Bd. of Education v. Brinkman, 443 U.S. 526, 537, 61 L. Ed. 2d 720, 99 S. Ct. 2971 (1979)* (conduct resulting in increased segregation was presumed to be caused by past intentional discrimination where dual system was never affirmatively remedied); *Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189, 208, 37 L. Ed. 2d 548, 93 S. Ct. 2686 (1973)* (proof of state-imposed segregation in a substantial portion of a school district will support a prima facie finding of a systemwide violation, thereby shifting the burden to school authorities to show that current segregation is not caused by past intentional discrimination); *Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 26, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971)* (establishing a presumption against racially identifiable schools once past state discrimination has been shown, thereby shifting the burden to the school district to show that current segregation was not caused by past intentional discrimination). Moreover, in addition to the "affirmative duty" placed upon school districts to eliminate vestiges of their past discrimination, *Green, 391 U.S. at 437-438,*

school districts initially have the burden of coming forward with desegregation plans and establishing that such plans promise to be effective. *Id., at 439.* And, while operating under a decree, a school board has a "heavy burden" to justify use of less effective or resegregative methods. *Ibid.* Accord, *Dayton, supra, at 538; Wright v. Council of City of Emporia, 407 U.S. 451, 467, 33 L. Ed. 2d 51, 92 S. Ct. 2196 (1972).*

Given the original obligation placed on formerly *de jure* segregated school districts to provide an effective remedy that will eliminate all vestiges of its segregated past, a school district seeking dissolution of an injunctive decree should also bear the burden of proving that this obligation has been fulfilled. Cf. *Keyes, supra, at 211, n.17* (noting that the plaintiffs should not bear the burden of proving "non-attenuation").

[*267] [***741] In its concern to spare local school boards the "Draconian" fate of "indefinite" "judicial tutelage," *ante*, at 249, the majority risks subordination of the constitutional rights of Afro-American children to the interest of school board autonomy. n11 The courts must consider the value of local control, but that factor primarily relates to the feasibility of a remedial measure, see *Milliken II, 433 U.S. at 280-281,* not whether the constitutional violation has been remedied. *Swann* establishes that if further desegregation is "reasonable, feasible, and workable," *402 U.S. at 31,* then it must be undertaken. In assessing whether the task is complete, the dispositive question is whether vestiges capable of inflicting stigmatic harm exist in the system and whether all that can practicably be done to eliminate those vestiges has been done. The Court of Appeals concluded that "on the basis of the record, it is clear that other measures that are feasible remain available to the Board [to avoid racially identifiable schools]." *890 F.* [*268] *2d, at 1505.* The School Board does not argue that further desegregation of the one-race schools in its [**648] system is unworkable and in light of the proven feasibility of the Finger Plan, I see no basis for doubting the Court of Appeals' finding.

n11 That "judicial tutelage" over the Oklahoma City School Board subsists at this late date is largely due to the Board's failure to take advantage of opportunities it had at its disposal at the outset. It could have abolished and located new schools with a view toward promoting integration and shaping (rather than following) public attitudes toward its schools. See *supra*, at 254. It could have come forward with its own meaningful desegregation plan -- a plan that would have been tailored to its particular concerns, including minimizing busing. *Ibid.* A school district's failures in this regard, however, should not lead federal courts, charged with assuring that constitutional violations are fully remedied, to renounce supervision of unfinished tasks because of the lateness of the hour.

The concepts of temporariness and permanence have no direct relevance to courts' powers in this context because the continued need for a decree will turn on whether the underlying purpose of the decree has been achieved. "The injunction . . . is 'permanent' only for the temporary period for which it may last. It is justified only by the violence that induced it and only so long as it counteracts a continuing intimidation. Familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted." *Milk Wagon Drivers v. Meadowmoor Dairies, Inc., 312 U.S. 287, 298, 85 L. Ed. 836, 61 S. Ct. 552 (1941).*

We should keep in mind that the court's active supervision of the desegregation process ceased in 1977. Retaining the decree does not require a return to active supervision. It may be that a modification of the decree which will improve its effectiveness and give the school district more flexibility in minimizing busing is appropriate in this case. But retaining the decree seems a slight burden on the school district compared with the risk of not delivering a full remedy to the Afro-American children in the school system. n12

n12 Research indicates that public schools with high concentrations of poor and minority students have less access to experienced, successful teachers and that the slow pace of instruction at such schools may be "hindering students' academic progress, net of their own aptitude levels." See Gamoran, Resource Allocation and the Effects of Schooling: A Sociological Perspective, in Microlevel School Finance: Issues and Implications for Policy 207, 214 (D. Monk & J. Underwood eds. 1988).

[***742] IV

Consistent with the mandate of *Brown I*, our cases have imposed on school districts an unconditional duty to eliminate *any* condition that perpetuates the message of racial inferiority inherent in the policy of state-sponsored segregation. The racial identifiability of a dis-

trict's schools is such a condition. Whether this "vestige" of state-sponsored segregation will persist cannot simply be ignored at the point where a district court is contemplating the dissolution of a desegregation decree. In a district with a history of state-sponsored school segregation, racial separation, in my view, *remains* inherently unequal.

I dissent.

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15 Am Jur 2d, Civil Rights 61, 62, 64-67, 70

6 Federal Procedure, L Ed, Civil Rights 11:326-11:328, 11:331

5 Federal Procedural Forms, L Ed, Civil Rights 10:421-10:428, 10:433-10:435

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 51, 53; 22 Am Jur Pl & Pr Forms (Rev), Schools, Forms 191-193

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Index to Annotations, Discrimination; Equal Protection of Law; Injunctions; Jurisdiction; School Buses; Schools and Education; Segregation; Termination and Expiration

Annotation References:

Supreme Court's views as to what constitutes appropriate relief under provisions of Federal Constitution in school desegregation cases. *53 L Ed 2d 1228.*

Racial discrimination in education-- *Supreme Court cases. 24 L Ed 2d 765.*

Circumstances warranting judicial determination or declaration of unitary status with regard to schools operating under court-ordered or -supervised desegregation plans and the effects of such declarations. *94 ALR Fed 667.*

Federal court regulation of school construction or facility so as to avoid school segregation. *4 ALR Fed 979.*

Racial discrimination in the hiring, retention, and assignment of teachers--federal cases. *3 ALR Fed 325.*

Relief against school board's "busing" plan to promote desegregation. *50 ALR3d 1089.*

De facto segregation of races in public schools. *11 ALR3d 780.*

Comment note.--Racial segregation. *38 ALR2d 1188.*

LEXSEE 503 US 467

ROBERT R. FREEMAN, ET AL., PETITIONERS v. WILLIE EUGENE PITTS, ET AL.

No. 89-1290

SUPREME COURT OF THE UNITED STATES

503 U.S. 467; 112 S. Ct. 1430; 118 L. Ed. 2d 108; 1992 U.S. LEXIS 2114; 60 U.S.L.W. 4286; 92 Cal. Daily Op. Service 2746; 92 Daily Journal DAR 4284; 6 Fla. L. Weekly Fed. S 135

October 7, 1991, Argued
March 31, 1992, Decided

PRIOR HISTORY: On writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

DISPOSITION: *887 F.2d 1438,* reversed and remanded.

DECISION:

Federal court in ongoing school desegregation case held to have discretion to order incremental withdrawal of supervision over Georgia school district.

SUMMARY:

In *Green v County School Board (1968) 391 US 430, 20 L Ed 2d 716, 88 S Ct 1689,* the United States Supreme Court held that (1) the time for "deliberate speed" in eliminating de jure school segregation had run out; (2) the obligation of schools once segregated by law was to come forward with a plan that promised to work realistically "now"; and (3) student assignments, faculty, staff, transportation, extracurricular activities, and physical facilities had to be free from racial discrimination. Shortly thereafter, black schoolchildren and their parents instituted a class action in the United States District Court for the Northern District of Georgia for the desegregation of a Georgia county school system which had once been segregated by law. The school system voluntarily began working with the Federal Government to devise a comprehensive desegregation plan, and the District Court in June 1969 entered a consent order approving the proposed plan. For the next 17 years, judicial intervention into the affairs of the school system was limited and infrequent, but demographic changes occurred, including (1) an increase in the overall proportion of black students from 5.6 percent to 47 percent, and (2) a shift in residential patterns, so that the population of the northern half of the county became predominantly white, and the southern half became predominantly black. In 1986, school officials, seeking a declaration that the school system had satisfied its duty and had achieved unitary status, filed a motion for final dismissal. Although evidence of racial imbalance was presented--such as evidence that during the 1986-1987 school year, 50 percent of the black students attended schools that were more than 90 percent black--the District Court's eventual findings included statements to the effect that (1) the county's population changes had not been caused by the school system's policies, but rather by independent factors; (2) throughout the period of supervision, the court had been impressed by the school system's successes and dedication to providing a quality education for all students; (3) the system had traveled the often long road to unitary status almost to its end; and (4) the system was a unitary system with respect to student assignments, transportation, physical facilities, and extracurricular activities, but vestiges of the dual system remained in the areas of teacher and principal assignments, resource allocation, and quality of education. Accordingly, the District Court ruled that it would order no further relief as to the unitary areas, but that the school system had to address the problems in the other areas. On appeal, the United States Court of Appeals for the Eleventh Circuit--in affirming in part, reversing in part, and ordering a remand--expressed the view that (1) the District Court had correctly concluded that the school system had not yet achieved unitary status, but had erred by considering the Green factors as separate categories; (2) a school system achieves unitary status only after it has satisfied all the Green factors at the same time for a number of years; (3) because the school system in question had not satisfied this test, the system could not shirk its constitutional duties by pointing to demographic shifts; and (4) the sys-

tem's officials, who bore the responsibility for the racial imbalance, would have to take actions that might be awkward, inconvenient, or even bizarre in order to correct that imbalance, such as pairing and clustering of schools, drastic gerrymandering of school zones, grade reorganization, and busing *(887 F2d 1438)*.

On certiorari, the Supreme Court reversed the judgment of the Court of Appeals, remanded the case to the Court of Appeals for further proceedings, and ordered each party to bear its own costs. In an opinion by Kennedy, J., joined by Rehnquist, Ch. J., and White, Scalia, and Souter, JJ., it was held that (1) a federal court in a school desegregation case has the authority and discretion to order an incremental or partial withdrawal of the court's supervision and control with respect to discrete categories in which a school district has achieved compliance with a court-ordered desegregation plan, before full compliance has been achieved in every area of school operations; (2) among the factors which may inform the court's sound discretion in ordering partial withdrawal are (a) whether there has been full and satisfactory compliance with the court's desegregation decree in those aspects of the system where supervision is to be withdrawn, (b) whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system, and (c) whether the affected school district has demonstrated, to the public and to the parents and students of the once disfavored race, the district's good-faith commitment to the whole of the court's decree and to those provisions of the law and the Federal Constitution that were the predicate for judicial intervention in the first instance; (3) the District Court did not, as a matter of law, lack discretion to permit the school system to regain control over student assignments, transportation, physical facilities, and extracurricular activities, while retaining court supervision over the areas of faculty and administrative assignments and the quality of education, where full compliance had not been demonstrated, for there was no requirement that until there was full compliance, heroic measures had to be taken to insure racial balance in student assignments systemwide in the late phases of carrying out a decree, when the imbalance was attributable to independent demographic forces, rather than to the prior de jure segregation system or to a later violation by the school system; and (4) on remand, the Court of Appeals was to determine what issues were open for the Court of Appeals' further consideration in light of the parties' arguments and the principles set forth by the Supreme Court, and thereupon was to order further proceedings as necessary, or order an appropriate remand to the District Court.

Scalia, J., concurring, expressed the view that (1) while the Supreme Court's decision would be of great assistance to the citizens of the county in question, the decision would have little effect upon the many other school districts that were still being supervised by federal judges, since the decision turned upon the relatively rare circumstance of a finding that no portion of the current racial imbalance was a remnant of prior de jure discrimination; and (2) while the Supreme Court must continue to prohibit, without qualification, all racial discrimination in schools, and to afford remedies that eliminate not only the discrimination but also its identified consequences, the court was close to the time in which the it must (a) acknowledge that it has become absurd to assume that constitutional violations dating from 24 years ago or earlier continue to have an appreciable effect on the current operations of schools, (b) lay aside the extraordinary and increasingly counterfactual presumption of Green v County School Board, and (c) revert to the ordinary principles of the nation's law, democratic heritage, and educational tradition, that (i) plaintiffs alleging equal protection violations must prove intent and causation and not merely the existence of racial disparity, (ii) public schooling, even in the South, should be controlled by locally elected authorities acting in conjunction with parents, and (iii) it is desirable to permit pupils to attend schools nearest their homes.

Souter, J., concurring, expressed the view that his understanding of the inquiry required by a Federal District Court applying the principles set out by the Supreme Court was that (1) the list of specific factors in Green v County School Board ought not to be treated as exclusive; (2) although demographic changes influencing the composition of a school's student population might well have no causal link to prior de jure segregation, judicial control of student assignments might still be necessary to remedy persisting vestiges of the unconstitutional dual system, such as remaining imbalance in faculty assignments; and (3) additional causal relationships between or among unconstitutional acts of school segregation and various Green-type factors might occur, such as where (a) the dual school system was itself a cause of the demographic shifts, or (b) after a District Court has relinquished supervision of a remedied aspect of the school system, future imbalance in that remedied Green-type factor would be caused by remaining vestiges of the dual system in the unremedied factors.

Blackmun, J., joined by Stevens and O'Connor, JJ., concurring in the judgment, expressed the view that (1) it was error in the case at hand for both (a) the District Court, ignoring the fact that the majority of black students in the county in question had never attended a school that was not disproportionately black, to relinquish control over student assignments, upon a finding that the school system had achieved unitary status in that aspect, and (b) the Court of Appeals to order the school

system to take extraordinary measures to correct all manifestations of that racial imbalance; (2) whether the District Court in the case at hand had to order the school system to balance student assignments depended on whether (a) the current imbalance was traceable to school policy, and (b) such an order was necessary to fashion an effective remedy; (3) whether a District Court must order changes in student assignments generally depends on whether (a) it is necessary or practicable to achieve compliance in other aspects of the school system, and (b) a school district's conduct was a contributing cause of the racially identifiable schools; and (4) the Court of Appeals ought to review the District Court's finding that the school system had met its burden of proving that the racially identifiable schools were in no way the result of past segregation.

Thomas, J., did not participate.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]
CIVIL RIGHTS § 50
school desegregation plan -- partial withdrawal of control -- authority of court --
Headnote:[1A][1B][1C][1D][1E][1F][1G]

A federal court in a school desegregation case has the authority and discretion to order an incremental or partial withdrawal of the court's supervision and control with respect to discrete categories in which a school district has achieved compliance with a court-ordered desegregation plan, before full compliance has been achieved in every area of school operations, so that the court need not retain active control over every aspect of school administration until the district has demonstrated unitary status in all facets of the district's system; the court's discretion derives from both the constitutional authority which justified the court's intervention in the first instance and the court's ultimate objectives in formulating a decree, as (1) the authority of the court is invoked at the outset to remedy particular constitutional violations, (2) a remedy in such a case is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation, (3) partial relinquishment of judicial control, where justified by the facts of the case, can be an important and significant step in fulfilling the court's duty to return the operations and control of schools to local authorities, (4) a transition phase in which control is relinquished in a gradual way is an appropriate means to the end of providing an orderly means of withdrawing from control when it is shown that the school district has attained the requisite degree of compliance, and (5) a court, by withdrawing control over areas where judicial supervision is no longer needed, can concentrate both its own resources and those of the school district on the areas where the effects of de jure segregation have not been eliminated and further action is necessary in order to provide real and tangible relief to minority students; thus, while retaining jurisdiction over a case, a court may determine that it will not order further remedies in areas where the school district is in compliance with the decree--that is, upon a finding that a school system subject to a court-supervised desegregation plan is in compliance in some but not all areas, the court may in appropriate cases return control to the school system in those areas where compliance has been achieved, limiting further judicial supervision to operations that are not yet in compliance with the court decree; in particular, the court may determine that it will not order further remedies in the area of student assignments, where racial imbalance is not traceable, in a proximate way, to constitutional violations.

[***LEdHN2]
CIVIL RIGHTS § 50
school desegregation plan -- partial withdrawal of control -- factors --
Headnote:[2A][2B]

A federal court's discretion to order the incremental withdrawal of its supervision in a school desegregation case must be exercised in a manner consistent with the purposes and objectives of the court's equitable power; among the factors which may inform the sound discretion of the court in ordering partial withdrawal are (1) whether there has been full and satisfactory compliance with the court's desegregation decree in those aspects of the system where supervision is to be withdrawn, (2) whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system, and (3) whether the school system has demonstrated, to the public and to the parents and students of the once disfavored race, the district's good-faith commitment to the whole of the court's decree and to those provisions of the law and the Federal Constitution that were the predicate for judicial intervention in the first instance; in considering these factors, a court should give particular attention to a school system's record of compliance, where (1) a school system is better positioned to demonstrate its good-faith commitment to a constitutional course of conduct when the system's policies form a consistent pattern of lawful conduct directed at eliminating earlier violations, and (2) with the passage of time, the degree to which racial imbalances continue to represent vestiges of a constitutional violation may diminish, and the practicability and efficacy of various remedies can be evaluated with more precision.

[***LEdHN3]
CIVIL RIGHTS § 50

school desegregation plan -- partial relinquishment of control -- transportation -- faculty --
Headnote:[3A][3B][3C][3D][3E][3F][3G][3H]

In a case in which a particular school district which was once segregated by law has been operating under a Federal District Court's desegregation decree, given that both parties agree that quality of education is a legitimate inquiry in determining the school district's compliance with the decree, and given that the court finds it workable to consider quality of education in connection with the court's findings on resource allocation, the court does not, as a matter of law, lack discretion to permit the school district to regain control over student assignments, transportation, physical facilities, and extracurricular activities, while retaining court supervision over the areas of faculty and administrative assignments and the quality of education, where full compliance has not been demonstrated, because (1) even if there is noncompliance in some discrete categories, there may be a partial withdrawal of control, and (2) there is no requirement that, until there is full compliance, heroic, awkward, inconvenient, or bizarre measures must be taken to insure racial balance in student assignments systemwide in the late phases of carrying out a decree, when the imbalance is attributable to independent demographic forces, rather than to the prior de jure segregation system or to a later violation by the school district; thus, under such circumstances, the court is correct to entertain the suggestion that the school district has no duty to achieve systemwide racial balance in the student population, and it is appropriate for the court to examine the reasons for the racial imbalance before ordering an impractical and massive expenditure of funds to achieve racial balance after 17 years of efforts to implement the court's comprehensive desegregation plan in a district where there have been fundamental changes in demographics, changes not attributable to the former de jure regime or any later actions by school officials, given that (1) the court's findings that the population changes which occurred in the school district were not caused by the district's policies, but rather by independent factors, is consistent with the mobility that is a distinct characteristic of the nation's society, (2) studies show a high correlation between residential segregation and school segregation, (3) the court hears evidence tending to show that racially stable neighborhoods are not likely to emerge, as whites tend to prefer a racial mix of 80 percent white and 20 percent black, while blacks prefer a 50-50 mix, and (4) the court orders the expenditure of scarce resources in areas such as the quality of education, where full compliance has not been achieved. (Blackmun, Stevens, and O'Connor, JJ., dissented in part from this holding.)

[***LEdHN4]

APPEAL § 1700
remand of school desegregation case -- judgment to be entered -- more specific findings --
Headnote:[4A][4B][4C][4D][4E]

On certiorari to review a Federal Court of Appeals' reversal in part of a Federal District Court's decision ordering incremental withdrawal in supervising the desegregation of a school district which was once segregated by law and was operating under a desegregation decree, the United States Supreme Court--having reversed the Court of Appeals, and having held that the District Court did not lack discretion, as a matter of law, to permit the school district to regain control over student assignments, transportation, physical facilities, and extracurricular activities, while retaining court supervision over the areas of faculty and administrative assignments and the quality of education--will remand the case to the Court of Appeals, which is to determine what issues are open for the Court of Appeals' further consideration in light of the parties' arguments and the principles set forth by the Supreme Court, and thereupon is to order further proceedings as necessary, or order an appropriate remand to the District Court, for (1) further proceedings are appropriate for the purpose of determining whether retention of judicial control over student assignments is necessary or practicable to achieve compliance in other facets of the school system, where (a) even though the school district was not in compliance with respect to faculty assignments, the record does not show that student reassignments would be a feasible or practicable way to remedy that defect, and (b) the District Court suggested that the school district could solve the faculty assignment problem by reassigning a few teachers per school, but (c) the District Court, not having the Supreme Court's analysis before it, did not have the opportunity to make specific findings and conclusions on this aspect of the case; and (2) the requirement that the school district show its good-faith commitment to the entirety of a desegregation plan, so that parents, students, and the public have assurance against further injuries or stigma, should be a subject for more specific findings, where (a) the District Court stated that throughout the period of judicial supervision, the District Court had been impressed by the school district's successes and dedication to providing a quality education for all students, (b) the District Court stated that the school district had traveled the often long road to unitary status almost to its end, and (c) with respect to those areas where compliance had not been achieved, the District Court did not find that the school district had acted in bad faith or had engaged in further acts of discrimination since the desegregation plan had gone into effect, but (d) this may not be the equivalent of a finding that the school district has a commitment to comply in good faith with the entirety of a desegregation

plan. (Blackmun, Stevens, and O'Connor, JJ., dissented in part from this holding.)

[***LEdHN5]
CIVIL RIGHTS § 48
school desegregation --
Headnote:[5]

Proper resolution of any school desegregation case turns on a careful assessment of the facts.

[***LEdHN6]
CIVIL RIGHTS § 50
school desegregation decree -- compliance --
Headnote:[6]

In most school desegregation cases where the issue is the degree of compliance with a desegregation decree, a critical beginning point for proper resolution is the degree of racial imbalance in the school district, that is, a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole; this inquiry is fundamental, for under the former de jure segregation regimes, racial exclusion was both the means and the end of a policy motivated by disparagement of or hostility toward the disfavored race.

[***LEdHN7]
CIVIL RIGHTS § 6
schools -- duty to desegregate --
Headnote:[7]

The duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional de jure system, in order to insure that the principal wrong of the de jure system--the injuries and stigma inflicted upon the race disfavored by the violation--is no longer present.

[***LEdHN8]
CIVIL RIGHTS § 6
school desegregation factors -- transportation -- faculty --
Headnote:[8A][8B]

The factors of student assignments, faculty, staff, transportation, extracurricular activities, and physical facilities are a measure of the racial identifiability of schools in a system that is not in compliance with the mandate to take all steps necessary to eliminate the vestiges of unconstitutional de jure segregation.

[***LEdHN9]
CIVIL RIGHTS § 50
school desegregation plan -- factors -- transportation -- faculty -- unitary system --
Headnote:[9A][9B][9C][9D]

In determining the compliance with a school desegregation decree by a school district which was once segregated by law, the factors of student assignments, faculty, staff, transportation, extracurricular activities, and physical facilities need not be a rigid framework; thus, it is an appropriate exercise of discretion by a Federal District Court in a school desegregation case (1) to address these factors as elements of a unitary school system, (2) to inquire whether other elements may be identified, and (3) to determine whether minority students are being disadvantaged in ways that require new and further remedies to insure full compliance with the court's decree; moreover, the law is not so formalistic as to demand that (1) a school district must meet all of these factors before a court can declare the system unitary and relinquish control over school attendance zones, and (2) racial balancing by all necessary means is required in the interim; instead, a proper rule must be based in the necessity to find a feasible remedy that insures systemwide compliance with a decree and that is directed to curing the effects of the specific violation; racial balancing in elementary and secondary school student assignments may be a legitimate remedial device, however, to correct other fundamental inequities that were themselves caused by the constitutional violation, for two or more of the measuring factors--such as student segregation and faculty segregation--may be intertwined or synergistic in their relation, so that a constitutional violation in one area cannot be eliminated unless the judicial remedy addresses the other as well; as a result, a continuing violation in one area may need to be addressed by remedies in another.

[***LEdHN10]
CIVIL RIGHTS § 51
school desegregation plans -- unitariness --
Headnote:[10]

The concept of unitariness, for purposes of defining the scope of a Federal District Court's authority in a school desegregation case, conveys the central idea that a school district that was once a dual system must be examined in all of its facets, both when a remedy is ordered, and in the later phases of desegregation when the question is whether the District Court's remedial control ought to be modified, lessened, or withdrawn; the term "unitary," however, is not a precise concept, and it is a mistake to treat words such as "unitary" and "dual" as if they are found in the Federal Constitution; a court must be cautious not to attribute to the term "unitary" a utility that the term does not have.

[***LEdHN11]
CIVIL RIGHTS § 49
desegregation -- unitary school system -- equitable remedies --
Headnote:[11A][11B]

The term "unitary," as used in a school desegregation case, does not confine the discretion and authority of a Federal District Court in a way that departs from traditional equitable principles; the fact, however, that the term "unitary" does not have a fixed meaning or content is not inconsistent with the principles that control the exercise of equitable power, for a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right, in that the task is to correct, by a balancing of the individual and collective interest, the condition that offends the Federal Constitution; the requirement of a unitary school system must be implemented according to this prescription.

[***LEdHN12]
EQUITY § 1
flexible remedies --
Headnote:[12]

The essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action; equitable remedies must be flexible if these underlying principles are to be enforced with fairness and precision.

[***LEdHN13]
CIVIL RIGHTS § 50
school desegregation supervision -- objective --
Headnote:[13A][13B]

The ultimate objective of federal judicial supervision of local school systems which were once segregated by law is to return school districts to the control of local authorities, as returning schools to the control of school authorities at the earliest practicable date is essential to restore their true accountability in the nation's governmental system.

[***LEdHN14]
CIVIL RIGHTS § 50
school desegregation plan -- supervision --
Headnote:[14]

A federal court has the obligation at the outset of a school desegregation decree to structure a plan so that all available resources of the court are directed to comprehensive supervision of the court's decree.

[***LEdHN15]
CIVIL RIGHTS § 50
school desegregation case -- relinquishment of control --
Headnote:[15]

One of the prerequisites for a federal court's relinquishment of control in whole or in part in a school desegregation case is that a school district has demonstrated its commitment to a course of action that gives full respect to the equal protection guarantees of the United States Constitution.

[***LEdHN16]
CIVIL RIGHTS § 6
schools -- prevention of discrimination --
Headnote:[16]

Because the potential for discrimination and racial hostility is still present in the United States, and because its manifestations may emerge in new and subtle forms after the effects of de jure segregation have been eliminated, it is the duty of a state and its subdivisions to insure that such forces do not shape or control the policies of its school systems.

[***LEdHN17]
EVIDENCE § 904.3
schools -- racial imbalance --
Headnote:[17]

The fact that there is racial imbalance in student attendance zones is not tantamount to a showing that a school district is in noncompliance with a desegregation decree or with the district's duties under the law.

[***LEdHN18]
CIVIL RIGHTS § 6
schools -- racial balance --
Headnote:[18]

Racial balance in student attendance zones is not to be achieved for its own sake, but is to be pursued when racial imbalance has been caused by a constitutional violation.

[***LEdHN19]
CIVIL RIGHTS § 6
schools -- resegregation -- demographic factors --
Headnote:[19A][19B]

Once the racial imbalance in student attendance zones due to a de jure segregation violation has been remedied,

a school district is under no duty to remedy imbalance that is caused by demographic factors, because resegregation does not have constitutional implications where it is a product of private choices, rather than state action; if the unlawful de jure policy of a school system has been the cause of racial imbalance in student attendance, however, that condition must be remedied.

[***LEdHN20]
EVIDENCE § 211.3
burden of proof -- racial imbalance -- cause --
Headnote:[20]

A school district which was once segregated by law in violation of the Federal Constitution bears the burden of showing that any current racial imbalance in student attendance zones is not traceable, in a proximate way, to the prior violation.

[***LEdHN21]
CIVIL RIGHTS § 48
school desegregation -- authority of courts -- demographic forces -- causation --
Headnote:[21A][21B]

It is beyond the authority and practical ability of federal courts in school desegregation cases to try to counteract continuous and massive demographic shifts in residential housing patterns, where (1) to attempt such results would require ongoing and neverending supervision by the courts of school districts simply because they were once de jure segregated, and (2) residential housing choices, and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies; the vestiges of segregation that are the concern of the law in a school desegregation case must be so real that they have a causal link to the de jure segregation being remedied.

[***LEdHN22]
CIVIL RIGHTS § 6
school segregation -- demographic factors -- causation -- good faith --
Headnote:[22A][22B][22C]

With respect to a school district which was once segregated by law and which has been operating under a federal desegregation decree, it is not always the case that demographic forces causing population changes bear any real and substantial relation to de jure segregation in violation of constitutional rights, and the law need not proceed on that premise; as de jure segregation becomes more remote in time and these demographic forces intervene, it becomes less likely that a current imbalance in a school district is a vestige of the prior de jure segregation system; the causal link between the current conditions and the prior constitutional violation is even more attenuated if the school district has demonstrated its good faith, for a history of good-faith compliance with the decree (1) is evidence that any current racial imbalance is not the product of new de jure segregation, and (2) enables a Federal District Court to accept the school board's representation that the board has accepted the principle of racial equality and will not suffer intentional discrimination in the future.

SYLLABUS: In a class action filed by respondents, black schoolchildren and their parents, the District Court, in 1969, entered a consent order approving a plan to dismantle the *de jure* segregation that had existed in the DeKalb County, Georgia, School System (DCSS). The court retained jurisdiction to oversee implementation of the plan. In 1986, petitioner DCSS officials filed a motion for final dismissal of the litigation, seeking a declaration that DCSS had achieved unitary status. Among other things, the court found that DCSS "has travelled the . . . road to unitary status almost to its end," noted that it had "continually been impressed by [DCSS'] successes . . . and its dedication to providing a quality education for all," and ruled that DCSS is a unitary system with regard to four of the six factors identified in *Green v. School Bd. of New Kent County, 391 U.S. 430; 20 L. Ed. 2d 716, 88 S. Ct. 1689:* student assignments, transportation, physical facilities, and extracurricular activities. In particular, the court found with respect to student assignments that DCSS had briefly achieved unitary status under the court-ordered plan, that subsequent and continuing racial imbalance in this category was a product of independent demographic changes that were unrelated to petitioners' actions and were not a vestige of the prior *de jure* system, and that actions taken by DCSS had achieved maximum practical desegregation from 1969 to 1986. Although ruling that it would order no further relief in the foregoing areas, the court refused to dismiss the case because it found that DCSS was not unitary with respect to the remaining *Green* factors: faculty assignments and resource allocation, the latter of which the court considered in connection with a non-*Green* factor, the quality of education being offered to the white and black student populations. The court ordered DCSS to take measures to address the remaining problems. The Court of Appeals reversed, holding, *inter alia*, that a district court should retain full remedial authority over a school system until it achieves unitary status in all *Green* categories at the same time for several years; that because, under this test, DCSS had never achieved unitary status, it could not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status; and that DCSS would have to take further actions to correct the racial imbalance, even though such actions

might be "administratively awkward, inconvenient, and even bizarre in some situations," *Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 28, 28 L. Ed. 2d 554, 91 S. Ct. 1267.*

Held:

1. In the course of supervising a desegregation plan, a district court has the authority to relinquish supervision and control of a school district in incremental stages, before full compliance has been achieved in every area of school operations, and may, while retaining jurisdiction over the case, determine that it will not order further remedies in areas where the school district is in compliance with the decree. Pp. 485-492.

(a) *Green* held that the duty of a former *de jure* district is to take all necessary steps to convert to a unitary system in which racial discrimination is eliminated, set forth factors that measure unitariness, and instructed the district courts to fashion remedies that address all these factors. Although the unitariness concept is helpful in defining the scope of the district court's authority, the term "unitary" does not have a fixed meaning or content and does not confine the court's discretion in a way that departs from traditional equitable principles. Under such principles, a court has the inherent capacity to adjust remedies in a feasible and practical way to correct the constitutional violation, *Swann, supra, at 15-16,* with the end purpose of restoring state and local authorities to the control of a school system that is operating in compliance, see, *e. g., Milliken v. Bradley, 433 U.S. 267, 280-281, 53 L. Ed. 2d 745, 97 S. Ct. 2749.* Where justified by the facts of the case, incremental or partial withdrawal of judicial supervision and control in areas of compliance, and retention of jurisdiction over the case with continuing supervision in areas of non-compliance, provides an orderly means for fulfilling this purpose. In particular, the court may determine that it will not order further remedies in the area of student assignments where racial imbalance is not traceable, in a proximate way, to constitutional violations. See *Pasadena Bd. of Education v. Spangler, 427 U.S. 424, 436. Pp. 485-491, 49 L. Ed. 2d 599, 96 S. Ct. 2697.*

(b) Among the factors which must inform the court's discretion to order the incremental withdrawal of its supervision in an equitable manner are the following: whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; whether retention of control is necessary or practicable to achieve compliance in other areas; and whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the decree and to those statutory and constitutional provisions that were the predicate for judicial intervention in the first instance. In considering these factors a court should give particular attention to the school system's record of compliance; *i. e.*, whether its policies form a consistent pattern of lawful conduct directed to eliminating earlier violations. And with the passage of time the degree to which racial imbalances continue to represent vestiges of a constitutional violation may diminish, and the practicability and efficacy of various remedies can be evaluated with more precision. Pp. 491-492.

2. The Court of Appeals erred in holding that, as a matter of law, the District Court had no discretion to permit DCSS to regain control over student assignments and three other *Green* factors, while retaining supervision over faculty assignments and the quality of education. Pp. 492-500.

(a) The District Court exercised its discretion appropriately in addressing the *Green* elements, inquiring into quality of education, and determining whether minority students were being disadvantaged in ways that required the formulation of new and further remedies in areas of noncompliance. This approach illustrates that the *Green* factors need not be a rigid framework and demonstrates the proper use of equitable discretion. By withdrawing control over areas where judicial supervision is no longer needed, a district court can concentrate its own and the school district's resources on the areas where the effects of *de jure* discrimination have not been eliminated and further action is necessary. Pp. 492-493.

(b) The related premises underlying the Court of Appeals' rejection of the District Court's order -- first, that given noncompliance in some discrete categories, there can be no partial withdrawal of judicial control; and second, until there is full compliance, *Swann, supra,* requires that heroic measures be taken to ensure racial balance in student assignments system wide -- are incorrect under this Court's analysis and precedents. Racial balance is not to be achieved for its own sake, but is to be pursued only when there is a causal link between an imbalance and the constitutional violation. Once racial imbalance traceable to the constitutional violation has been remedied, a school district is under no duty to remedy an imbalance that is caused by demographic factors. *Id., at 31-32.* The decree here accomplished its objective of desegregation in student assignments in the first year of its operation, and the District Court's finding that the subsequent resegregation is attributable to independent demographic forces is credible. A proper rule must be based on the necessity to find a feasible remedy that ensures systemwide compliance with the decree and that is

directed to curing the effect of the specific violation. Pp. 493-497.

(c) Resolution of the question whether retention of judicial control over student attendance is necessary or practicable to achieve compliance in other facets of DCSS must await further proceedings on remand. The District Court did not have this Court's analysis before it when it addressed the faculty assignment problem, and specific findings and conclusions should be made on whether student reassignments would be a proper way to remedy the defect. Moreover, the District Court's praise for DCSS' successes, dedication, and progress, and its failure to find that DCSS had acted in bad faith or engaged in postdecree acts of discrimination with respect to those areas where compliance had not been achieved, may not be the equivalent of the necessary finding that DCSS has an affirmative commitment to comply in good faith with the entirety of the desegregation plan. Pp. 497-500.

COUNSEL: Rex E. Lee argued the cause for petitioners. With him on the briefs were Carter G. Phillips, Mark D. Hopson, Gary M. Sams, Charles L. Weatherly, and J. Stanley Hawkins.

Solicitor General Starr argued the cause for the United States as amicus curiae in support of petitioners. With him on the brief were Assistant Attorney General Dunne, Deputy Solicitor General Roberts, Deputy Assistant Attorney General Clegg, Ronald J. Mann, David K. Flynn, and Lisa J. Stark.

Christopher A. Hansen argued the cause for respondents. With him on the brief were Steven R. Shapiro, Helen Hershkoff, John A. Powell, and Willie Abrams. *

> * Briefs of amici curiae urging reversal were filed for the Intervenors in Carlin v. Board of Education San Diego Unified School District by Elmer Enstrom, Jr.; and for the Southeastern Legal Foundation, Inc., by G. Stephen Parker.
>
> Briefs of amici curiae urging affirmance were filed for the Lawyers' Committee for Civil Rights Under Law by Norman Redlich and Burke Marshall; and for the NAACP, DeKalb County, Georgia, Branch et al. by William H. Allen and Elliott Schulder.
>
> Charles S. Johnson III filed a brief for plaintiff-intervenors as amici curiae.

JUDGES: KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, and SOUTER, JJ., joined. SCALIA, J., post, p. 500, and SOUTER, J., post, p. 507, filed concurring opinions. BLACKMUN, J., filed an opinion concurring in the judgment, in which STEVENS and O'CONNOR, JJ., joined, post, p. 509. THOMAS, J., took no part in the consideration or decision of the case.

OPINION BY: KENNEDY

OPINION:

[*471] [***122] [**1435] JUSTICE KENNEDY delivered the opinion of the Court.

[***LEdHR1A] [1A] [***LEdHR2A] [2A] [***LEdHR3A] [3A] [***LEdHR4A] [4A]DeKalb County, Georgia, is a major suburban area of Atlanta. This case involves a court-ordered desegregation decree for the DeKalb County School System (DCSS). DCSS now serves some 73,000 students in kindergarten through high school and is the 32d largest elementary and secondary school system in the Nation.

DCSS has been subject to the supervision and jurisdiction of the United States District Court for the Northern District of Georgia since 1969, when it was ordered to dismantle its dual school system. In 1986, petitioners [**1436] filed a motion for final dismissal. The District Court ruled that DCSS had not achieved unitary status in all respects but had done so in student attendance and three other categories. In its order the District Court relinquished remedial control as to those aspects of the system in which unitary status had been achieved, and retained supervisory authority only for those aspects of the school system in which the district was not in full compliance. The Court of Appeals for the Eleventh Circuit reversed, *887 F.2d 1438 (1989)*, holding that a district court should retain full remedial authority over a school system until it achieves unitary status in six categories at the same time for several years. We now reverse the judgment of the Court of Appeals and remand, holding that a district court is permitted to withdraw judicial supervision with respect to discrete categories in which the school district has achieved compliance with a court-ordered desegregation plan. A district court need not retain active control over every aspect of school administration until a school district has demonstrated unitary status in all facets of its system.

I

A

For decades before our decision in *Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686 (1954) (Brown I)*, and our mandate in [*472] *Brown v. Board of Education, 349 U.S. 294, 301, 99 L. Ed. 1083, 75 S. Ct. 753* [***123] *(1955) (Brown II)*, which ordered school districts to desegregate with "all deliberate

speed," DCSS was segregated by law. DCSS' initial response to the mandate of *Brown II* was an all too familiar one. Interpreting "all deliberate speed" as giving latitude to delay steps to desegregate, DCSS took no positive action toward desegregation until the 1966-1967 school year, when it did nothing more than adopt a freedom of choice transfer plan. Some black students chose to attend former *de jure* white schools, but the plan had no significant effect on the former *de jure* black schools.

In 1968, we decided *Green v. School Bd. of New Kent County, 391 U.S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689.* We held that adoption of a freedom of choice plan does not, by itself, satisfy a school district's mandatory responsibility to eliminate all vestiges of a dual system. *Green* was a turning point in our law in a further respect. Concerned by more than a decade of inaction, we stated that "'the time for mere "deliberate speed" has run out.'" *Id., at 438,* quoting *Griffin v. Prince Edward County School Bd., 377 U.S. 218, 234, 12 L. Ed. 2d 256, 84 S. Ct. 1226 (1964).* We said that the obligation of school districts once segregated by law was to come forward with a plan that "promises realistically to work, and promises realistically to work *now*." *391 U.S. at 439* (emphasis in original). The case before us requires an understanding and assessment of how DCSS responded to the directives set forth in *Green.*

Within two months of our ruling in *Green*, respondents, who are black schoolchildren and their parents, instituted this class action in the United States District Court for the Northern District of Georgia. After the suit was filed, DCSS voluntarily began working with the Department of Health, Education, and Welfare to devise a comprehensive and final plan of desegregation. The District Court, in June 1969, entered a consent order approving the proposed plan, which was to be implemented in the 1969-1970 school year. The order abolished the freedom of choice plan and adopted [*473] a neighborhood school attendance plan that had been proposed by DCSS and accepted by the Department of Health, Education, and Welfare subject to a minor modification. Under the plan all of the former *de jure* black schools were closed, and their students were reassigned among the remaining neighborhood schools. The District Court retained jurisdiction.

[**1437] Between 1969 and 1986, respondents sought only infrequent and limited judicial intervention into the affairs of DCSS. They did not request significant changes in student attendance zones or student assignment policies. In 1976, DCSS was ordered to expand its Majority-to-Minority (M-to-M) student transfer program, allowing students in a school where they are in the majority race to transfer to a school where they are in the minority; to establish a biracial committee to oversee the transfer program and future boundary line changes; and to reassign teachers so that the ratio of black to white teachers in each school would be, in substance, similar to the racial balance in the school population systemwide. From 1977 to 1979, the District Court approved a boundary line change for one elementary school attendance zone and rejected [***124] DCSS proposals to restrict the M-to-M transfer program. In 1983, DCSS was ordered to make further adjustments to the M-to-M transfer program.

In 1986, petitioners filed a motion for final dismissal of the litigation. They sought a declaration that DCSS had satisfied its duty to eliminate the dual education system, that is to say a declaration that the school system had achieved unitary status. *Green, supra, at 441.* The District Court approached the question whether DCSS had achieved unitary status by asking whether DCSS was unitary with respect to each of the factors identified in *Green.* The court considered an additional factor that is not named in *Green:* the quality of education being offered to the white and black student populations.

[*474] The District Court found DCSS to be "an innovative school system that has travelled the often long road to unitary status almost to its end," noting that "the court has continually been impressed by the successes of the DCSS and its dedication to providing a quality education for all students within that system." App. to Pet. for Cert. 71a. It found that DCSS is a unitary system with regard to student assignments, transportation, physical facilities, and extracurricular activities, and ruled that it would order no further relief in those areas. The District Court stopped short of dismissing the case, however, because it found that DCSS was not unitary in every respect. The court said that vestiges of the dual system remain in the areas of teacher and principal assignments, resource allocation, and quality of education. DCSS was ordered to take measures to address the remaining problems.

B

[***LEdHR5] [5] [***LEdHR6] [6]Proper resolution of any desegregation case turns on a careful assessment of its facts. *Green, supra, at 439.* Here, as in most cases where the issue is the degree of compliance with a school desegregation decree, a critical beginning point is the degree of racial imbalance in the school district, that is to say a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole. This inquiry is fundamental, for under the former *de jure* regimes racial exclusion was both the means and the end of a policy motivated by disparagement of, or hostility towards, the disfavored race. In accord with this principle, the District Court began its analysis with an assessment of the current racial mix in the schools throughout DCSS and the

explanation for the racial imbalance it found. Respondents did not contend on appeal that the findings of fact were clearly erroneous, and the Court of Appeals did not find them to be erroneous. The Court of Appeals did disagree with the conclusion reached [*475] by the District Court respecting the need for further supervision of racial balance in student assignments.

In the extensive record that comprises this case, one fact predominates: Remarkable changes in the racial composition of the county presented DCSS and the District Court with a student population in 1986 far different from the one they set out to integrate in [**1438] 1969. Between 1950 and 1985, DeKalb County grew from 70,000 to 450,000 in total population, but most of the gross increase in student enrollment had occurred by 1969, the relevant starting date for [***125] our purposes. Although the public school population experienced only modest changes between 1969 and 1986 (remaining in the low 70,000's), a striking change occurred in the racial proportions of the student population. The school system that the District Court ordered desegregated in 1969 had 5.6% black students; by 1986 the percentage of black students was 47%.

To compound the difficulty of working with these radical demographic changes, the northern and southern parts of the county experienced much different growth patterns. The District Court found that "as the result of these demographic shifts, the population of the northern half of DeKalb County is now predominantly white and the southern half of DeKalb County is predominantly black." App. to Pet. for Cert. 38a. In 1970, there were 7,615 nonwhites living in the northern part of DeKalb County and 11,508 nonwhites in the southern part of the county. By 1980, there were 15,365 nonwhites living in the northern part of the county, and 87,583 nonwhites in the southern part. Most of the growth in the nonwhite population in the southern portion of the county was due to the migration of black persons from the city of Atlanta. Between 1975 and 1980 alone, approximately 64,000 black citizens moved into southern DeKalb County, most of them coming from Atlanta. During the same period, approximately 37,000 white citizens moved out of southern DeKalb County to the surrounding counties.

[*476] The District Court made findings with respect to the number of nonwhite citizens in the northern and southern parts of the county for the years 1970 and 1980 without making parallel findings with respect to white citizens. Yet a clear picture does emerge. During the relevant period, the black population in the southern portion of the county experienced tremendous growth while the white population did not, and the white population in the northern part of the county experienced tremendous growth while the black population did not.

The demographic changes that occurred during the course of the desegregation order are an essential foundation for the District Court's analysis of the current racial mix of DCSS. As the District Court observed, the demographic shifts have had "an immense effect on the racial compositions of the DeKalb County schools." *Ibid.* From 1976 to 1986, enrollment in elementary schools declined overall by 15%, while black enrollment in elementary schools increased by 86%. During the same period, overall high school enrollment declined by 16%, while black enrollment in high schools increased by 119%. These effects were even more pronounced in the southern portion of DeKalb County.

Concerned with racial imbalance in the various schools of the district, respondents presented evidence that during the 1986-1987 school year DCSS had the following features: (1) 47% of the students attending DCSS were black; (2) 50% of the black students attended schools that were over 90% black; (3) 62% of all black students attended schools that had more than 20% more blacks than the system-wide average; (4) 27% of white students attended schools that were more than 90% white; (5) 59% of the white students attended schools that had more than 20% more whites than the system-wide [***126] average; (6) of the 22 DCSS high schools, five had student populations that were more than 90% black, while five other schools had student populations that were more than 80% white; and (7) of the 74 elementary schools [*477] in DCSS, 18 are over 90% black, while 10 are over 90% white. *Id.*, at 31a. (Respondents' evidence on these points treated all nonblack students as white. The District Court noted that there was no evidence that nonblack minority students constituted even 1% of DCSS student population.)

[**1439] Respondents argued in the District Court that this racial imbalance in student assignment was a vestige of the dual system, rather than a product of independent demographic forces. In addition to the statistical evidence that the ratio of black students to white students in individual schools varied to a significant degree from the system-wide average, respondents contended that DCSS had not used all available desegregative tools in order to achieve racial balancing. Respondents pointed to the following alleged shortcomings in DCSS' desegregative efforts: (1) DCSS did not break the county into subdistricts and racially balance each subdistrict; (2) DCSS failed to expend sufficient funds for minority learning opportunities; (3) DCSS did not establish community advisory organizations; (4) DCSS did not make full use of the freedom of choice plan; (5) DCSS did not cluster schools, that is, it did not create schools for separate grade levels which could be used to establish a feeder pattern; (6) DCSS did not institute its magnet school

program as early as it might have; and (7) DCSS did not use busing to facilitate urban to suburban exchanges.

According to the District Court, respondents conceded that the 1969 order assigning all students to their neighborhood schools "effectively desegregated the DCSS for a period of time" with respect to student assignment. *Id.*, at 35a. The District Court noted, however, that despite this concession respondents contended there was an improper imbalance in two schools even in 1969. Respondents made much of the fact that despite the small percentage of blacks in the county in 1969, there were then two schools that contained a majority of black students: Terry Mill Elementary School [*478] was 76% black, and Stoneview Elementary School was 51% black.

The District Court found the racial imbalance in these schools was not a vestige of the prior *de jure* system. It observed that both the Terry Mill and Stoneview schools were *de jure* white schools before the freedom of choice plan was put in place. It cited expert witness testimony that Terry Mill had become a majority black school as a result of demographic shifts unrelated to the actions of petitioners or their predecessors. In 1966, the overwhelming majority of students at Terry Mill were white. By 1967, due to migration of black citizens from Atlanta into DeKalb County -- and into the neighborhood surrounding the Terry Mill school in particular -- 23% of the students at Terry Mill were black. By 1968, black students constituted 50% of the school population at Terry Mill. By 1969, when the plan was put into effect, the percentage of black students had grown to 76. In accordance with the evidence of demographic shifts, and in the absence of any evidence to suggest that the former dual system contributed in any way [***127] to the rapid racial transformation of the Terry Mill student population, the District Court found that the pre-1969 unconstitutional acts of petitioners were not responsible for the high percentage of black students at the Terry Mill school in 1969. Its findings in this respect are illustrative of the problems DCSS and the District Court faced in integrating the whole district.

Although the District Court found that DCSS was desegregated for at least a short period under the court-ordered plan of 1969, it did not base its finding that DCSS had achieved unitary status with respect to student assignment on that circumstance alone. Recognizing that "the achievement of unitary status in the area of student assignment cannot be hedged on the attainment of such status for a brief moment," *id.*, at 37a, the District Court examined the interaction between DCSS policy and demographic shifts in DeKalb County.

[*479] The District Court noted that DCSS had taken specific steps to combat the effects of demographics on the racial mix of the schools. Under the 1969 order, a biracial committee had reviewed all proposed changes in the boundary lines of school attendance zones. Since the original desegregation order, there had been about 170 such [**1440] changes. It was found that only three had a partial segregative effect. An expert testified, and the District Court found, that even those changes had no significant effect on the racial mix of the school population, given the tremendous demographic shifts that were taking place at the same time.

The District Court also noted that DCSS, on its own initiative, started an M-to-M program in the 1972 school year. The program was a marked success. Participation increased with each passing year, so that in the 1986-1987 school year, 4,500 of the 72,000 students enrolled in DCSS participated. An expert testified that the impact of an M-to-M program goes beyond the number of students transferred because students at the receiving school also obtain integrated learning experiences. The District Court found that about 19% of the students attending DCSS had an integrated learning experience as a result of the M-to-M program. *Id.*, at 40a.

In addition, in the 1980's, DCSS instituted a magnet school program in schools located in the middle of the county. The magnet school programs included a performing arts program, two science programs, and a foreign language program. There was testimony in the District Court that DCSS also had plans to operate additional magnet programs in occupational education and gifted and talented education, as well as a preschool program and an open campus. By locating these programs in the middle of the county, DCSS sought to attract black students from the southern part of the county and white students from the northern part.

Further, the District Court found that DCSS operates a number of experience programs integrated by race, including [*480] a writing center for fifth and seventh graders, a driving range, summer school programs, and a dialectical speech program. DCSS employs measures to control the racial mix in each of these special areas.

In determining whether DCSS has achieved unitary status with respect to student assignment, the District [***128] Court saw its task as one of deciding if petitioners "have accomplished maximum practical desegregation of the DCSS or if the DCSS must still do more to fulfill their affirmative constitutional duty." *Id.*, at 41a. Petitioners and respondents presented conflicting expert testimony about the potential effects that desegregative techniques not deployed might have had upon the racial mix of the schools. The District Court found that petitioners' experts were more reliable, citing their greater familiarity with DCSS, their experience, and their standing within the expert community. The District Court made these findings:

> "[The actions of DCSS] achieved maximum practical desegregation from 1969 to 1986. The rapid population shifts in DeKalb County were not caused by any action on the part of the DCSS. These demographic shifts were inevitable as the result of suburbanization, that is, work opportunities arising in DeKalb County as well as the City of Atlanta, which attracted blacks to DeKalb; the decline in the number of children born to white families during this period while the number of children born to black families did not decrease; blockbusting of formerly white neighborhoods leading to selling and buying of real estate in the DeKalb area on a highly dynamic basis; and the completion of Interstate 20, which made access from DeKalb County into the City of Atlanta much easier. . . . There is no evidence that the school system's previous unconstitutional conduct may have contributed to this segregation. This court is convinced that any further actions taken by defendants, while the actions might have made marginal adjustments in the [*481] population trends, would not have offset the factors that were described above and the same racial segregation would have occurred at approximately the same speed." *Id.*, at 44a-45a.

The District Court added:

> "Absent massive bussing, which is not considered as a viable option by either the [**1441] parties or this court, the magnet school program and the M-to-M program, which the defendants voluntarily implemented and to which the defendants obviously are dedicated, are the most effective ways to deal with the effects on student attendance of the residential segregation existing in DeKalb County at this time." *Id.*, at 46a.

Having found no constitutional violation with respect to student assignment, the District Court next considered the other *Green* factors, beginning with faculty and staff assignments. The District Court first found that DCSS had fulfilled its constitutional obligation with respect to hiring and retaining minority teachers and administrators. DCSS has taken active steps to recruit qualified black applicants and has hired them in significant numbers, employing a greater percentage of black teachers than the statewide average. The District Court also noted that DCSS has an "equally exemplary record" in retention of black teachers and administrators. App. to Pet. for Cert. 49a. Nevertheless, the District Court found that DCSS had not achieved or maintained a ratio of black to white teachers and administrators in each school to approximate the ratio of black to white teachers and administrators [***129] throughout the system. See *Singleton v. Jackson Municipal Separate School Dist., 419 F.2d 1211 (CA5 1969)*, cert. denied, *396 U.S. 1032, 24 L. Ed. 2d 530, 90 S. Ct. 612 (1970)*. In other words, a racial imbalance existed in the assignment of minority teachers and administrators. The District Court found that in the 1984-1985 school year, seven schools deviated by more than 10% from the system-wide average [*482] of 26.4% minority teachers in elementary schools and 24.9% minority teachers in high schools. The District Court also found that black principals and administrators were over-represented in schools with high percentages of black students and underrepresented in schools with low percentages of black students.

The District Court found the crux of the problem to be that DCSS has relied on the replacement process to attain a racial balance in teachers and other staff and has avoided using mandatory reassignment. DCSS gave as its reason for not using mandatory reassignment that the competition among local school districts is stiff, and that it is difficult to attract and keep qualified teachers if they are required to work far from their homes. In fact, because teachers prefer to work close to their homes, DCSS has a voluntary transfer program in which teachers who have taught at the same school for a period of three years may ask for a transfer. Because most teachers request to be transferred to schools near their homes, this program makes compliance with the objective of racial balance in faculty and staff more difficult.

The District Court stated that it was not "unsympathetic to the difficulties that DCSS faces in this regard," but held that the law of the Circuit requires DCSS to comply with *Singleton*. App. to Pet. for Cert. 53a. The court ordered DCSS to devise a plan to achieve compliance with *Singleton*, noting that "it would appear that such compliance will necessitate reassignment of both teachers and principals." App. to Pet. for Cert. 58a. With respect to faculty, the District Court noted that meeting *Singleton* would not be difficult, citing petitioners' own estimate that most schools' faculty could conform by moving, at most, two or three teachers.

Addressing the more ineffable category of quality of education, the District Court rejected most of respondents' contentions that there was racial disparity in the

provision of certain educational resources (*e. g.*, teachers with advanced [*483] degrees, teachers with more experience, library books), contentions made to show that black students were not being given equal educational opportunity. The District Court went further, however, and examined the evidence concerning achievement of black students in DCSS. It cited expert testimony praising the overall educational program in the district, as well as objective evidence of black achievement: [**1442] Black students at DCSS made greater gains on the Iowa Tests of Basic Skills than white students, and black students at DCSS are more successful than black students nationwide on the Scholastic Aptitude Test. It made the following finding:

> "While there will always be something more that the DCSS can do to improve the chances for black students to achieve academic success, the court cannot find, as plaintiffs urge, that the DCSS has [***130] been negligent in its duties to implement programs to assist black students. The DCSS is a very innovative school system. It has implemented a number of programs to enrich the lives and enhance the academic potential of all students, both blacks and whites. Many remedial programs are targeted in the majority black schools. Programs have been implemented to involve the parents and offset negative socio-economic factors. If the DCSS has failed in any way in this regard, it is not because the school system has been negligent in its duties." App. to Pet. for Cert. 69a-70a (footnote omitted).

Despite its finding that there was no intentional violation, the District Court found that DCSS had not achieved unitary status with respect to quality of education because teachers in schools with disproportionately high percentages of white students tended to be better educated and have more experience than their counterparts in schools with disproportionately high percentages of black students, and because per-pupil expenditures in majority white schools [*484] exceeded per-pupil expenditures in majority black schools. From these findings, the District Court ordered DCSS to equalize spending and remedy the other problems.

The final *Green* factors considered by the District Court were: (1) physical facilities, (2) transportation, and (3) extracurricular activities. The District Court noted that although respondents expressed some concerns about the use of portable classrooms in schools in the southern portion of the county, they in effect conceded that DCSS has achieved unitary status with respect to physical facilities.

In accordance with its factfinding, the District Court held that it would order no further relief in the areas of student assignment, transportation, physical facilities, and extracurricular activities. The District Court, however, did order DCSS to establish a system to balance teacher and principal assignments and to equalize per-pupil expenditures throughout DCSS. Having found that blacks were represented on the school board and throughout DCSS administration, the District Court abolished the biracial committee as no longer necessary.

Both parties appealed to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals affirmed the District Court's ultimate conclusion that DCSS has not yet achieved unitary status, but reversed the District Court's ruling that DCSS has no further duties in the area of student assignment. *887 F.2d 1438 (1989).* The Court of Appeals held that the District Court erred by considering the six *Green* factors as separate categories. The Court of Appeals rejected the District Court's incremental approach, an approach that has also been adopted by the Court of Appeals for the First Circuit, *Morgan v. Nucci, 831 F.2d 313, 318-319 (1987),* and held that a school system achieves unitary status only after it has satisfied all six factors at the same time for several years. *887 F.2d at 1446.* Because, under this test, DCSS had not achieved unitary status at any time, the Court of Appeals held that DCSS could "not shirk [*485] its constitutional duties by pointing to demographic shifts occurring prior to unitary status." *Id., at 1448.* The Court of Appeals held that petitioners bore the responsibility for the racial imbalance, [***131] and in order to correct that imbalance would have to take actions that "may be administratively awkward, inconvenient, and even bizarre in some situations," *Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 28, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971),* such as pairing and clustering of [**1443] schools, drastic gerrymandering of school zones, grade reorganization, and busing. We granted certiorari, *498 U.S. 1081 (1991).*

II

[***LEdHR1B] [1B] [***LEdHR3B] [3B]Two principal questions are presented. The first is whether a district court may relinquish its supervision and control over those aspects of a school system in which there has been compliance with a desegregation decree if other aspects of the system remain in noncompliance. As we answer this question in the affirmative, the second question is whether the Court of Appeals erred in reversing the District Court's order providing for incremental withdrawal of supervision in all the circumstances of this case.

A

[***LEdHR7] [7] [***LEdHR8A] [8A]The duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system. This is required in order to ensure that the principal wrong of the *de jure* system, the injuries and stigma inflicted upon the race disfavored by the violation, is no longer present. This was the rationale and the objective of *Brown I* and *Brown II.* In *Brown I* we said: "To separate [black students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *347 U.S. at 494.* We [*486] quoted a finding of the three-judge District Court in the underlying Kansas case that bears repeating here:

> "'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.'" *Ibid.*

[***LEdHR8B] [8B] [***LEdHR9A] [9A]The objective of *Brown I* was made more specific by our holding in *Green* that the duty of a former *de jure* district is to "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *391 U.S. at 437-438.* We also identified various parts of the school system which, in addition to student attendance patterns, must be free from racial discrimination before the mandate of *Brown* is met: faculty, staff, transportation, extracurricular activities, and facilities. *391 U.S. at 435.* The *Green* factors are a measure of the racial identifiability of schools in a system that is not in compliance with *Brown*, and we instructed the District Courts to fashion [***132] remedies that address all these components of elementary and secondary school systems.

[***LEdHR10] [10] [***LEdHR11A] [11A]The concept of unitariness has been a helpful one in defining the scope of the district courts' authority, for it conveys the central idea that a school district that was once a dual system must be examined in all of its facets, both when a remedy is ordered and in the later phases of desegregation when the question is whether the district courts' remedial control ought to be modified, lessened, or withdrawn. But, as we explained last Term in *Board of Ed. of Oklahoma City* [*487] *Public Schools v. Dowell, 498 U.S. 237, 245-246, 112 L. Ed. 2d 715, 111 S. Ct. 630 (1991),* the term "unitary" is not a precise concept:

> "It is a mistake to treat words such as 'dual' and 'unitary' as if they were actually found in the Constitution. . . . Courts have used the terms 'dual' to denote a school system which has engaged in intentional [**1444] segregation of students by race, and 'unitary' to describe a school system which has been brought into compliance with the command of the Constitution. We are not sure how useful it is to define these terms more precisely, or to create subclasses within them."

It follows that we must be cautious not to attribute to the term a utility it does not have. The term "unitary" does not confine the discretion and authority of the District Court in a way that departs from traditional equitable principles.

[***LEdHR11B] [11B] [***LEdHR12] [12]That the term "unitary" does not have fixed meaning or content is not inconsistent with the principles that control the exercise of equitable power. The essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action. Equitable remedies must be flexible if these underlying principles are to be enforced with fairness and precision. In this respect, as we observed in *Swann*, "a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." *Swann, 402 U.S. at 15-16.* The requirement of a unitary school system must be implemented according to this prescription.

Our application of these guiding principles in *Pasadena Bd. of Education v. Spangler, 427 U.S. 424, 49 L. Ed. 2d 599, 96 S. Ct. 2697 (1976),* is instructive. There we held that a District Court exceeded its remedial authority in requiring annual readjustment of school [*488] attendance zones in the Pasadena school district when changes in the racial makeup of the schools were caused by demographic shifts "not attributed to any seg-

regative acts on the part of the [school district]." *Id., at 436.* In so holding we said:

> "It may well be that petitioners have not yet totally achieved the unitary system contemplated by . . . *Swann.* There has been, for example, dispute as to the petitioners' compliance with those portions of the plan specifying procedures for hiring and promoting teachers and administrators. See *384 F. Supp. 846 (1974),* vacated, *537 F.2d 1031* [***133] *(1976).* But that does not undercut the force of the principle underlying the quoted language from *Swann.* In this case the District Court approved a plan designed to obtain racial neutrality in the attendance of students at Pasadena's public schools. No one disputes that the initial implementation of this plan accomplished *that* objective. That being the case, the District Court was not entitled to require the [Pasadena Unified School District] to rearrange its attendance zones each year so as to ensure that the racial mix desired by the court was maintained in perpetuity. For having once implemented a racially neutral attendance pattern in order to remedy the perceived constitutional violations on the part of the defendants, the District Court had fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." *Ibid.*

See also *id.*, at 438, n. 5 ("Counsel for the original plaintiffs has urged, in the courts below and before us, that the District Court's perpetual 'no majority of any minority' requirement was valid and consistent with *Swann*, at least until the school system achieved 'unitary' status in all other respects such as the hiring and promoting of teachers and administrators. Since we have concluded that the case is moot with [*489] regard to these plaintiffs, these arguments are not properly before us. It should be clear from what we have said that they have little substance").

[***LEdHR1C] [1C]Today, we make explicit the rationale that was central in *Spangler.* A federal court in a school desegregation case has the [**1445] discretion to order an incremental or partial withdrawal of its supervision and control. This discretion derives both from the constitutional authority which justified its intervention in the first instance and its ultimate objectives in formulating the decree. The authority of the court is invoked at the outset to remedy particular constitutional violations. In construing the remedial authority of the district courts, we have been guided by the principles that "judicial powers may be exercised only on the basis of a constitutional violation," and that "the nature of the violation determines the scope of the remedy." *Swann, supra, at 16.* A remedy is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation.

[***LEdHR1D] [1D] [***LEdHR13A] [13A] [***LEdHR14] [14]We have said that the court's end purpose must be to remedy the violation and, in addition, to restore state and local authorities to the control of a school system that is operating in compliance with the Constitution. *Milliken v. Bradley, 433 U.S. 267, 280-281, 53 L. Ed. 2d 745, 97 S. Ct. 2749 (1977)* ("The federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution"). Partial relinquishment of judicial control, where justified by the facts of the case, can be an important and significant step in fulfilling the district court's duty to return the operations and control of schools to local authorities. In *Dowell*, we emphasized that federal judicial supervision of local school systems was intended as a "temporary measure." *498 U.S. at 247.* Although this temporary measure has lasted [***134] decades, the ultimate objective has not changed -- to return school districts to the control of local authorities. Just as a court has the obligation [*490] at the outset of a desegregation decree to structure a plan so that all available resources of the court are directed to comprehensive supervision of its decree, so too must a court provide an orderly means for withdrawing from control when it is shown that the school district has attained the requisite degree of compliance. A transition phase in which control is relinquished in a gradual way is an appropriate means to this end.

[***LEdHR13B] [13B] [***LEdHR15] [15] [***LEdHR16] [16]As we have long observed, "local autonomy of school districts is a vital national tradition." *Dayton Bd. of Education v. Brinkman, 433 U.S. 406, 410, 53 L. Ed. 2d 851, 97 S. Ct. 2766 (1977) (Dayton I).* Returning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system. When the school district and all state entities participating with it in operating the schools make decisions in the absence of judicial supervision, they can be held accountable to the citizenry, to the political process, and to the courts in the ordinary course. As we discuss below, one of the prerequisites to relinquishment of control in whole or in part is that a school district has demonstrated its commitment to

a course of action that gives full respect to the equal protection guarantees of the Constitution. Yet it must be acknowledged that the potential for discrimination and racial hostility is still present in our country, and its manifestations may emerge in new and subtle forms after the effects of *de jure* segregation have been eliminated. It is the duty of the State and its subdivisions to ensure that such forces do not shape or control the policies of its school systems. Where control lies, so too does responsibility.

[***LEdHR1E] [1E]We hold that, in the course of supervising desegregation plans, federal courts have the authority to relinquish supervision and control of school districts in incremental stages, before full compliance has been achieved in every area of school operations. While retaining jurisdiction over the case, the court may determine that it will not order further [*491] remedies in areas where the school district is in compliance with the decree. That is to say, upon a finding that a school system subject to a court-supervised [**1446] desegregation plan is in compliance in some but not all areas, the court in appropriate cases may return control to the school system in those areas where compliance has been achieved, limiting further judicial supervision to operations that are not yet in full compliance with the court decree. In particular, the district court may determine that it will not order further remedies in the area of student assignments where racial imbalance is not traceable, in a proximate way, to constitutional violations.

[***LEdHR2B] [2B]A court's discretion to order the incremental withdrawal of its supervision in a school desegregation case must be exercised in a manner consistent with the purposes and objectives of its equitable power. Among the factors which must inform the sound discretion of the court in ordering partial withdrawal are the following: whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to [***135] be withdrawn; whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system; and whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.

In considering these factors, a court should give particular attention to the school system's record of compliance. A school system is better positioned to demonstrate its good-faith commitment to a constitutional course of action when its policies form a consistent pattern of lawful conduct directed to eliminating earlier violations. And, with the passage of time, the degree to which racial imbalances continue to represent vestiges of a constitutional violation may diminish, [*492] and the practicability and efficacy of various remedies can be evaluated with more precision.

These are the premises that guided our formulation in *Dowell* of the duties of a district court during the final phases of a desegregation case: "The District Court should address itself to whether the Board had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable." *498 U.S. at 249-250.*

B

[***LEdHR3C] [3C]We reach now the question whether the Court of Appeals erred in prohibiting the District Court from returning to DCSS partial control over some of its affairs. We decide that the Court of Appeals did err in holding that, as a matter of law, the District Court had no discretion to permit DCSS to regain control over student assignment, transportation, physical facilities, and extracurricular activities, while retaining court supervision over the areas of faculty and administrative assignments and the quality of education, where full compliance had not been demonstrated.

[***LEdHR1F] [1F]. [***LEdHR3D] [3D] [***LEdHR9B] [9B]It was an appropriate exercise of its discretion for the District Court to address the elements of a unitary system discussed in *Green*, to inquire whether other elements ought to be identified, and to determine whether minority students were being disadvantaged in ways that required the formulation of new and further remedies to ensure full compliance with the court's decree. Both parties agreed that quality of education was a legitimate inquiry in determining DCSS' compliance with the desegregation decree, and the trial court found it workable to consider the point in connection with its findings on resource allocation. Its order retaining supervision over this aspect of the case has not been challenged by the parties, and we need not examine it except as it underscores the school district's record of compliance in some areas but not others. The District Court's approach illustrates [*493] that the *Green* factors need not be a rigid framework. It illustrates also the uses of equitable discretion. [**1447] By withdrawing control over areas where judicial supervision is no longer needed, a district court can concentrate both its own resources and those of the school district on the areas [***136] where the effects of *de jure* discrimination have not been eliminated and further action is necessary in order to provide real and tangible relief to minority students.

[***LEdHR1G] [1G] [***LEdHR3E] [3E]The Court of Appeals' rejection of the District Court's order rests on related premises: first, that given noncompliance in some discrete categories, there can be no partial withdrawal of judicial control; and second, until there is full compliance, heroic measures must be taken to ensure racial balance in student assignments system wide. Under our analysis and our precedents, neither premise is correct.

[***LEdHR3F] [3F]The Court of Appeals was mistaken in ruling that our opinion in *Swann* requires "awkward," "inconvenient," and "even bizarre" measures to achieve racial balance in student assignments in the late phases of carrying out a decree, when the imbalance is attributable neither to the prior *de jure* system nor to a later violation by the school district but rather to independent demographic forces. In *Swann* we undertook to discuss the objectives of a comprehensive desegregation plan and the powers and techniques available to a district court in designing it at the outset. We confirmed that racial balance in school assignments was a necessary part of the remedy in the circumstances there presented. In the case before us the District Court designed a comprehensive plan for desegregation of DCSS in 1969, one that included racial balance in student assignments. The desegregation decree was designed to achieve maximum practicable desegregation. Its central remedy was the closing of black schools and the reassignment of pupils to neighborhood schools, with attendance zones that achieved racial balance. The plan accomplished its objective in the first year of operation, before dramatic demographic changes altered residential [*494] patterns. For the entire 17-year period respondents raised no substantial objection to the basic student assignment system, as the parties and the District Court concentrated on other mechanisms to eliminate the *de jure* taint.

[***LEdHR17] [17] [***LEdHR18] [18] [***LEdHR19A] [19A] [***LEdHR20] [20]That there was racial imbalance in student attendance zones was not tantamount to a showing that the school district was in noncompliance with the decree or with its duties under the law. Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation. Once the racial imbalance due to the *de jure* violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors. *Swann, 402 U.S. at 31-32* ("Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary"). If the unlawful *de jure* policy of a school system has been the cause of the [***137] racial imbalance in student attendance, that condition must be remedied. The school district bears the burden of showing that any current imbalance is not traceable, in a proximate way, to the prior violation.

[***LEdHR3G] [3G]The findings of the District Court that the population changes which occurred in DeKalb County were not caused by the policies of the school district, but rather by independent factors, are consistent with the mobility that is a distinct characteristic of our society. In one year (from 1987 to 1988) over 40 [**1448] million Americans, or 17.6% of the total population, [*495] moved households. U. S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 19 (111th ed. 1991) (Table 25). Over a third of those people moved to a different county, and over six million migrated between States. *Ibid.* In such a society it is inevitable that the demographic makeup of school districts, based as they are on political subdivisions such as counties and municipalities, may undergo rapid change.

The effect of changing residential patterns on the racial composition of schools, though not always fortunate, is somewhat predictable. Studies show a high correlation between residential segregation and school segregation. Wilson & Taeuber, Residential and School Segregation: Some Tests of Their Association, in Demography and Ethnic Groups 57-58 (F. Bean & W. Frisbie eds. 1978). The District Court in this case heard evidence tending to show that racially stable neighborhoods are not likely to emerge because whites prefer a racial mix of 80% white and 20% black, while blacks prefer a 50-50 mix.

[***LEdHR19B] [19B] [***LEdHR21A] [21A]Where resegregation is a product not of state action but of private choices, it does not have constitutional implications. It is beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts. To attempt such results would require ongoing and never-ending supervision by the courts of school districts simply because they were once *de jure* segregated. Residential housing choices, and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies.

[***LEdHR21B] [21B] [***LEdHR22A] [22A]In one sense of the term, vestiges of past segregation by state decree do remain in our society and in our schools. Past wrongs to the black race, wrongs committed by the State and in its name, are a stubborn fact of history. And stubborn facts of history linger and persist. But though we cannot escape our history, neither must we overstate its consequences [*496] in fixing legal responsibilities. The vestiges of segregation that are the concern of the law in a school case may be subtle and intangible but nonetheless they must be so real that they have a causal link to the *de jure* violation being remedied. It is simply not always the case that demographic forces causing population change bear any real and substantial relation to a *de jure* violation. And the law need not proceed on that premise.

[***LEdHR3H] [3H] [***LEdHR22B] [22B]As the *de jure* violation becomes more remote in time and these demographic changes intervene, it becomes less likely that a current racial imbalance in a school district is a vestige of the prior *de jure* system. The causal link between [***138] current conditions and the prior violation is even more attenuated if the school district has demonstrated its good faith. In light of its finding that the demographic changes in DeKalb County are unrelated to the prior violation, the District Court was correct to entertain the suggestion that DCSS had no duty to achieve system-wide racial balance in the student population. It was appropriate for the District Court to examine the reasons for the racial imbalance before ordering an impractical, and no doubt massive, expenditure of funds to achieve racial balance after 17 years of efforts to implement the comprehensive plan in a district where there were fundamental changes in demographics, changes not attributable to the former *de jure* regime or any later actions by school officials. The District Court's determination to order instead the expenditure of scarce resources in areas such as the quality of education, where full compliance had not yet been achieved, underscores the uses of discretion in framing equitable remedies.

[***LEdHR9C] [9C]To say, as did the Court of Appeals, that a school district must meet all six *Green* factors before the trial court can declare the system unitary and relinquish its control over school attendance zones, and to hold further [**1449] that racial balancing by all necessary means is required in the interim, is [*497] simply to vindicate a legal phrase. The law is not so formalistic. A proper rule must be based on the necessity to find a feasible remedy that ensures system-wide compliance with the court decree and that is directed to curing the effects of the specific violation.

[***LEdHR4B] [4B] [***LEdHR9D] [9D]We next consider whether retention of judicial control over student attendance is necessary or practicable to achieve compliance in other facets of the school system. Racial balancing in elementary and secondary school student assignments may be a legitimate remedial device to correct other fundamental inequities that were themselves caused by the constitutional violation. We have long recognized that the *Green* factors may be related or interdependent. Two or more *Green* factors may be intertwined or synergistic in their relation, so that a constitutional violation in one area cannot be eliminated unless the judicial remedy addresses other matters as well. We have observed, for example, that student segregation and faculty segregation are often related problems. See *Dayton Bd. of Education v. Brinkman, 443 U.S. 526, 536, 61 L. Ed. 2d 720, 99 S. Ct. 2971 (1979) (Dayton II)* ("'Purposeful segregation of faculty by race was inextricably tied to racially motivated student assignment practices'"); *Rogers v. Paul, 382 U.S. 198, 200, 15 L. Ed. 2d 265, 86 S. Ct. 358 (1965)* (students have standing to challenge racial allocation of faculty because "racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils"). As a consequence, a continuing violation in one area may need to be addressed by remedies in another. See, *e. g., Bradley v. Richmond School Bd., 382 U.S. 103, 105, 15 L. Ed. 2d 187, 86 S. Ct. 224 (1965) (per curiam)* ("There is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans is entirely speculative"); *Vaughns v. Board of Education of Prince George's County, 742 F. Supp. 1275, 1291 (Md. 1990)* [***139] ("The components of [*498] a school desegregation plan are interdependent upon, and interact with, one another, so that changes with respect to one component may impinge upon the success or failure of another").

[***LEdHR4C] [4C]There was no showing that racial balancing was an appropriate mechanism to cure other deficiencies in this case. It is true that the school district was not in compliance with respect to faculty assignments, but the record does not show that student reassignments would be a feasible or practicable way to remedy this defect. To the contrary, the District Court suggests that DCSS could solve the faculty assignment problem by reassigning a few teachers per school. The District Court, not having our analysis before it, did not have the opportunity to make specific findings and conclusions on this aspect of the case, however. Further proceedings are appropriate for this purpose.

[***LEdHR4D] [4D] [***LEdHR22C] [22C]The requirement that the school district show its good-faith commitment to the entirety of a desegregation plan so

that parents, students, and the public have assurance against further injuries or stigma also should be a subject for more specific findings. We stated in *Dowell* that the good-faith compliance of the district with the court order over a reasonable period of time is a factor to be considered in deciding whether or not jurisdiction could be relinquished. *498 U.S. at 249-250* ("The District Court should address itself to whether the Board had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable"). A history of good-faith compliance is evidence that any current racial imbalance is not the product of a new *de jure* violation, and enables the district court to accept the school board's representation that it has accepted the principle of racial equality and will not suffer intentional discrimination in the future. See *Morgan v. Nucci, 831* [*499] *F.2d at 321* [**1450] ("A finding of good faith . . . reduces the possibility that a school system's compliance with court orders is but a temporary constitutional ritual").

[***LEdHR4E] [4E]When a school district has not demonstrated good faith under a comprehensive plan to remedy ongoing violations, we have without hesitation approved comprehensive and continued district court supervision. See *Columbus Bd. of Education v. Penick, 443 U.S. 449, 461, 61 L. Ed. 2d 666, 99 S. Ct. 2941 (1979)* (predicating liability in part on the finding that the school board "'never actively set out to dismantle [the] dual system,'" *Penick v. Columbus Bd. of Education, 429 F. Supp. 229, 260 (SD Ohio 1977)); Dayton II, supra, at 534* (adopting Court of Appeals holding that the "intentionally segregative impact of various practices since 1954 . . . were of systemwide import and an appropriate basis for a systemwide remedy").

In contrast to the circumstances in *Penick* and *Brinkman*, the District Court in this case stated that throughout the period of judicial supervision it has been impressed by the successes DCSS has achieved and its dedication to providing a quality education for all students, and that DCSS "has travelled the often long road to unitary status almost to its end." With respect to those areas where compliance had not been achieved, the District Court did not [***140] find that DCSS had acted in bad faith or engaged in further acts of discrimination since the desegregation plan went into effect. This, though, may not be the equivalent of a finding that the school district has an affirmative commitment to comply in good faith with the entirety of a desegregation plan, and further proceedings are appropriate for this purpose as well.

The judgment is reversed, and the case is remanded to the Court of Appeals. It should determine what issues are open for its further consideration in light of the previous briefs and arguments of the parties and in light of the principles set forth in this opinion. Thereupon it should order further [*500] proceedings as necessary or order an appropriate remand to the District Court.

Each party is to bear its own costs.

It is so ordered.

JUSTICE THOMAS took no part in the consideration or decision of this case.

CONCUR BY: SCALIA; SOUTER; BLACKMUN

CONCUR:

JUSTICE SCALIA, concurring.

The District Court in the present case found that the imbalances in student assignment were attributable to private demographic shifts rather than governmental action. Without disturbing this finding, and without finding that revision of student assignments was necessary to remedy some other unlawful government action, the Court of Appeals ordered DeKalb County to institute massive busing and other programs to achieve integration. The Court convincingly demonstrates that this cannot be reconciled with our cases, and I join its opinion.

Our decision will be of great assistance to the citizens of DeKalb County, who for the first time since 1969 will be able to run their own public schools, at least so far as student assignments are concerned. It will have little effect, however, upon the many other school districts throughout the country that are still being supervised by federal judges, since it turns upon the extraordinarily rare circumstance of a *finding* that no portion of the current racial imbalance is a remnant of prior *de jure* discrimination. While it is perfectly appropriate for the Court to decide this case on that narrow basis, we must resolve -- if not today, then soon -- what is to be done in the vast majority of other districts, where, though our cases continue to profess that judicial oversight of school operations is a temporary expedient, democratic processes remain suspended, with no prospect of restoration, 38 years after *Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686 (1954).*

[*501] [**1451] Almost a quarter century ago, in *Green v. School Bd. of New Kent County, 391 U.S. 430, 437-438, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968),* this Court held that school systems which had been enforcing *de jure* segregation at the time of *Brown* had not merely an obligation to assign students and resources on a race-neutral basis but also an "affirmative duty" to "desegregate," that is, to achieve insofar as practicable racial balance in their schools. This holding has become such a part of our legal fabric that there is a tendency, [***141]

reflected in the Court of Appeals opinion in this case, to speak as though the Constitution requires such racial balancing. Of course it does not: The Equal Protection Clause reaches only those racial imbalances shown to be intentionally caused by the State. As the Court reaffirms today, if "desegregation" (*i. e.*, racial balancing) were properly to be ordered in the present case, it would be not because the extant racial imbalance in the DeKalb County School System offends the Constitution, but rather because that imbalance is a "lingering effect" of the pre-1969 *de jure* segregation that offended the Constitution. For all our talk about "unitary status," "release from judicial supervision," and "affirmative duty to desegregate," the sole question in school desegregation cases (absent an allegation that current policies are intentionally discriminatory) is one of remedies for past violations.

Identifying and undoing the effects of some violations of the law is easy. Where, for example, a tax is found to have been unconstitutionally imposed, calculating the funds derived from that tax (which must be refunded), and distinguishing them from the funds derived from other taxes (which may be retained), is a simple matter. That is not so with respect to the effects of unconstitutionally operating a legally segregated school system; they are uncommonly difficult to identify and to separate from the effects of other causes. But one would not know that from our instructions to the lower courts on this subject, which tend to be at a level of generality that assumes facile reduction to specifics. [*502] "'[Desegregation] decrees,'" we have said, "'exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation,'" *Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. 237, 247, 112 L. Ed. 2d 715, 111 S. Ct. 630 (1991); Milliken v. Bradley, 433 U.S. 267, 282, 53 L. Ed. 2d 745, 97 S. Ct. 2749 (1977).* We have never sought to describe how one identifies a condition as the effluent of a violation, or how a "vestige" or a "remnant" of past discrimination is to be recognized. Indeed, we have not even betrayed an awareness that these tasks are considerably more difficult than calculating the amount of taxes unconstitutionally paid. It is time for us to abandon our studied disregard of that obvious truth and to adjust our jurisprudence to its reality.

Since parents and school boards typically want children to attend schools in their own neighborhood, "the principal cause of racial and ethnic imbalance in ... . public schools across the country -- North and South -- is the imbalance in residential patterns." *Austin Independent School Dist. v. United States, 429 U.S. 990, 994, 50 L. Ed. 2d 603, 97 S. Ct. 517 (1976)* (Powell, J., concurring). That imbalance in residential patterns, in turn, "doubtless result[s] from a melange of past happenings prompted by economic considerations, private discrimination, discriminatory school assignments, or a desire to reside near people of one's own race or ethnic background." *Columbus Bd. of Education v. Penick, 443 U.S. 449, 512, 61 L. Ed. 2d 666, 99 S. Ct. 2941 (1979)* (REHNQUIST, J., dissenting); see also *Pasadena Bd. of Education v. Spangler, 427 U.S. 424, 435-437, 49 L. Ed. 2d 599, 96 S. Ct. 2697 (1976).* Consequently, residential [***142] segregation "is a national, not a southern[,] phenomenon" which exists "'regardless of the character of local laws and policies, and regardless of the extent of other forms of segregation or discrimination.'" *Keyes v. School Dist. No. 1, Denver, 413 U.S. 189, 223, 37 L. Ed. 2d 548, 93 S. Ct. 2686,* [**1452] *and n. 9 (1973)* (Powell, J., concurring in part and dissenting in part), quoting K. Taeuber, Negroes in Cities 36 (1965).

[*503] Racially imbalanced schools are hence the product of a blend of public and private actions, and any assessment that they would not be segregated, or would not be *as* segregated, in the absence of a particular one of those factors is guesswork. It is similarly guesswork, of course, to say that they *would* be segregated, or would be *as* segregated, in the absence of one of those factors. Only in rare cases such as this one and *Spangler, see 427 U.S. at 435-437,* where the racial imbalance had been temporarily corrected after the abandonment of *de jure* segregation, can it be asserted with any degree of confidence that the past discrimination is no longer playing a proximate role. Thus, allocation of the burden of proof foreordains the result in almost all of the "vestige of past discrimination" cases. If, as is normally the case under our equal protection jurisprudence (and in the law generally), we require the plaintiffs to establish the asserted facts entitling them to relief -- that the racial imbalance they wish corrected is at least in part the vestige of an old *de jure* system -- the plaintiffs will almost always lose. Conversely, if we alter our normal approach and require the school authorities to establish the negative -- that the imbalance is *not* attributable to their past discrimination -- the plaintiffs will almost always win. See *Penick, supra, at 471* (Stewart, J., concurring in result).

Since neither of these alternatives is entirely palatable, an observer unfamiliar with the history surrounding this issue might suggest that we avoid the problem by requiring only that the school authorities establish a regime in which parents are free to disregard neighborhood-school assignment, and to send their children (with transportation paid) to whichever school they choose. So long as there is free choice, he would say, there is no reason to require that the schools be made identical. The constitutional right is equal racial access to schools, not access to racially equal schools; whatever racial imbalances such a free-choice system might produce would be

the product of private forces. We apparently [*504] envisioned no more than this in our initial post-*Brown* cases. * It is also the approach we actually adopted in *Bazemore v. Friday, 478 U.S. 385, 407-409,* [***143] *106 S. Ct. 3000, 92 L. Ed. 2d 315 (1986)* (WHITE, J., concurring), which concerned remedies for prior *de jure* segregation of state university-operated clubs and services.

> * See, *e. g., Cooper v. Aaron, 358 U.S. 1, 7, 3 L. Ed. 2d 5, 78 S. Ct. 1401 (1958)* ("Obedience to the duty of desegregation would require the immediate general admission of Negro children . . . at particular schools"); *Goss v. Board of Education of Knoxville, 373 U.S. 683, 687, 10 L. Ed. 2d 632, 83 S. Ct. 1405 (1963)* (holding unconstitutional a minority-to-majority transfer policy which was unaccompanied by a policy allowing majority-to-minority transfers, but noting that "if the transfer provisions were made available to all students regardless of their race and regardless as well of the racial composition of the school to which he requested transfer we would have an entirely different case. Pupils could then at their option (or that of their parents) choose, entirely free of any imposed racial considerations, to remain in the school of their zone or transfer to another").

But we ultimately charted a different course with respect to public elementary and secondary schools. We concluded in *Green* that a "freedom of choice" plan was not necessarily sufficient, *391 U.S. at 439-440,* and later applied this conclusion to all jurisdictions with a history of intentional segregation:

> "'Racially neutral' assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district [**1453] court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly nondiscriminatory assignments." *Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 28, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971).*

[*505] Thus began judicial recognition of an "affirmative duty" to desegregate, *id., at 15; Green, supra, at 437-438,* achieved by allocating the burden of negating causality to the defendant. Our post-*Green* cases provide that, once state-enforced school segregation is shown to have existed in a jurisdiction in 1954, there arises a presumption, effectively irrebuttable (because the school district cannot prove the negative), that any current racial imbalance is the product of that violation, at least if the imbalance has continuously existed, see, *e. g., Swann, supra, at 26; Keyes, 413 U.S. at 209-210.*

In the context of elementary and secondary education, the presumption was extraordinary in law but not unreasonable in fact. "Presumptions normally arise when proof of one fact renders the existence of another fact 'so probable that it is sensible and timesaving to assume the truth of [the inferred] fact . . . until the adversary disproves it.'" *NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 788-789, 108 L. Ed. 2d 801, 110 S. Ct. 1542 (1990),* quoting E. Cleary, McCormick on Evidence § 343, p. 969 (3d ed. 1984). The extent and recency of the prior discrimination, and the improbability that young children (or their parents) would use "freedom of choice" plans to disrupt existing patterns "warranted a presumption [that] schools that are substantially disproportionate in their racial composition" were remnants of the *de jure* system. *Swann, supra, at 26.*

But granting the merits of this approach at the time of *Green,* it is now 25 years later. "From the very first, federal supervision of local school systems was intended as a *temporary* measure to remedy past discrimination." *Dowell, 498 U.S. at 247* (emphasis added). We envisioned it as temporary partly because "no single tradition in public education is more deeply rooted than local control over the operation of schools," *Milliken v. Bradley, 418 U.S. 717, 741, 41 L. Ed. 2d 1069, 94 S. Ct. 3112* [***144] *(1974) (Milliken I),* and because no one's interest is furthered by subjecting the Nation's educational system to "judicial tutelage for the indefinite future," *Dowell, supra, at 249;* see also [*506] *Dayton Bd. of Education v. Brinkman, 433 U.S. 406, 410, 53 L. Ed. 2d 851, 97 S. Ct. 2766 (1977); Spangler v. Pasadena City Bd. of Education, 611 F.2d 1239, 1245, n. 5 (CA9 1979)* (Kennedy, J., concurring). But we also envisioned it as temporary, I think, because the rational basis for the extraordinary presumption of causation simply must dissipate as the *de jure* system and the school boards who produced it recede further into the past. Since a multitude of private factors has shaped school systems in the years after abandonment of *de jure* segregation -- normal mi-

gration, population growth (as in this case), "white flight" from the inner cities, increases in the costs of new facilities -- the percentage of the current makeup of school systems attributable to the prior, government-enforced discrimination has diminished with each passing year, to the point where it cannot realistically be assumed to be a significant factor.

At some time, we must acknowledge that it has become absurd to assume, without any further proof, that violations of the Constitution dating from the days when Lyndon Johnson was President, or earlier, continue to have an appreciable effect upon current operation of schools. We are close to that time. While we must continue to prohibit, without qualification, all racial discrimination in the operation of public schools, and to afford remedies that eliminate not only the discrimination but its identified consequences, [**1454] we should consider laying aside the extraordinary, and increasingly counter-factual, presumption of *Green*. We must soon revert to the ordinary principles of our law, of our democratic heritage, and of our educational tradition: that plaintiffs alleging equal protection violations must prove intent and causation and not merely the existence of racial disparity, see *Bazemore, supra, at 407-409* (WHITE, J., concurring); *Washington v. Davis, 426 U.S. 229, 245, 48 L. Ed. 2d 597, 96 S. Ct. 2040 (1976);* that public schooling, even in the South, should be controlled by locally elected authorities acting in conjunction with parents, see, *e. g., Dowell, supra, at 248; Dayton, supra, at 410; Milliken I, supra,* at [*507] 741-742; and that it is "desirable" to permit pupils to attend "schools nearest their homes," *Swann, 402 U.S. at 28.*

JUSTICE SOUTER, concurring.

I join the Court's opinion holding that where there are vestiges of a dual system in some of a judicially supervised school system's aspects, or *Green*-type factors, * a district court will retain jurisdiction over the system, but need not maintain constant supervision or control over factors as to which compliance has been achieved. I write separately only to explain my understanding of the enquiry required by a district [***145] court applying the principle we set out today.

* *Green v. School Bd. of New Kent County, 391 U.S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968). Green*'s list of specific factors, of course, need not be treated as exclusive. See *ante*, at 492-493.

We recognize that although demographic changes influencing the composition of a school's student population may well have no causal link to prior *de jure* segregation, judicial control of student assignments may still be necessary to remedy persisting vestiges of the unconstitutional dual system, such as remaining imbalance in faculty assignments. See *ante*, at 497-498. This is, however, only one of several possible causal relationships between or among unconstitutional acts of school segregation and various *Green*-type factors. I think it is worth mentioning at least two others: the dual school system itself as a cause of the demographic shifts with which the district court is faced when considering a partial relinquishment of supervision, and a *Green*-type factor other than student assignments as a possible cause of imbalanced student assignment patterns in the future.

The first would occur when demographic change toward segregated residential patterns is itself caused by past school segregation and the patterns of thinking that segregation creates. Such demographic change is not an independent, supervening cause of racial imbalance in the student body, and we have said before that when demographic change is [*508] not independent of efforts to segregate, the causal relationship may be considered in fashioning a school desegregation remedy. See *Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 21, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971).* Racial imbalance in student assignments caused by demographic change is not insulated from federal judicial oversight where the demographic change is itself caused in this way, and before deciding to relinquish supervision and control over student assignments, a district court should make findings on the presence or absence of this relationship.

The second and related causal relationship would occur after the district court has relinquished supervision over a remedied aspect of the school system, when future imbalance in that remedied *Green*-type factor (here, student assignments) would be caused by remaining vestiges of the dual system. Even after attaining compliance as to student composition, other factors such as racial composition of the faculty, quality of the physical plant, or per-pupil expenditures may leave schools racially identifiable. (In this very [**1455] case, for example, there is a correlation in particular schools of overrepresentation of black principals and administrators, lower per-pupil expenditures, and high percentages of black students. Moreover, the schools in the predominantly black southern section of the school district are the only ones that use "portable classrooms," *i. e.*, trailers. See *ante*, at 481-482, 484.) If such other factors leave a school identifiable as "black," as soon as the district court stops supervising student assignments, nearby white parents may move in the direction of racially identifiable "white" schools, or may simply move their children into these schools. In such a case, the vestige of discrimination in one factor will act as an incubator for

resegregation in others. Before a district court ends its supervision of student assignments, then, it should make a finding that there is no immediate threat of unremedied *Green*-type [***146] factors causing population or student enrollment changes that in turn may imbalance student composition [*509] in this way. And, because the district court retains jurisdiction over the case, it should of course reassert control over student assignments if it finds that this does happen.

JUSTICE BLACKMUN, with whom JUSTICE STEVENS and JUSTICE O'CONNOR join, concurring in the judgment.

It is almost 38 years since this Court decided *Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686 (1954).* In those 38 years the students in DeKalb County, Ga., never have attended a desegregated school system even for one day. The majority of "black" students never have attended a school that was not disproportionately black. Ignoring this glaring dual character of the DeKalb County School System (DCSS), part "white" and part "black," the District Court relinquished control over student assignments, finding that the school district had achieved "unitary status" in that aspect of the system. No doubt frustrated by the continued existence of duality, the Court of Appeals ordered the school district to take extraordinary measures to correct all manifestations of this racial imbalance. Both decisions, in my view, were in error, and I therefore concur in the Court's decision to vacate the judgment and remand the case.

I also am in agreement with what I consider to be the holdings of the Court. I agree that in some circumstances the District Court need not interfere with a particular portion of the school system, even while, in my view, it must retain jurisdiction over the entire system until all vestiges of state-imposed segregation have been eliminated. See *ante*, at 490-491. I also agree that whether the District Court must order DCSS to balance student assignments depends on whether the current imbalance is traceable to unlawful state policy and on whether such an order is necessary to fashion an effective remedy. See *ante*, at 491, 493-494, 497-498. Finally, I agree that the good faith of the school board is relevant to these inquiries. See *ante*, at 498-499.

[*510] I write separately for two purposes. First, I wish to be precise about my understanding of what it means for the District Court in this case to retain jurisdiction while relinquishing "supervision and control" over a subpart of a school system under a desegregation decree. Second, I write to elaborate on factors the District Court should consider in determining whether racial imbalance is traceable to board actions and to indicate where, in my view, it failed to apply these standards.

I

Beginning with *Brown*, and continuing through the Court's most recent school-desegregation decision in *Board of Ed. of Oklahoma City Public Schools v. Dowell, 498 U.S. 237, 112 L. Ed. 2d 715, 111 S. Ct. 630 (1991),* this Court has recognized that when the local government has been running *de jure* segregated schools, it is the operation of a racially segregated school *system* that must be remedied, [***147] not discriminatory policy in some [**1456] discrete subpart of that system. Consequently, the Court in the past has required, and decides again today, that even if the school system ceases to discriminate with respect to one of the *Green*-type factors, "the [district] court should retain jurisdiction until it is clear that state-imposed segregation has been *completely removed.*" *Green v. School Bd. of New Kent County, 391 U.S. 430, 439, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968)* (emphasis added); *Raney v. Board of Ed. of Gould School Dist., 391 U.S. 443, 449, 20 L. Ed. 2d 727, 88 S. Ct. 1697 (1968);* see *ante*, at 491.

That the District Court's jurisdiction should continue until the school board demonstrates full compliance with the Constitution follows from the reasonable skepticism that underlies judicial supervision in the first instance. This Court noted in *Dowell:* "A district court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future." *498 U.S. at 249.* It makes little sense, it seems to me, for the court to disarm itself by renouncing jurisdiction in one aspect of a school system, while violations of the Equal Protection [*511] Clause persist in other aspects of the same system. Cf. *Keyes v. School Dist. No. 1, Denver, 413 U.S. 189, 207, 37 L. Ed. 2d 548, 93 S. Ct. 2686 (1973).* It would seem especially misguided to place unqualified reliance on the school board's promises in this case, because the two areas of the school system the District Court found still in violation of the Constitution -- expenditures and teacher assignments -- are two of the *Green* factors over which DCSS exercises the greatest control.

The obligations of a district court and a school district under its jurisdiction have been clearly articulated in the Court's many desegregation cases. Until the desegregation decree is dissolved under the standards set forth in *Dowell*, the school board continues to have "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green, 391 U.S. at 437-438.* The duty remains enforceable by the district court without any new proof of a constitutional violation, and the school district has the burden of proving that its actions are eradicating the effects of the former *de jure* regime. See *Dayton Board of Education v. Brinkman, 443 U.S. 526, 537, 61 L. Ed. 2d 720, 99 S. Ct. 2971 (1979); Keyes, 413 U.S. at 208-211; Swann v.*

Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 26, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971); Green, 391 U.S. at 439.

Contrary to the Court of Appeals' conclusion, however, retaining jurisdiction does not obligate the district court in all circumstances to maintain active supervision and control, continually ordering reassignment of students. The "duty" of the district court is to guarantee that the school district "'eliminate[s] the discriminatory effects of the past as well as to bar like discrimination in the future.'" *Green, 391 U.S. at 438, n. 4.* This obligation requires the court to review school-board actions to ensure that each one "will further rather [***148] than delay conversion to a unitary, nonracial nondiscriminatory school system." *Monroe v. Board of Comm'rs of Jackson, 391 U.S. 450, 459, 20 L. Ed. 2d 733, 88 S. Ct. 1700 (1968);* see also *Dayton Board of Education, 443 U.S. at 538; United States v.* [*512] *Scotland Neck Board of Education, 407 U.S. 484, 489, 33 L. Ed. 2d 75, 92 S. Ct. 2214 (1972).* But this obligation does not always require the district court to order new, affirmative action simply because of racial imbalance in student assignment.

Whether a district court must maintain active supervision over student assignment, and order new remedial actions, depends on two factors. As the Court discusses, the district court must order changes in student assignment if it "is necessary or practicable to achieve compliance in other facets of the school system." *Ante*, at 497; see also *ante*, at 507 [**1457] (SOUTER, J., concurring). The district court also must order affirmative action in school attendance if the school district's conduct was a "contributing cause" of the racially identifiable schools. *Columbus Board of Education v. Penick, 443 U.S. 449, 465, n. 13, 61 L. Ed. 2d 666, 99 S. Ct. 2941 (1979);* see also *Keyes, 413 U.S. at 211, and n. 17* (the school board must prove that its conduct "did not create or contribute to" the racial identifiability of schools or that racially identifiable schools are "in no way the result of" school board action). It is the application of this latter causation requirement that I now examine in more detail.

II

A

DCSS claims that it need not remedy the segregation in DeKalb County schools because it was caused by demographic changes for which DCSS has no responsibility. It is not enough, however, for DCSS to establish that demographics exacerbated the problem; it must prove that its own policies did not contribute. n1 Such contribution can occur in at [*513] least two ways: DCSS may have contributed to the demographic changes themselves, or it may have contributed directly to the racial imbalance in the schools.

n1 The Court's cases make clear that there is a presumption in a former *de jure* segregated school district that the board's actions caused the racially identifiable schools, and it is the school board's obligation to rebut that presumption. See *Dayton Board of Education v. Brinkman, 443 U.S. 526, 537, 61 L. Ed. 2d 720, 99 S. Ct. 2971 (1979); Keyes v. School Dist. No. 1, Denver, 413 U.S. 189, 208, 211, 37 L. Ed. 2d 548, 93 S. Ct. 2686 (1973); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 26, 28 L. Ed. 2d 554, 91 S. Ct. 1267 (1971); ante*, at 494-495.

To determine DCSS' possible role in encouraging the residential segregation, the court must examine the situation with special care. "[A] connection between past segregative acts and present segregation may be present even when not apparent and . . . close examination is required before concluding that the connection does not exist." *Keyes, 413 U.S. at 211.* Close examination is necessary because what might seem to be purely private preferences in housing may in fact have been created, in part, by actions of the school district.

> "People gravitate toward school facilities, just as schools are located in response to the needs of people. [***149] The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods." *Swann, 402 U.S. at 20-21.*

This interactive effect between schools and housing choices may occur because many families are concerned about the racial composition of a prospective school and will make residential decisions accordingly. n2 Thus, schools that are demonstrably black or white provide a signal to these families, perpetuating and intensifying the residential movement. See *Keyes, 413 U.S. at 202; Columbus Board of Education, 443 U.S. at 465, n. 13; ante*, at 507-508 (SOUTER, J., concurring).

n2 See Taeuber, Housing, Schools, and Incremental Segregative Effects, 441 Annals Am. Acad. Pol. & Soc. Sci. 157 (1979); Orfield, School Segregation and Residential Segregation, in School Desegregation: Past, Present, and Future 227, 234-237 (W. Stephan & J. Feagin eds. 1980); Elam, The 22nd Annual Gallup Poll of

Public's Attitudes Toward the Public Schools, 72 Phi Delta Kappan 41, 44-45 (1990).

School systems can identify a school as "black" or "white" in a variety of ways; choosing to enroll a racially identifiable [*514] student population is only the most obvious. The Court has noted: "The use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and [**1458] staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition." *Keyes, 413 U.S. at 202.* Because of the various methods for identifying schools by race, even if a school district manages to desegregate student assignments at one point, its failure to remedy the constitutional violation in its entirety may result in resegregation, as neighborhoods respond to the racially identifiable schools. See *ante*, at 508-509 (SOUTER, J., concurring). Regardless of the particular way in which the school district has encouraged residential segregation, this Court's decisions require that the school district remedy the effect that such segregation has had on the school system.

In addition to exploring the school district's influence on residential segregation, the District Court here should examine whether school-board actions might have contributed to school segregation. Actions taken by a school district can aggravate or eliminate school segregation independent of residential segregation. School-board policies concerning placement of new schools and closure of old schools and programs such as magnet classrooms and majority-to-minority (M-to-M) transfer policies affect the racial composition of the schools. See *Swann, 402 U.S. at 20-21, 26-27.* A school district's failure to adopt policies that effectively desegregate its schools continues the violation of the Fourteenth Amendment. See *Columbus Board of Education, 443 U.S. at 458-459; Dayton Board of Education, 443 U.S. at 538.* The Court many times has noted that a school district is not responsible for all of society's ills, but it bears full responsibility for schools that have never been desegregated. [***150] See, *e. g., Swann, supra.*

[*515] B

The District Court's opinion suggests that it did not examine DCSS' actions in light of the foregoing principles. The court did note that the migration farther into the suburbs was accelerated by "white flight" from black schools and the "blockbusting" of former white neighborhoods. It did not examine, however, whether DCSS might have encouraged that flight by assigning faculty and principals so as to identify some schools as intended respectively for black students or white students. See App. 226-231. Nor did the court consider how the placement of schools, the attendance zone boundaries, or the use of mobile classrooms might have affected residential movement. The court, in my view, failed to consider the many ways DCSS may have contributed to the demographic shifts.

Nor did the District Court correctly analyze whether DCSS' past actions had contributed to the school segregation independent of residential segregation. The court did not require DCSS to bear the "heavy burden" of showing that student assignment policies -- policies that continued the effects of the dual system -- served important and legitimate ends. See *Dayton Board of Education, 443 U.S. at 538; Swann, 402 U.S. at 26.* Indeed, the District Court said flatly that it would "not dwell on what might have been," but would inquire only as to "what else should be done now." App. 221. But this Court's decisions *require* the District Court to "dwell on what might have been." In particular, they require the court to examine the past to determine whether the current racial imbalance in the schools is attributable in part to the former *de jure* segregated regime or any later actions by school officials.

As the Court describes, the District Court placed great emphasis on its conclusion that DCSS, in response to the court order, had desegregated student assignment in 1969. DCSS' very first action taken in response to the court decree, however, was to shape attendance zones to result [*516] in two schools that were more than 50% black, despite a district-wide black student population of less than 6%. See *ante*, at 477-478. Within a year, [**1459] another school became majority black, followed by four others within the next two years. App. 304, 314, 350, 351, 368. Despite the existence of these schools, the District Court found that DCSS effectively had desegregated for a short period of time with respect to student assignment. See *ante*, at 478. The District Court justified this finding by linking the school segregation exclusively to residential segregation existing prior to the court order. See *ibid.*

But residential segregation that existed *prior* to the desegregation decree cannot provide an excuse. It is not enough that DCSS adopt race-neutral policies in response to a court desegregation decree. Instead, DCSS is obligated to "counteract the continuing effects of past school segregation." *Swann, 402 U.S. at 28.* Accordingly, the school district did not meet its affirmative duty simply by adopting a neighborhood-school plan, when already existing residential [***151] segregation inevitably perpetuated the dual system. See *Davis v. Board of School Comm'rs of Mobile County, 402 U.S. 33, 37, 28 L. Ed. 2d 577, 91 S. Ct. 1289 (1971); Swann, 402 U.S. at 25-28, 30.*

Virtually all the demographic changes that DCSS claims caused the school segregation occurred after 1975. See *ante*, at 475; App. 215, 260. Of particular relevance to the causation inquiry, then, are DCSS' actions prior to 1975; failures during that period to implement the 1969 decree render the school district's contentions that its noncompliance is due simply to demographic changes less plausible.

A review of the record suggests that from 1969 until 1975, DCSS failed to desegregate its schools. During that period, the number of students attending racially identifiable schools actually increased, and increased more quickly than the increase in black students. By 1975, 73% of black elementary students and 56% of black high school students were attending majority black schools, although the percentages of black [*517] students in the district population were just 20% and 13%, respectively. *Id.*, at 269-380.

Of the 13 new elementary schools DCSS opened between 1969 and 1975, 6 had a total of four black students in 1975. *Id.*, at 272, 299, 311, 316, 337, 353. One of the two high schools DCSS opened had no black students at all. n3 *Id.*, at 367, 361. The only other measure taken by DCSS during the 1969-1975 period was to adopt the M-to-M transfer program in 1972. Due, however, to limitations imposed by school-district administrators -- including a failure to provide transportation, "unnecessary red tape," and limits on available transfer schools -- only one-tenth of 1% of the students were participating in the transfer program as of the 1975-1976 school year. *Id.*, at 75, 80.

n3 By 1986, one of those two high schools was 2.4% black. The other was 91.7% black. Of the 13 elementary schools, 8 were either virtually all black or all white and all were racially identifiable. App. 269-359.

In 1976, when the District Court reviewed DCSS' actions in the M-to-M program, it concluded that DCSS' limitations on the program "perpetuate the vestiges of a dual system." *Id.*, at 83. Noting that the Department of Health, Education, and Welfare had found that DCSS had ignored its responsibility affirmatively to eradicate segregation and perpetuate desegregation, the District Court found that attendance zone changes had perpetuated the dual system in the county. *Id.*, at 89, 91.

Thus, in 1976, before most of the demographic changes, the District Court found that DCSS had not complied with the 1969 order to eliminate the vestiges of its former *de jure* school system. Indeed, the 1976 order found that DCSS had contributed to the growing racial imbalance of its schools. Given these determinations in 1976, the District Court, at a minimum, should have required DCSS to prove that, but for the demographic changes between 1976 and 1985, its actions would have been sufficient to "convert [**1460] promptly to a system without a 'white' school and a 'Negro' school, but just [*518] schools." *Green, 391 U.S. at 442.* The available evidence suggests that this [***152] would be a difficult burden for DCSS to meet.

DCSS has undertaken only limited remedial actions since the 1976 court order. The number of students participating in the M-to-M program has expanded somewhat, composing about 6% of the current student population. The district also has adopted magnet programs, but they involve fewer than 1% of the system's students. Doubtless DCSS could have started and expanded its magnet and M-to-M programs more promptly; it could have built and closed schools with a view toward promoting integration of both schools and neighborhoods; redrawn attendance zones; integrated its faculty and administrators; and spent its funds equally. But it did not. DCSS must prove that the measures it actually implemented satisfy its obligation to eliminate the vestiges of *de jure* segregation originally discovered in 1969, and still found to exist in 1976.

III

The District Court apparently has concluded that DCSS should be relieved of the responsibility to desegregate because such responsibility would be burdensome. To be sure, changes in demographic patterns aggravated the vestiges of segregation and made it more difficult for DCSS to desegregate. But an integrated school system is no less desirable because it is difficult to achieve, and it is no less a constitutional imperative because that imperative has gone unmet for 38 years.

Although respondents challenged the District Court's causation conclusions in the Court of Appeals, that court did not reach the issue. Accordingly, in addition to the issues the Court suggests be considered in further proceedings, I would remand for the Court of Appeals to review, under the foregoing principles, the District Court's finding that DCSS has met its burden of proving the racially identifiable schools are in no way the result of past segregative action.

REFERENCES: Return To Full Text Opinion

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Supreme Court's views as to propriety of purported remedies for unconstitutional racial segregation of public elementary or secondary schools

15 Am Jur 2d, Civil Rights 61-78

6 Federal Procedure, L Ed, Civil Rights 11:326-11:333

5 Federal Procedural Forms, L Ed, Civil Rights 10:421-10:428, 10:433-10:435

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 51, 53, 54; 22 Am Jur Pl & Pr Forms (Rev), Schools, Forms 191-193

USCS, Constitution, Amendment 14

L Ed Digest, Appeal 1700, 1701; Civil Rights 49, 50, 51, 53, 54

L Ed Index, Faculty; School Buses; Schools and Education

Index to Annotations, Discrimination; Equal Protection of Law; Good Faith; Injunctions; School Buses; Schools and Education; Segregation; Teachers and Instructors; Termination and Expiration

Annotation References:

Racial discrimination in education-- *Supreme Court cases. 24 L Ed 2d 765.*

Circumstances warranting judicial determination or declaration of unitary status with regard to schools operating under court-ordered or -supervised desegregation plans and the effects of such declarations. *94 ALR Fed 667.*

Federal court regulation of school construction or facility so as to avoid school segregation. *4 ALR Fed 979.*

Racial discrimination in the hiring, retention, and assignment of teachers--federal cases. *3 ALR Fed 325.*

Relief against school board's "busing" plan to promote desegregation. *50 ALR3d 1089.*

De facto segregation of races in public schools. *11 ALR3d 780.*

Comment note .--Racial segregation. *38 ALR2d 1188.*

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NOTE: Unclear Standards Create an Unclear Future: Developing a Better Definition of Unitary Status

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SUMMARY:
... When the federal courts began supervising the desegregation of public schools in the latter half of the twentieth century, no one intended this regulation to continue for an indefinite period of time. ... For instance, one school system has attempted to remain under court supervision so that it could continue to use race-based student assignments to its magnet schools, which would be unconstitutional if the court lifted the desegregation order. ... For instance, critics might argue that this proposal contradicts the basic theory upon which it is premised, because it would require a school system to remain under court supervision for twelve years, even if the system had complied with its desegregation order in a shorter period of time. ... On September 5, 1997, William Capacchione filed a complaint against CMS on behalf of his daughter Cristina, who was denied admission to a magnet school by CMS because of the school's enforcement of a rigid racial quota system resulting from the school district's desegregation order. ... In determining whether or not CMS had achieved unitary status, the court examined the progress of the school system with respect to the Green factors, and found that CMS had complied with the court order "to the extent practicable. ...

TEXT:
[*311]

I. Introduction

When the federal courts began supervising the desegregation of public schools in the latter half of the twentieth century, no one intended this regulation to continue for an indefinite period of time. The expectation was that the courts would return schools to local control after the districts had complied with their federal desegregation orders. In the year 2001, however, over 400 school districts were still under federal court supervision, n1 making the federal bench the largest school district in the country. Since many of these school districts have operated under court supervision for more than three decades, the reason that they are still under court supervision is not that they have failed to desegregate. Instead, at least two plausible explanations demonstrate why so many districts remain under desegregation orders. One explanation results from the unclear standard the Supreme Court has developed to define when courts should release school districts from supervision. The other explanation arises from the process school systems must undergo to regain local control.

First, the Supreme Court has not provided the lower courts with any concrete standards to help them decide when they should release school districts from supervision. The Court has only vaguely explained that lower courts should remove school districts from court orders when the districts [*312] have attained "unitary status." n2 It has then listed six educational areas, commonly known as the Green factors, n3 from which school districts must eliminate all vestiges of the prior dual system before the districts can return to local control. The Court has not offered any more guidance on this question. Therefore, lower courts have developed their own measures, and this fact explains why some school districts are still under court control, even though they have achieved a higher level of desegregation than other districts that courts have already released from supervision.

Second, the process that the courts have developed to determine when to release districts from their desegregation orders has made it possible for school systems to remain under supervision indefinitely. Typically when a school district

first came under supervision, the court required the district to develop an acceptable desegregation plan. In many cases, if the district did not design a satisfactory plan, the court developed its own plan. The court then removed the case from its active docket and did not continue to monitor the district's progress unless an outside party brought a problem to the court's attention. Consequently, if no party brought any complaints to the court, a school district could remain under supervision years after it had achieved its desegregation goals.

Theoretically, under this process, a school system should not remain under supervision after it has fulfilled its desegregation obligations because even if no other party reactivates the litigation, the school system itself has the power to request that the court release it from control. However, school systems have several motives to want to remain under court orders indefinitely, and so the potential exists for a system to remain under supervision many years after it has fully desegregated its schools. Aside from the fact that this prolonged supervision violates the principle that schools should be under local control, it also often works to the detriment of students in the system.

Consequently, this Note argues that the Supreme Court should have more clearly defined the term "unitary status." Since the Court offered little clarification on this point, several commentators have attempted to suggest more quantifiable methods to assess when a system has achieved unitary status. This Note analyzes these proposals and explains why these suggestions are all problematic.

This Note then offers a new proposal for how the Court could have defined unitary status. Unlike the proposals of some scholars that attempt to offer substantive definitions of some of the Green factors, this proposal focuses on providing procedural clarification. This proposal, called the "twelve-year plan," asserts that a court should end supervision of a system [*313] under a desegregation order twelve years after it has removed the case from its active docket if the district has complied with the order while under supervision. During this twelve-year period, the court would more closely monitor the school system's compliance by requiring annual reports from the system detailing its progress in remedying the vestiges of the prior dual system.

The selection of the twelve-year period of court supervision is not arbitrary. Instead, it stems from the fact that a school system has substantially harmed all students who attended segregated schools under the prior dual regime. Consequently, the twelve-year plan requires a school to remain under court supervision until all of the students who had standing in the desegregation suit have a chance to graduate.

The twelve-year plan is a superior alternative to the status quo because it addresses the four main problems that stem from the current system. First, inflexible desegregation orders restrict the ability of districts to adopt creative policies to address their most current and pressing needs. Second, school districts must spend thousands of dollars in litigation fees to have the courts release them from supervision. Third, parents have no clear expectation as to when the courts will remove desegregation orders and their children will have to switch schools. Finally, the longer that districts are under desegregation orders, the more difficult it becomes to ensure that the districts are only addressing de jure segregation and have not adopted policies that focus on de facto segregation.

In response to this first concern, the twelve-year plan recognizes that school districts need the freedom to implement policies to address changing needs instead of being hindered by requirements that they meet rigid racial ratios long after the district has addressed, to the extent possible, the evils caused by de jure segregation. The twelve-year plan combats the second problem concerning the high costs of litigation in several ways. It ensures that courts are more involved in monitoring a school system's progress and in preventing noncompliance, and it also provides a concrete time frame for when supervision should end. These attributes of the plan would prevent the need for the costly litigation that plagues the current system. Similarly, the twelve-year plan solves the problem of parental expectations, because it gives individuals a concrete idea of when their schools' assignment plans will change. Finally, the limited timespan recommended by the twelve-year plan would minimize the extent to which school districts under desegregation orders feel that they are required to address imbalances that result from de facto segregation.

The problems that result from the Court's vague unitary status standards and the benefits the twelve-year plan would create become evident through a case study of the Charlotte-Mecklenburg School System (CMS). In 1971, CMS became the first school system to use busing to [*314] desegregate its schools when the Supreme Court approved the use of this desegregation method in Swann v. Charlotte-Mecklenburg Board of Education. n4 The courts then failed to monitor CMS's desegregation progress any further until a group of parents asked a federal judge to end the court order in 1997. n5 The school system waged an active defense against the plaintiffs' suit, claiming that it had failed to comply with the court order. After years of litigation, a federal court of appeals finally concluded that CMS had obtained unitary status. n6

An examination of the CMS litigation clearly illustrates the four problems that result when school systems remain under court supervision for too long. Furthermore, a hypothetical analysis of how circumstances would have been different for CMS if the court had facilitated the system's desegregation through the twelve-year plan illustrates the merits of this proposal. Finally, an assessment of the steps CMS has taken since the court removed it from supervision helps dispel some of the main concerns that might surround the use of the twelve-year plan.

Part II of this Note begins by providing a synopsis of the limited guidance that the Supreme Court has given to lower courts concerning how to determine whether a school has achieved unitary status. It then addresses various measures lower courts have developed in light of this ambiguous guidance. Part III analyzes the few suggestions that scholars have offered to quantify the concept of unitary status and articulates the flaws in these proposals. It also introduces the twelve-year plan, this author's suggestion for how unitary status could have been more clearly defined. This Part identifies the plan's strengths and addresses potential criticisms that might arise concerning the feasibility of the proposal. Part IV explains why a clearer definition of unitary status is necessary by detailing the history of CMS's actions to comply with its desegregation order. It applies the twelve-year plan to the facts of the CMS litigation, and it demonstrates how this plan could have prevented the problems that the school system's parents and students faced as a result of the courts having allowed CMS to remain under the court order for too long. Part V uses the CMS desegregation experience both to identify other concerns the twelve-year plan may generate and to demonstrate why these concerns are unfounded. Part VI concludes.

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II. The Vague Definition of Unitary Status

The Supreme Court has clearly stated that "from the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination." n7 The Court has given little guidance, however, as to when lower courts should release schools from the court orders requiring them to execute desegregation plans. In its 1968 decision in Green v. County School Board, the Supreme Court stated that courts should remove schools from supervision when the schools achieve "unitary status," or when "racial discrimination [has been] eliminated root and branch." n8 The Court further clarified that schools would not achieve unitary status until six aspects of education no longer reflected any of the vestiges of past racial discrimination. These areas, now commonly called the Green factors, are student assignment, faculty, staff, transportation, extracurricular activities, and facilities. n9 Yet, the Court offered no further guidance to lower courts concerning how to determine when a Green factor no longer reflects the vestiges of past racial discrimination.

Later in Board of Education v. Dowell, the Court explained that unitary status is achieved if "the Board had complied in good faith with the desegregation decree since it was entered" and "the vestiges of past discrimination had been eliminated to the extent practicable." n10 However, the concept of "to the extent practicable" is just as unclear as the concept of "unitary status."

It is perhaps understandable why the Supreme Court did not offer the lower courts more direction. After all, every school district is under a different district court order detailing the expectations the school district must meet in order to achieve unitary status. Furthermore, the Supreme Court has openly acknowledged that it has not offered a concrete definition for the concept of unitary status because it did not believe that it needed to explicate further this term. n11 "Think[ing] it [was] a mistake to treat words such as "dual' and "unitary' as if they were actually found in the Constitution," the Court has explained that it was "not sure how useful it [was] to define these terms more precisely." n12 However, despite the Court's reasoning, the Fourteenth Amendment articulates the constitutional right to equal protection that unitary school systems promote and dual systems violate. Also, ironically, since the Court has basically limited its guidance concerning when lower courts should release schools from supervision to [*316] the use of the term "unitary status," the lower courts have overemphasized this term and given it great importance, even though it appears that this outcome was not the Court's intention.

As a result, district and circuit courts have developed different and somewhat arbitrary criteria to measure when school districts have eliminated the vestiges of prior discrimination. In Morgan v. Nucci, the First Circuit looked to the racial imbalance in schools during the period that a district was under a desegregation order to determine whether the school district had achieved unitary status in school assignments. n13 In Hoots v. Pennsylvania, a district court not only considered whether specific schools had achieved acceptable racial ratios, but also whether individual classrooms had a satisfactory racial balance, before ruling that the school district had achieved unitary status. n14

Courts have also developed a variety of different measurements concerning the other five Green factors. When evaluating whether school districts had achieved unitary status concerning faculty and staff assignments, one court considered whether the district's current employment practices were nondiscriminatory and whether the district had remedied the effects of prior discrimination. n15 Another court found that the increase in the number of African-American principals in the district was an important consideration when determining that the school district had achieved unitary status. n16

Outside of the measures that specifically relate to the Green factors, courts have recognized a myriad of other ancillary factors as important considerations when determining whether school districts have achieved unitary status. For instance, some courts have found that the presence of minority members in school administration is a helpful indicator of a district's progress. n17 In addition, at least one court has considered the support for desegregation demonstrated by local African-American and white communities as an indicative measure. n18 This court took particular note of the fact that the community as a whole had "accepted public school desegregation in a spirit of cooperation and good will," n19 and recognized that the community had demonstrated a willingness to sustain the newly desegregated school by supporting a school bond. n20

[*317] Equally absent from the Supreme Court's opinions concerning desegregation orders is any clarification concerning how many years a school district must comply with a desegregation order before a court will release the school from its supervision. In Board of Education v. Dowell, the Court explained that courts should release school districts from desegregation orders after the districts have complied with the orders for "a reasonable period of time." n21

However, the Court has failed to offer more concrete guidance on this point. Consequently, the district and circuit courts have developed a number of different standards for how many years that a school district must comply with the desegregation order for the court to find that it has achieved unitary status. For example, at least one appellate court has asserted a vague opinion on this question, stating that courts can release school districts from supervision after the districts have complied with the desegregation orders for a period of "several years." n22

Other courts have offered more specific opinions. One Mississippi district court released a school district from its desegregation order after the district had complied with the order for seven years. n23 Another district court in Oklahoma removed a school district from supervision after it had met the requirements of the desegregation plan for only five years. n24 Accordingly, across the country, the standard for the duration of a desegregation order has varied by school district.

This analysis of how courts have attempted to measure a school district's progress toward achieving unitary status demonstrates one of the main problems inherent in the current jurisprudence concerning unitary status. Under the present regime, courts have developed their methodologies for evaluating compliance with a desegregation order ex post instead of when the desegregation order was first implemented. Consequently, school districts have had little notice about how courts will evaluate their progress, and furthermore they lack a clear idea of when they might be eligible for release from court supervision. This lack of information is problematic in a system that places the burden on the school district or some other outside party to request that the court remove the desegregation order. It is consequently not surprising that many school systems remain under court orders long after they have complied with them.

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III. A Proposed Clearer Definition of Unitary Status

An examination of the vague jurisprudence concerning unitary status has identified the problems inherent in the current system. School systems have no clear idea of when courts will release them from court supervision. Consequently, they often remain under court supervision for too long. These characteristics of the current system are problematic for a number of reasons. First, schools that are under desegregation orders for several decades lack the ability and incentive to adopt creative new policies to address the system's most pressing needs. n25 A school system's needs change over time, and in the twenty-first century many black parents no longer believe that an integrated education will ensure that their children receive the best quality education. n26 As Professor Drew Days has noted, many blacks have begun to rethink the integrative ideal because of "concerns about the burdens blacks have had to carry in the desegregation process, the degree to which integration requires assimilation and rejection of black values and institutions, and the seemingly intractable problems presented for largely black school systems in educational extremis." n27 However, if the school is still under a desegregation order, the district's top priority when designing school policies is to ensure that it is in compliance with the order.

Secondly, schools that are under desegregation orders typically have to spend thousands of dollars in litigation fees when they seek termination of court supervision. n28 In addition, when a school is under a desegregation order, parents typically have no idea when the court will remove the order, [*319] at which time their children may have to transfer schools. n29 It is important for parents to have a reasonable expectation of when their child's student assignment may change because school changes have psychological impacts on children and often create logistical problems for parents. Finally, when schools remain under desegregation orders for prolonged periods of time, they begin to address racial imbalances caused by de facto segregation as well as de jure segregation. n30 When a school district is under a desegregation order for several decades, racial imbalances in schools can begin to occur because of population shifts and demographic changes. Since the system is under the order, the school district has to make adjustments to its student-assignment plan to remain in compliance with the order. The courts, however, only intended for schools under desegregation orders to address de jure segregation, not imbalances that occur due to de facto segregation. n31 Recognizing the harmful effects of the vague nature of the unitary status concept raises the important question of how this term could be more clearly defined.

A. Scholars' Suggestions for How To Define Unitary Status

Various observers have attempted to suggest more tangible and quantifiable ways to measure a school system's progress toward achieving unitary status. Yet, these ideas run into roadblocks. For instance, one measure that has been suggested is that a district is unitary when there is no [*320] longer a possibility that it can achieve any further racial balancing. n32 In theory, however, there is always some new policy a school district could implement to desegregate further its schools. Consequently, school systems under this definition of unitary status could remain under desegregation orders forever. At least one court has recognized the problem inherent in this idea and has held that a court cannot keep a school under a desegregation order simply because more desegregation is theoretically possible. n33

Another suggestion concerning how to define unitary status is that school systems have achieved this goal "when the numbers are right." n34 Professor Melva Ware has defined this concept to mean that a system complies with a court desegregation order when test scores reflect that any continuing discrepancies between the success of African-American and white students are "incidental." n35 Courts could measure whether these quantifiable indicators are "incidental" by comparing a school district's test scores with state and national averages. n36 This measure is problematic, however, because different areas of the country are wealthier than others, and different states have different methods of financing and running their schools, which might create discrepancies that have nothing to do with remnants of a prior dual system. Furthermore, the Supreme Court made clear in Missouri v. Jenkins II that the appropriate test of whether a district has achieved partial unitary status is not whether student achievement levels reach national norms. n37

On the other hand, Charles Willie and Michael Fultz have advanced a different test to evaluate unitary status based on a study they conducted that analyzed four school systems they believed had developed successful models. n38 Their study found that one mistake school systems and courts have commonly made when designing desegregation plans is that they only focus on providing a desegregated educational experience for one race. n39 [*321] For instance, many systems have concentrated on ensuring that African-American students attend schools where they are not the majority - however, these desegregation plans have left many predominantly white schools. n40 Willie and Fultz argue that to be truly effective, desegregation plans must ensure that the system does not operate any schools where racial minorities comprise less than twenty percent of the student body. n41 Their survey demonstrated that school systems that have been the most successful in desegregating their schools focus on the twin goals of increasing educational advancement and improving racial diversity for all students. n42

The strength of Willie and Fultz's plan is that they identify that one necessary component of a successful plan to achieve unitary status is to set forth quantifiable requirements that school systems must meet to ensure that their students are receiving an integrated education. However, their suggestions do not consider the question of how long school districts must remain under court supervision and the harms that result when school districts operate under court orders for too long. Consequently, their plan does not consider many of the problems that result from the system currently in place.

Finally, Thomas Chandler has proposed that courts should engage in two levels of hearings to determine whether schools have achieved unitary status. n43 Under his plan, the school board would have to request the first hearing after it had operated under its desegregation plan for a period of years. The burden of proof would be on the school board to prove that it had eliminated the effects of the prior dual system. If the court found that the system had not achieved unitary status, the court would have to give the system specific instruction on how to comply further with the desegregation order. n44

After the court has found that a system is unitary, Chandler recommends that the court retain jurisdiction over the system for a fixed length of time that each individual court would determine. During this time, the district would have to submit periodic reports to the court detailing the continued racial balance maintained within the system. n45 At the end of the specified period, the court would then hold another hearing where it would give the original plaintiffs one final opportunity to show why the district should remain under supervision. Then, if there was no showing that the [*322] school should remain under the desegregation order, the court would relinquish all control over the school district. n46

In actuality, Chandler's plan is not very different from the status quo. His main contribution is adding the second stage of hearings, which would require school systems to remain under court orders even after being declared unitary. One benefit that this second hearing might provide is that parents would have some notice as to when their child's school assignment would change, since the court has to specify the length of time between the initial unitary status finding and the second hearing that would remove the district from court supervision.

Chandler's plan, however, suffers from a number of weaknesses. First, his plan requires the school board to initiate the proceedings to be released from the court order. The problem with this requirement is that school districts often are motivated to remain under court orders indefinitely. Evidence demonstrates that several school districts have fought to remain under court supervision even though these districts recognized that there was nothing more they could do to comply with the court order. For instance, one school system has attempted to remain under court supervision so that it could continue to use race-based student assignments to its magnet schools, which would be unconstitutional if the court lifted the desegregation order. n47 In this instance, if the court had allowed the school system to remain under the court order, it would essentially have given the system a mandate to engage in the unconstitutional practice of using race-based preferences for magnet school admissions even though the system had already done everything practicable to eliminate the vestiges of the prior dual system. n48

In addition, there are other motivations for school districts to want to remain under supervision even after they have complied with their court orders. For example, schools may want to remain under court orders indefinitely so that they can continue to receive certain state and federal funds that they can no longer obtain when they have achieved unitary status. n49 Furthermore, many school boards want to preserve the court orders [*323] because they believe there is a benefit to maintaining a racially balanced staff at each school. n50 However, they fear that if the court order is removed they will be under increasing pressure, often from leaders in the African-American community, to replace their current staffing policies with a "role model" policy. n51 This new type of policy would assign teachers and principals disproportionately to match the predominant race at each school. As a result, school systems might not ever initiate the proceedings for courts to remove them from supervision, even though being released from the court order might be in the best interest of their students.

Another problem with Chandler's plan is that the court would only give the school system feedback on its progress toward achieving unitary status ex post. Therefore, school systems might operate under court supervision for years without recognizing that they are violating the court order. Last, one other troublesome component is that the plan recommends that the school system remain under court supervision for a period of time even after the court has made a finding that the district has achieved unitary status. This provision of the plan strongly conflicts with the mandate that schools should return to local control as quickly as possible.

B. The Twelve-Year Plan

None of the plans offered by other scholars attempt to specify the length of time that school systems must operate under desegregation orders prior to achieving unitary status. As a result, these plans do not address the problems that result when school systems remain under court orders for too long. At least one scholar has recognized the problems inherent in this ambiguous procedure. Chris Hansen has noted:

Courts, which by their nature are used to finite projects with a definite beginning and a certain, usually prompt end, are increasingly uncomfortable with school desegregation, which appears to have no end. Courts, which by their nature are used to success when decisions are issued and then executed, are increasingly frustrated by their inability to achieve success ... in these cases. Simply put, they are giving up. n52

Consequently, the key to defining unitary status more clearly is to develop a concrete procedure for school systems and courts to follow that [*324] specifies the length of time the system has to comply with its court order and that requires

more accountability during the supervision period. In most school desegregation cases, the district court developed the court order, and it took the schools a few years to change their policies in order to satisfy the court. Then the court removed the case from its docket until some outside party chose to reintroduce the matter, which could take several decades.

In light of the problems that plague the current system, this Note argues that court supervision should end in all cases twelve years after the court has removed the case from its docket, as long as the district has maintained its level of compliance during that time. The twelve-year time period would begin on the date that the school system has fully begun to implement its court-approved desegregation plan. During these twelve years, all of the students who were in grades K-12 in the segregated school system would have the opportunity to graduate, and the court desegregation order would truly be remedial. This approach accords with the Supreme Court's decisions in Swann and Keyes, n53 as it focuses on the victims of the de jure segregation in question.

The selection of a mandated twelve-year period of supervision is supported by a study conducted by Robert Crain and Rita Mahard. This study revealed that "desegregation beginning in first grade or kindergarten and continuing through later years produced much better results in terms of achievement gains than desegregation beginning at higher grade levels." n54 Consequently, it seems that a desegregation order could not remedy the effects of the prior dual system to the extent practicable unless it remained in place until the students in kindergarten the year before the plan's implementation had graduated from high school.

The twelve-year plan would also require the courts to maintain a closer watch on the district's compliance with the desegregation order while the schools are under supervision. n55 Admittedly, the courts do not have the time or money to micromanage every decision that a school district makes with regard to its desegregation plans. However, the school system could submit annual reports to the court detailing its desegregation progress and giving an account of how it is addressing all of the Green factors. Furthermore, the system would have to explain any activities that deviate from the desegregation plan and its rationale for any major decisions, such as where it is building new schools. It does not help anyone for a court to notify a school district that a school-siting decision is segregative ten years after the district has made the decision. These reports would address this problem. [*325] At the end of this twelve-year period, the court would release the school district from its supervision and give control back to the local boards.

To assist the courts with the monitoring required by this proposal, the twelve-year plan would insist that from the beginning, the court and school system work together to develop a detailed outline of the court's expectations regarding each of the Green factors. For all of these factors, the court would set forth quantifiable measurements to assess the school system's compliance and would explain the rationale behind these measurements. Certainly, no two school systems are the same, so it would be difficult to develop uniform quantifiable measurements for each Green factor that would apply to every school system. It is possible, however, for each court to determine first its individual goals for each Green factor. Then it can determine quantifiable ways to measure these goals based on an analysis of what is feasible for each individual school system. For instance, to assess compliance with the Green factor of student assignment, a court might accept Willie and Fultz's recommendation that a school system ensure that none of its schools has a student body comprised of less than a certain percentage of racial minorities. However, Willie and Fultz's suggestion of twenty percent might not be appropriate for every school system because no school system has the same demographic makeup as another. Therefore, the court could develop a standard for each school system based upon its demographics and the underlying goal that all students receive the benefit of an integrated education.

One positive result of having the court develop standards to measure a district's compliance with each Green factor ex ante is that when the court later has to analyze a school system's annual report, the court has a set of indicators to use when evaluating the system's progress. Another benefit of this requirement is that it ensures that, from the beginning, the school system has a reasonable expectation of what the court requires from it concerning its compliance with the desegregation order. The current regime is fundamentally unfair in this respect because school systems often do not have a clear conception of the courts' expectations until they have operated under the court order for a number of years, and a suit has been brought to request a finding of unitary status.

Admittedly, one problem with developing quantitative standards concerning the Green factors ex ante is that the court might not have a clear idea of what is truly possible for a school system to achieve. Consequently, at least during the first few years of supervision, some degree of flexibility would have to be built into the system to allow for some small deviations that the district may make from these concrete standards. When analyzing any deviations reported in a system's annual report, the court would hold the system to the same good faith standard that courts currently use when analyzing a district's actions to comply with a desegregation order. In [*326] addition, the court would have the ability

to modify the expectations at any time during the twelve-year period, as it gained more information about what the school system is capable of achieving with regard to becoming unitary.

One question that arises concerning the twelve-year plan is what courts should do if they find that the school system has adopted new segregative policies during this time. Certainly the courts would require the system to change such practices immediately. The more important question, however, is whether the twelve-year period should start again upon this determination. In deciding whether to restart the twelve-year count, the court should examine evidence concerning the school system's intent when it adopted these segregative practices. If it appears the school system was making a good faith effort to comply with the desegregation order, and these policies resulted because they were either the only practicable choice available n56 or because of an honest mistake, n57 the court should not restart the count. However, if there is evidence that the system was not making a good faith effort to comply with the court order when it adopted these policies, then the court should restart the twelve-year count.

1. Benefits of the Twelve-Year Plan

The twelve-year plan provides many benefits that the status quo does not offer. Most importantly, the twelve-year plan counteracts the four main problems that result when courts maintain supervision over school districts under desegregation orders for prolonged periods of time. First, these school systems often become complacent and lack both the ability and the incentive to change their policies to focus on their students' greatest needs. The twelve-year plan, however, would limit the duration of the desegregation order, so that at the end of the twelve-year period, school districts would have the opportunity to determine what is the best way to ensure that all students continue to receive a quality education.

Second, when schools currently want the courts to release them from supervision, they typically have to spend thousands of dollars in litigation fees to achieve this goal. Under the twelve-year plan, however, the court would release the district at the end of this specified time period. Furthermore, the court would have monitored the district's progress during this time and notified the district if it had committed an infraction. [*327] Admittedly, this more extensive monitoring would cause the school system and the courts to incur additional costs. It is much easier, however, for the system to argue that a specific act has not violated the desegregation order than to argue that it has achieved unitary status in all capacities.

In addition, another problem with the current system is that it does not provide parents with a reasonable expectation of when the court will remove the desegregation order, which may cause their children's assignment plans to change. Under the twelve-year plan, parents would have a clear idea of when the student assignments based on the desegregation order would end. One problem with both the current system and the twelve-year plan is the unfairness of making students transfer from one school to another while they are in the middle of their tenure at that school. For instance, a tenth-grade student should not have to transfer to a new school to finish high school. Consequently, under the twelve-year plan, it is highly advisable to allow students to complete the highest grade available at the school they are currently attending when the desegregation order ends.

Also, when schools remain under desegregation orders for prolonged periods of time, they begin to address racial imbalances caused by de facto segregation as well as de jure segregation. The twelve-year plan would curb this problem n58 by limiting the duration of desegregation orders. Finally, from a political standpoint, one final benefit of the twelve-year plan is that it takes much of the pressure off of local school boards, which are typically elected. The twelve-year plan predetermines the time frame of the desegregation order, so school boards do not have to worry about the political ramifications of requesting that the court remove the district from supervision. Furthermore, with the court providing more extensive oversight throughout the entire process, school boards would have less incentive to consider political repercussions when making decisions that affect the Green factors.

2. Potential Criticisms of the Twelve-Year Plan and Responses

While the benefits of the twelve-year plan are clear, there are five main criticisms of the plan that could be raised. The most obvious is the question of whether twelve years is long enough for a school district to remedy the harms caused by the prior de jure segregation. For example, Gary Orfield and David Thronson argue that in many past unitary status hearings, courts have removed desegregation orders before school districts have effectuated [*328] true change. n59 They further assert that negative ramifications occur when courts declare school systems unitary before the systems have remedied their past violations. n60 Their main concern, however, stems from the belief that as soon as a school system is released from court supervision it will become resegregated due to residential segregation. n61

Orfield and Thronson lose sight of the fact that desegregation orders were not intended to address de facto segregation. Consequently, while it is problematic that some schools become resegregated after courts remove desegregation orders, federal desegregation orders are not the appropriate solution to this problem. Instead, new solutions must be developed to address this issue. If we admit that no practical solutions exist to remedy residential segregation, then this concession would mean that school districts would have to remain under desegregation orders forever.

Moreover, a court should seriously scrutinize any proposed desegregation plan that could not achieve desegregation in twelve years, and force the school district to make adjustments to it. This scrutiny alone would be more helpful than the status quo because currently many school districts simply remain stagnant under their desegregation orders. They do not make any changes to effectuate further desegregation, and they force their students to suffer the negative consequences of remaining under desegregation orders for too long.

Furthermore, the policy arguments that critics such as Orfield and Thronson raise to justify prolonged court supervision as necessary to prevent resegregation do not account for the harms that result when schools remain under court orders for too long. In fact, a close analysis of these policy arguments demonstrates that none of them justifies the continuation of court supervision over public schools for a prolonged period of time.

First, some critics who oppose the discontinuation of court supervision assert that once schools are released from their desegregation orders, the achievement gap between white students and black students will increase. Consequently, the only way to ensure that the gap continues to close is to continue to operate schools under the desegregation plans that ensure a balanced makeup of the student body. n62 However, extensive studies by leading social science and school desegregation expert David Armor [*329] demonstrate that, at present, there is no evidence that schools that are still under desegregation orders are diminishing the achievement gap between black and white students. n63 While the achievement gap did decrease slightly when desegregation was implemented on a wide scale in the 1970s, the gap has begun to increase since the late 1980s, even though desegregation has not been dismantled to a significant degree. n64 Armor notes that since 1986, white students' math scores on the National Assessment of Educational Progress (NAEP) tests have continued to rise while the scores of black students have remained constant. n65 Similarly, after 1988, an analysis of these test scores shows that the reading scores of white students have risen, while the test scores of black students have declined. Most persuasive is Armor's conclusion that, at present, black students in schools under court orders achieve at the same rates as black students attending de facto segregated schools. n66

Secondly, these critics assert that ending the court orders will be detrimental to students, because resegregation will ensure that students will be forced to learn in single-race environments. n67 On the other hand, when students attend desegregated schools they have the opportunity to work together and learn from one another as well as gain an appreciation for the cultural pluralism of American society. n68 In the same vein, these critics argue that schools that are integrated "require[] parents of all races to work together to improve the educational quality of a common school. By compelling blacks and whites to cooperate in facing joint problems on a local level, school integration presents invaluable opportunities for the exercise of interracial cooperation and the discovery of convergent interests." n69

However, these arguments lack adequate support for a number of reasons. For instance, in many schools still under court orders, racially segregated classes have still been created through practices such as tracking, which divides students into classes by their perceived ability. n70 These practices make it difficult for students to have meaningful [*330] interactions with individuals of other races while at school. n71 Furthermore, research has shown that as desegregation continues, fewer and fewer white students remain in the public schools due both to demographic reasons and white flight. n72 This fact further decreases the possibility that students in desegregated schools will be exposed to students of a different race.

In addition, while in theory desegregated schools teach an appreciation for cultural diversity, studies have shown the opposite to be true. Armor has noted:

One of the central sociological hypotheses in the integration policy model is that integration should reduce racial stereotypes, increase tolerance, and generally improve race relations. Needless to say, we were quite surprised when our data failed to verify this axiom. Our surprise was increased substantially when we discovered that, in fact, the converse appears to be true. The data suggests that, under the circumstances obtaining in these studies, integration heightens racial identity and consciousness, enhances ideologies that promote racial segregation, and reduces opportunities for actual contact between the races. n73

Also, while it is laudable to hope that parents of different races will have the opportunity to interact as they work for the benefit of their children's school, in actuality, desegregation has actually led to an overall decline in parental involvement at schools under court orders. n74

The other main argument that scholars raise to oppose the perceived premature release of schools from court orders is the concern that after the desegregation orders end, schools with a majority of black students will not receive adequate funding and without this financial support, these schools will not produce desirable educational outcomes. n75 For instance, Orfield and Thronson argue that nonjudicial mechanisms cannot ensure that districts achieve equity among their resegregated schools. n76 However, even if this unfortunate result occurred, ending the desegregation orders would not foreclose the opportunity for concerned parents to litigate this matter.

There are several other arguments that individuals might raise in opposition to the twelve-year plan. For instance, critics might argue that [*331] this proposal contradicts the basic theory upon which it is premised, because it would require a school system to remain under court supervision for twelve years, even if the system had complied with its desegregation order in a shorter period of time. After all, courts have found that some systems have complied with their orders in as short as five n77 or seven n78 years. The twelve-year plan, however, does not simply select an arbitrary number of years during which a school system has to maintain acceptable racial ratios among students and faculty at each of its schools. Instead, this proposal is predicated on the assumption that the school system has substantially harmed all students that it has forced to attend segregated schools.

Consequently, to remedy this harm, the system should be required to implement the policies mandated by the desegregation order until all students who had standing n79 in the desegregation case have a chance to graduate. This group would include all of the students that were in the school system the year before it implemented the desegregation plan. Also, to enable a desegregation order to "overcome the cumulative impact of generations of unequal opportunity," n80 the order must be in place long enough for one class of students to cycle through the entire public education system.

Another potential criticism is that the twelve-year plan will not really reduce litigation costs and has the potential to increase them. This concern would arise from the fact that during every year of court supervision, the court has to scrutinize an annual report and make a finding on whether the district has complied in good faith with the desegregation order. Community members who oppose the release of the district from court supervision may use each of these opportunities to oppose a finding of good faith in an effort to convince the court to restart the twelve-year supervision period. This potential problem is one of the main reasons that the twelve-year plan requires courts to develop clear and quantitative standards ex ante to measure the district's progress. If the numbers clearly show that the school system is complying with the quantitative indicators developed by the court, this fact might discourage frivolous litigation. Furthermore, litigation is expensive, which might dissuade these groups from contesting the court's findings each year. In addition, one of the main reasons that litigating unitary status is currently so expensive is that schools have to [*332] accumulate information from long periods of time - sometimes thirty years - to show that they have complied with the order. Under the twelve-year plan, however, the schools would only have to prove their compliance with regard to one year.

An additional criticism that might be raised concerning the twelve-year plan is that it potentially gives the judiciary the impossible task of developing an adequate desegregation plan ex ante. After all, what if the school system complies with the court order in good faith for twelve years, but the desegregation plan was simply unsatisfactory from the beginning? Under the twelve-year plan, the court can only restart the twelve-year time period if the school system has not been complying with the court order in good faith. Consequently, these critics would question why the students within the school system should be punished for the judiciary's shortcomings. The clearest response to this criticism is that the twelve-year plan does not expect the judiciary to develop a perfect desegregation plan from the beginning. The plan allows the court to make modifications to the desegregation plan throughout the process. Furthermore, it seems highly unlikely that a court would develop a completely dysfunctional plan even at the beginning of the twelve-year period. It is much more likely that the court will develop a plan that requires minor tweaking throughout the process. Since it is clear that a number of harms result when a school system remains under a desegregation order for too long, it would be a mistake to require a school system to remain under court supervision while the court engages in an unlimited period of trial and error to develop the perfect plan before starting the twelve-year period of compliance. Instead, it seems that a twelve-year proposal that allows modification of the desegregation plan throughout the process is the best solution.

Finally, critics might argue that since there is strong evidence that school systems often want to remain under court orders, the twelve-year plan should encompass some measures to prevent school systems from intentionally failing to comply with the court order during the latter years of the order so as to restart the twelve-year count. Hopefully, in most cases, the court would be able to detect this type of behavior, and recognize it as bad faith noncompliance if the school

system had been able to meet the goals of the desegregation order in past years. One misguided way for courts to address this concern would be through a deterrence mechanism, such as imposing monetary sanctions on school systems if they do not comply in good faith with the court order at any stage in the process. For example, these school systems could be deemed ineligible for the funds that the federal and state governments make available to schools under court orders. This solution is not preferable, however, because the individuals most harmed by monetary sanctions are the children in the school system. Therefore, to address this concern, it is important to point out that most [*333] school systems that would want to remain under court orders are systems that are deeply committed to the ideal of integrated education that desegregation orders promote. Thus, it seems unlikely that these systems would commit egregious actions to violate the order simply to remain subject to it in the future. Furthermore, it seems that it would be apparent to the court that the school system is engaging in this type of behavior. As a result, it appears that the best way for the court to proceed in this situation is to criticize the system's actions openly, but also to allow the twelve-year count to continue. While this solution may not seem the ideal way to deal with this problem, as a policy matter, courts should not make a practice of allowing systems to succeed in manipulating the process in this manner, thereby encouraging more systems to engage in unconscionable conduct.

IV. A Case Study of the Charlotte-Mecklenburg School System

The preceding analysis of the potential criticisms that confront the twelve-year plan actually provides strong support for the merits of this proposal. However, to demonstrate better the problems inherent in the current system and the benefits that the adoption of the twelve-year plan would create, it is helpful to analyze the experience of a school system that remained under its court order for an unnecessarily long period of time. The Charlotte-Mecklenburg School System (CMS) is the perfect example. CMS received national attention in 1971 when the Supreme Court approved a plan to use busing to desegregate its schools in the landmark case Swann v. Charlotte-Mecklenburg Board of Education. n81 Busing is the most dramatic step that the courts have approved for school districts to use to desegregate schools, and CMS was the first system to implement this solution. However, thirty years after the Court approved the busing plan, CMS remained under the court order. While the court could have released the system from supervision many years earlier, the court required CMS to remain under supervision, thereby harming the system's students and parents.

A. The 1971 Swann Decision

The Swann litigation began on January 19, 1965, when Julius Chambers, an attorney representing several African-American families in Charlotte, North Carolina, filed a lawsuit against the Charlotte-Mecklenburg School Board attacking the Board's failure to fulfill its desegregation obligations. At the time Chambers filed the lawsuit, 98% of [*334] Charlotte's African-American students (19,510 out of 20,000) attended all-African-American schools. Of the 490 pupils who did not attend all-African-American schools, more than 80% were enrolled at a school that only had seven white students. n82

District Court Judge James McMillan ruled in favor of the plaintiffs, requiring the school district to develop a plan that would completely desegregate the system's schools by the fall of 1970. n83 When the school district failed to produce an acceptable remedy, McMillan asked an outside expert on school administration, Dr. John A. Finger, Jr., to develop a plan for the court to review. n84

The plan Finger developed would change the face of school desegregation. Finger called for the desegregation of all 105 of the Charlotte-Mecklenburg schools by using free transportation to create more acceptable racial ratios among the schools. n85 In a landmark 9-0 decision, the Burger Court required the school district to implement immediately the Finger Plan in its entirety, thereby accepting the use of busing as a tool to desegregate schools. n86 The school board then diligently implemented the requirements of the desegregation order, and the district court removed the case from its active docket on July 11, 1975. n87

CMS's success in desegregating its schools gained national recognition. In 1984, the National Education Association commended Charlotte for being an example of a city where desegregation was working, n88 and scholars and educators lauded the area as "The City That Made Busing Work." n89

B. Capacchione Threatens To End the Swann Desegregation Order

In response to the ever-changing demographic patterns of the city, the school system continued to alter its student-assignment plan to ensure that all schools had balanced racial ratios. In 1992, CMS modified its school-assignment plan to include the use of magnet schools. n90 The system [*335] developed this new policy initiative largely to address the

racial imbalance occurring because of the shifts in demographic patterns, which were outside the school system's control.

However, CMS's development of the magnet schools program prompted the reopening of the Swann litigation. On September 5, 1997, William Capacchione filed a complaint against CMS on behalf of his daughter Cristina, who was denied admission to a magnet school by CMS because of the school's enforcement of a rigid racial quota system resulting from the school district's desegregation order. n91 Cristina Capacchione was classified as "non-black" because she is Hispanic and Caucasian. The school no longer had any spaces available for "non-black students" and, consequently, refused to give her admission. n92

CMS responded to the Capacchiones' complaint by arguing that its magnet school admissions program did not violate the Fourteenth Amendment. The school system claimed that the program was a remedial measure that it took to comply with the desegregation requirements issued under the Swann order. Furthermore, CMS maintained that the admissions program should remain in place because the system had not yet eliminated all of the vestiges of Charlotte-Mecklenburg's previous dual school system.

At the same time the school system issued its response to the Capacchiones' complaint, the original Swann plaintiffs filed to reopen their lawsuit. They concurred with the school system's assertion that it had not yet satisfied its requirements under the Swann decision, and they requested that the district court retain the desegregation order. The district court consolidated these two cases. n93

In determining whether or not CMS had achieved unitary status, the court examined the progress of the school system with respect to the Green factors, and found that CMS had complied with the court order "to the extent practicable." n94 Some of the strongest evidence District Court Judge Potter cited was the fact that the Swann plaintiffs had not had to file any motions for further relief since the Court issued the final order in Swann. Also, the court had not had to "enjoin or sanction CMS for noncompliance." n95 Furthermore, by continually adjusting student attendance zones when schools became racially unbalanced due to demographic shifts and private choices, the court was of the opinion that CMS had "gone above and beyond what the [Swann] orders required." n96.

[*336] The court's ruling that CMS had achieved unitary status dictated its decision concerning the school district's magnet school admissions policy. The court used strict scrutiny to analyze whether the use of racial criteria in student admissions was appropriate, considering whether the program served a compelling state interest and whether the system had narrowly tailored it. n97 Judge Potter was particularly critical of the fact that the CMS magnet schools rigidly ensured that they achieved the 40/60 racial balance by mandating that "slots reserved for one race will not be filled by students of another race." n98 Judge Potter most likely viewed this practice as analogous to the controversial admissions policy employed by the University of California at Davis in Regents of the University of California v. Bakke. n99 In Bakke, the Supreme Court invalidated the Davis admissions policy because it reserved spots for minorities for which nonminorities could not compete. The plaintiffs in Capacchione presented specific evidence of instances where seats at magnet schools remained vacant at the beginning of the school year because not enough applicants of the desired race applied to fill them, even after the school had heavily recruited members of that race. n100 The court ruled that the magnet school admissions program was unconstitutional because the system had not narrowly tailored it to address the inequities created by the previous dual system.

C. Conflicting Fourth Circuit Decisions in Belk v. Charlotte-Mecklenburg Board of Education

The Swann litigation seemed closed after the district court ruled that the system had achieved unitary status. However, on November 30, 2000, the Fourth Circuit Court of Appeals issued a two-to-one decision in Belk v. Charlotte-Mecklenburg Board of Education that reversed a large part of the district court's prior ruling in Capacchione. n101 The majority, consisting of Judges Motz and King, found that CMS had not achieved unitary status with regard to student assignment, facilities, transportation, and student achievement. n102

Furthermore, the court ruled that the system's current magnet school admissions policy did not violate the Fourteenth Amendment because it was [*337] designed to facilitate the system's desegregation plan. n103 When considering the issue of student assignment, the appellate court focused on factors such as CMS's failure to obey court orders concerning where to construct new schools. n104 The court's main concern was that CMS had constructed the majority of its new facilities since the Swann ruling in suburban white communities. n105

While the court conceded that there was no evidence that the school system was intentionally trying to recreate a dual system, the court felt that this action was still suspect under the Swann order, and it remanded this issue to the dis-

trict court for reconsideration. n106 The appellate court also emphasized its concern that African-American students had more heavily borne the burden of busing than white students, and that this fact violated the original court decree. n107 It used this evidence as proof that the school system had not done everything it could to eliminate the vestiges of prior segregation. n108

In addition, the court gave much credence to the fact that the school board had taken "the remarkable step of admitting its noncompliance with prior orders in this case." n109 The Capacchione plaintiffs appealed the decision, and the Fourth Circuit agreed to hear the case en banc. n110 The court reviewed the district court's ruling for clear error and found none. n111 Consequently, the court ordered the removal of the desegregation order and returned the schools to the local control of the school board. n112 In addition, the court affirmed the trial court's ruling that the system could no longer use race-based quotas when making magnet school assignments. n113

D. An Analysis of the Conflicting Decisions

After conducting an analysis of all of the facts from Capacchione and Belk, it is surprising that the three-judge panel found that the school system had not complied with the court desegregation order concerning student assignment, facilities, transportation, and student achievement. The evidence overwhelmingly indicated that the system had done everything [*338] that it could to achieve its desegregation goal. The district court found that during the last thirty years "an overwhelming majority ... generally, 70% to 100%" of the schools in the school system have been racially balanced, and no all-black or all-white schools had existed during this time. n114 Furthermore, at least one study had indicated that CMS had facilitated a higher amount of racial integration than a number of school systems across the country had achieved when courts declared that they had attained unitary status. n115 In fact, while testifying before the court during the Capacchione litigation, the superintendent of CMS, Eric Smith, admitted that he could not specify any further benefit that the school system would gain from remaining under court supervision. n116

The system's record in terms of school-siting decisions was laudable. Approximately nine years ago, CMS voluntarily adopted a policy that it would not construct new schools in areas where black residents did not constitute at least ten percent of the population. n117 Furthermore, the district court found that for a number of years CMS had worked to combat imbalances resulting from de facto segregation, even though it had no obligation to address this problem. n118

Moreover, when the court issued the desegregation order in 1969, it originally found that the African-American schools were not inferior to the white schools. n119 In addition, during the Capacchione litigation, the plaintiffs did not present any evidence demonstrating that the school system implemented any intentionally discriminatory policies concerning facilities since the court issued the desegregation order. n120 Consequently, the court's consideration of the school system's facilities should have been moot. Finally, with regard to transportation, the original court order only required the system to provide transportation to all students indiscriminately. n121 The defendants in the Capacchione litigation conceded that the school system had complied with this requirement. n122

It is puzzling why the Fourth Circuit judges in the 2000 Belk decision ruled that CMS had not complied with the desegregation order and why CMS fought so hard to remain under court control, insisting that it was at fault for not having done everything that it could have to comply with the court desegregation order. After all, from the beginning, CMS was one of [*339] the school districts in the South that was least resistant to complying with Brown. n123 It began admitting a small number of black students into its formerly all-white schools in 1957. In fact, even before the Supreme Court issued the Swann decision, "no southern city, and only two non-southern cities, had achieved as much racial mixing in its public schools as had Charlotte." n124 One would expect a school system to bristle at having to remain under court supervision - especially since the evidence is clear that CMS has worked very hard to comply with the Swann order.

However, CMS had a special incentive to want to remain under the court order indefinitely. The Fourth Circuit has made it clear that only school systems that are under desegregation orders can consider race when making assignments to magnet schools. n125 As a result, since the court has lifted the desegregation order, CMS will no longer be able to consider race when granting admission to magnet schools. Furthermore, the system can no longer justify its policies as remedying the vestiges of past discrimination. This realization explains why CMS and some parents wanted the system to remain under the order, as the Fourth Circuit has intimated that remedial action could be the only compelling state interest that legitimates the use of race-based distinctions. n126 Consequently, in theory, strict scrutiny could be "fatal in fact" n127 to any future race-based assignment policies that CMS may choose to implement since the court has removed the desegregation order.

E. The Benefits the Twelve-Year Plan Would Have Given to CMS

The experience of CMS clearly demonstrates the four main problems that school systems experience when courts do not remove desegregation orders for a prolonged period of time. For thirty years, CMS did not have the freedom or incentive to adopt creative new assignment plans, which [*340] would address its students' needs more adequately. n128 Furthermore, as a result of the Supreme Court's unclear standard of what constitutes unitary status, CMS recently spent thousands of dollars litigating Capacchione and Belk that it could have used to fund programs to increase the achievement level of all of its students. Also, during the entire time that it took to resolve the legal disputes concerning the desegregation order, the parents and students in the system remained uncertain about when their student-assignment plan might change and which school they would attend. n129 In addition, during the three decades that CMS was under court supervision, it continually revised its student-assignment plan to address imbalances caused by changing demographic patterns. n130 Even more problematic, because the court did not closely monitor CMS's progress while it was under the court order, and the court did not recognize that the system had complied with the court order long before William Capacchione initiated his lawsuit, the court was actually enabling the school system to engage in unconstitutional behavior.

In contrast, if the Supreme Court had adopted the twelve-year plan when it began requiring schools to desegregate, the experience of CMS would have been very different. Under the twelve-year plan, court supervision of CMS would have begun with the 1975-1976 school year n131 and would have ended at the close of the 1986-1987 school year. Since CMS did not start to use magnet schools until 1992, the problem concerning student assignment to these schools would not have arisen. Furthermore, the system would have never denied Cristina Capacchione admission to a magnet school because of her race. In addition, the twelve-year plan would have prevented the system's unnecessary expenditures on [*341] litigation fees and the stressful confusion parents and students faced concerning their future school placements. It also would have eliminated the majority of the system's activities to adjust assignment plans to combat de facto desegregation, which school systems under desegregation orders are not required to address.

Moreover, during the 2000 Belk litigation, the court questioned a number of the decisions CMS had made while it was under the court order. For instance, the court was suspicious of the fact that the system had built "twenty-five of twenty-seven new schools in predominately white suburban communities." n132 While the evidence does not suggest that the system made these decisions with the intent of placing a greater burden on African-American students than white students, under the twelve-year plan, the school system would have had to submit annual reports to the court explaining its decisions concerning school sitings and other Green factors. Consequently, the court would have had the opportunity to view these decisions in the aggregate throughout the time it supervised the system to determine if there was a pattern demonstrating a segregative intent. Finally, and perhaps most importantly, under the twelve-year plan, the system would have regained full control of its schools in twelve years, and after the court removed the order, the system could have focused on concerns that were more important to parents and students than continuing efforts of perfecting integration. n133

V. Responses to Other Concerns the Twelve-Year Plan May Generate

An examination of the CMS litigation clearly shows how the twelve-year plan would have prevented the four major problems faced by schools that remain under desegregation orders too long. It also brings to light several more concerns individuals may have about the twelve-year plan. However, a careful analysis of the steps CMS has taken since the court removed its desegregation order reveals that these concerns are unfounded and actually support the acceptance of the twelve-year plan.

A. Schools Can Still Continue To Use Busing

One potential concern critics might raise in opposition to the twelve-year plan is that after twelve years, schools could no longer use busing to create diversity in their nonmagnet schools even if they still feel that [*342] diversity is an important goal. In actuality, however, school systems can still use busing to facilitate this goal even after courts remove their desegregation orders.

Admittedly, it is unclear whether schools could make assignments to public nonmagnet schools based on race after the court removes the desegregation order and still use busing to achieve this objective. However, Professor John Charles Boger has argued that the use of racial classifications in making assignments to public elementary and secondary schools is vastly different from the use of racial classifications that the courts have prohibited in cases like Bakke, Croson, and Hopwood. n134 Unlike employment or higher education, students in nonmagnet public schools are not competing for a finite number of spaces. Every student who wants the benefit of a public education in the school system

has this opportunity. However, applicants for admission to a certain university, a specific job, or a government contract have no guarantee that they will receive that for which they have applied because there are a limited number of spaces available. n135

The Fourteenth Amendment simply promises individuals that "no State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws." n136 Consequently, it is arguable that "there is no "federal right' granted to any parent or child that assures them attendance at any particular public school. For legal purposes, public schools are deemed equivalent and fungible." n137

While this argument is logical, in order to infringe upon students' rights and bus them to schools that are further from their homes than their neighborhood school, a compelling state interest must exist. n138 At present, the Supreme Court has not decided whether diversity is a compelling state interest. n139 However, regardless of what the Supreme Court decides concerning this question, a school system could still use busing to create diversity in its nonmagnet public schools by making student assignments using wealth as a criterion. The Supreme Court has held that wealth is not a suspect classification. n140

[*343] Research demonstrates disturbing correlations between race, wealth, and student achievement. n141 In North Carolina alone, more than half of the 400,000 African-American students in the state's public schools fail standardized math and reading tests each year, while over eighty percent of white students consistently pass these tests. n142 Furthermore, studies on a national level show that ""three-fifths of all high poverty schools in the U.S. have majorities of black and Latino students.'" n143 Consequently, it seems that this plan serves many of the purposes that race-based school-assignment policies served under the desegregation order. However, the new plan will probably withstand an attack questioning its constitutionality because the school board is employing race-neutral criteria in its student-assignment policies. It appears that a court would employ rational basis review to analyze the program, as opposed to strict scrutiny, because courts do not consider wealth a suspect classification. Admittedly, the North Carolina Supreme Court recently declared in Leandro v. State n144 that education is a fundamental right, n145 and typically the North Carolina courts apply strict scrutiny when a fundamental right is at stake. n146 There is still a strong chance, however, that the courts would not apply strict scrutiny in this situation.

B. School Systems Will Have More Freedom

Furthermore, the twelve-year plan is actually a better alternative than the status quo in terms of the future of student-assignment plans because this plan gives districts more freedom to create diversity and equal education opportunities. While under court supervision, school districts have to continue the use of busing to achieve the necessary race-ratios to comply with their desegregation orders. n147 Busing has always been a controversial solution and is problematic in a number of ways. Once a court releases a school system from supervision, however, the system can continue to use busing to achieve diversity in its nonmagnet schools or it [*344] can reevaluate whether it wants to continue busing at all. For instance, after the court removed CMS from supervision, the system opted to implement a neighborhood schools model for its student-assignment plan, which does not include busing for long distances.

1. The Problems with Busing

From the beginning of desegregation, the majority of African-American parents have opposed busing. n148 They have complained that their children had to bear much more of the burden to integrate the schools than white children. In addition, these greater distances were a barrier for parents when they had to speak with their children's teachers or when they wanted to attend PTA meetings. Members of the white community also voiced their opposition to this policy when school systems first implemented it. n149 In addition, it is staggering to discover that school systems spend "hundreds of thousands or even millions of dollars every year on extra fuel and labor in order to bus students from one neighborhood to another rather than just a few miles to the nearest school." n150

Finally, perhaps the best argument against the controversial use of busing is that, hypothetically, the main benefit of busing is that students of different races can interact with one another in the educational environment. The experience of CMS, however, illustrates that this goal was not necessarily achieved. While the system used busing for thirty years to create racial diversity in its schools, the desired interaction of students of different races did not occur because of the school system's use of student tracking. In 1988, researcher Frye Gaillard questioned whether CMS was actually resegregating its students within its schools. n151 While busing ensured that students of different races attended the same school, Gaillard found that once the students arrived at school, separation by race still occurred in classes, at lunch, and

through extracurricular activities. n152 CMS divided students into high-and low-ability groups, and the divisions based on ability levels often showed distinct racial imbalances. n153

In 1991, William Robinson conducted a study to determine whether CMS's use of tracking was actually promoting racial resegregation. n154 Studying all of the high schools in the system, Robinson found that "64.5% [*345] of all low track courses were ... racially imbalanced with disproportionately more black students, and 58.3% of all advanced level courses were racially imbalanced in favor of other (nonblack) students." n155 In his study, Robinson cited research that demonstrated the negative effects of tracking on students. Studies have illustrated that low-ability students fall further behind when they are in classes with all low-level students, but that they benefit when they are in classes intermixed with students of all ability levels. n156 Consequently, Robinson argued that racial tracking in CMS was hurting African-American students, and CMS should limit its use.

2. The Benefits of a New Neighborhood Schools Plan

Busing has not proven to be as useful in promoting equal opportunities for students as proponents had hoped, and it has been extremely expensive. However, school systems under desegregation orders have been forced to continue this practice indefinitely. In contrast, under the twelve-year plan, school systems would have the broad freedom to reassess what types of policies most effectively address the needs of their students after twelve years and design their assignment plans accordingly.

The actions of CMS after the court removed its desegregation order illustrate this point. Derrick Bell has observed that even though African-American students from the inner city attended wealthier schools because of desegregation, these schools usually funneled the extra money they had into programs for the high-ability groups that white students predominately populated. n157 Consequently, CMS has developed a new school-assignment plan that it will implement at the start of the 2002-2003 school year. This new plan could potentially address this concern.

Under the new plan, the system has assigned students to a school close to their homes, known as the student's "home school." n158 In addition, the system has assigned each student to a "choice zone," which includes elementary, middle, and high schools located close to the students' homes. Each choice zone includes three or four high schools. n159 Parents have the opportunity to rank school preferences and can choose from any of the schools in the system. n160 The system has guaranteed students admission to [*346] their home schools. Parents also have the option of selecting a school outside of their child's choice zone. n161

After the system conducts the initial lottery and makes student assignments, parents have the opportunity to appeal. n162 The system has promised to give a preference to the appeals of children who receive free or reduced lunch and to whom the system has assigned a school where the proportion of students qualifying for free or reduced lunch is thirty percentage points or more above the system average. n163

Theoretically, using this new neighborhood schools model, African-American students can receive more benefits from their school's resources. To achieve this goal, however, CMS has promised that under the new student-assignment plan, schools that have higher concentrations of lower socioeconomic status students will receive additional resources. n164 During the Capacchione litigation, the issue of whether the system could allocate supplementary funds to schools arose. Judge Potter ruled that the district could not make these allocations based on race, but he did not preclude the schools from distributing these funds based on the low amount of resources a school currently has available to it. n165 In the past, other school districts that courts have released from supervision have adopted similar measures. When Prince George's County in Maryland proposed ending busing and moving toward a new policy of neighborhood schools, the school board voted "to spend $ 172 million to upgrade neighborhood school buildings and $ 174 million for educational improvements to ensure that all schools had equal facilities and resources." n166

Another important distinction to note between the school system in the pre-Brown era and the system under the new student-assignment plan is that students now have the opportunity to transfer to magnet and nonmagnet schools if they do not like the school to which the system assigns them. Consequently, since parents will have the opportunity to transfer their students, this policy will hopefully encourage CMS to equip all of its schools with adequate resources, so that schools do not become overcrowded with parents transferring their children.

[*347]

C. The System Can Still Achieve Diversity in Its Magnet Schools

A more challenging concern critics may assert regarding the adoption of the twelve-year plan is that under its implementation, schools would only have the opportunity to create diversity in magnet schools for a short period of time. However, just as schools can still create diversity in nonmagnet schools after desegregation orders are removed, school systems can also create diversity within magnet schools by using wealth as one admission criterion. n167 An analysis of recent events within CMS regarding magnet school admissions after the court removed the desegregation order demonstrates the feasibility of this option. Certainly in the opinion of CMS, the biggest loss that it will face now that the court has released it from supervision is that it can no longer use racial criteria to create diversity when making magnet schools admissions decisions. However, CMS has addressed this concern in its new student-assignment plan by incorporating wealth-based preferences into its magnet school admissions process. n168

D. The Necessary Return to Local Control

One final argument against the twelve-year plan deals with its limited duration. More specifically, critics may worry that after the court removes the desegregation order, many systems may revert to their former discriminatory practices. However, this concern would exist whether a system remained under court supervision for twelve years or thirty years. Furthermore, one must attempt to balance this concern with the idea that school systems are intended to be under local control.

In Milliken v. Bradley, the Supreme Court made clear that "no single tradition in public education is more deeply rooted than local control over the operation of schools." n169 It is clear that the Supreme Court foresaw the judicial supervision of desegregation as a temporary measure that would eventually end, and intended for the control of schools to return to local school boards. Consequently, while it is always a possibility that a school district could implement segregative or discriminatory policies in the future, in the long run, it is the responsibility of community activists and voters to prevent this action from happening. These individuals must accept their responsibility to ensure that school systems continue to serve the needs of all of the students within their boundaries regardless of their race.

Moreover, it is important to note that even when a court terminates a desegregation order, concerned parents can bring new litigation if they feel [*348] that the school system is neglecting the needs of their children. n170 Furthermore, another benefit to removing the focus from the classic desegregation remedies is that it is possible that this policy has achieved its marginal utility, and parents of African-American children can shift their focus to address new problems. For example, parents could bring a lawsuit that attacks the current curriculum and faculty assignments in their schools if they feel that these components of their children's academic environment are perpetuating a racial hierarchy by failing to embrace diverse racial and cultural perspectives. n171

In Knight v. Alabama, concerned parents of African-American children brought a lawsuit which "challenged the equality of opportunity afforded African American students in educational institutions that fail to embrace diverse racial and cultural perspectives." n172 Some commentators suggest that concerned parents should seek remedies for "harmful, limiting schooling practices, such as tracking, early special education designation, and disciplinary practices that communicate outside status." n173 Parents could also examine whether racial hierarchies are created by the types of courses that teachers of different races teach. For instance, these parents may feel that the fact that white teachers teach most of the advanced courses in their schools, while minority teachers teach most of the remedial courses, perpetuates racial hierarchy and racial inferiority. In contrast, while school systems have been under desegregation orders, it seems that citizens have operated under the mistaken belief that school systems are not engaging in discriminatory practices. In actuality, however, school systems like CMS have still created inequities through mechanisms like tracking. One benefit of the twelve-year plan is that when school systems are released from supervision after this specified period of time, parents may feel a greater responsibility to monitor their schools' polices than they feel while their schools are operating under court supervision.

VI. Conclusion

Under the twelve-year plan, the court would have released CMS from court supervision in 1987. n174 Instead, the system remained under court [*349] supervision for thirty years and fell victim to the four problems that plague school systems that have to remain under desegregation orders for too long. This result is unfortunate because the priorities of parents in 2002 are not the same as the priorities that parents had in 1971. For instance, at present, "more and more Americans - black and white - discount the importance of an integrated education." n175 Today, concerned parents of African-American students are advocating different priorities, such as curbing the unfair practice of tracking, which disproportionately affects black students, and encouraging school systems to redirect the large sums of money spent to bus students away from their neighborhoods to the funding of resources that they feel the schools need much more.

n176 However, since CMS was under the desegregation order for thirty years, it lacked the ability to address many of these redefined priorities because its new policies would most likely have violated its court order.

While this dilemma is now over for CMS, it still confronts parents and students in hundreds of school districts. The bell should be tolling for desegregation orders across the country. Instead, more than 400 school districts were still under court supervision in the year 2001. An analysis of the CMS case demonstrates both the benefits this school system will receive now that it is no longer under the court order and the negative ramifications that would have occurred if the system had remained under supervision. It is clear that a more concrete definition of unitary status would have been helpful. What is unclear is why the Supreme Court has hesitated to provide a better definition. The reason that the Court did not elaborate upon the concept of unitary status is not that this concept is not guaranteed by the Constitution. After all, the Fourteenth Amendment articulates the constitutional right of equal protection that unitary school systems promote and dual systems violate.

In addition, the reason that the Court did not more clearly define this term does not seem to be that it felt that it would overstep its bounds by providing further clarification. The Court has already demonstrated great activism when taking control of the school systems, and, in actuality, the courts determine whether or not a school system has complied with the desegregation order. Why not provide concrete standards in the beginning instead of after the system has struggled for years to achieve desegregation?

Another potential explanation for why the Court did not provide clear guidance is that it did not foresee all the negative ramifications that would [*350] occur if school systems languished under desegregation orders. For instance, magnet schools did not exist in 1954 when the Court issued the Brown decision, so the Court could not have envisioned that systems under desegregation orders would leave coveted seats at magnet schools unfilled simply to achieve desired racial ratios. However, while this theory explains why the Court did not expound upon the concept of unitary status in the early years of desegregation, this theory does not explain why the Court has not further clarified this term as school desegregation litigation has evolved.

In fact, the best theory for why the Court has left the concept of unitary status so vague is that it was wary of creating a one-size-fits-all remedy to de jure segregation. However, it seems that there are ways to clarify further the term unitary status without falling into this trap. For instance, while one may believe that the twelve-year plan does create this type of one-size-fits-all solution, one must also remember that a school district would still be working with a district court to create a specialized plan to effectuate desegregation in its district.

Based on this analysis, it seems that the Supreme Court erred when it failed to define the concept of unitary status more clearly. Strong reasons exist to explain why further guidance would have helped. No acceptable justification appears to exist, however, for why the Court did not further clarify this term. When the Court ordered schools to desegregate in 1954, its rationale was that it wanted to ensure that state actors did not use racial classifications to prevent students from receiving equal educational opportunities. Ironically, at present, when the courts require school systems to remain under desegregation orders long after the systems have complied with these orders, state action is preventing students from receiving equal educational opportunities. One of the starkest examples of this point is when school districts will not offer open seats in magnet schools to non-African-American students because their desegregation order requires them to satisfy strict racial ratios when making student assignments.

Similarly, school systems currently hide behind desegregation orders and resegregate students within their schools while failing to address their students' most pressing needs in other ways. Instead of fighting to ensure that schools remain under desegregation orders, parents should focus their litigation efforts on these more pressing problems, which may not violate desegregation orders but are preventing their students from receiving adequate educational opportunities.

In reality, it does not appear that the Court is going to offer further clarification of the term unitary status in the future. It seems that many school districts will remain under desegregation orders indefinitely until we finally understand that ending desegregation orders will not erase all of the progress of the past three decades. Consequently, as the fiftieth anniversary of the Brown decision quickly approaches, the courts should take a more [*351] active supervisory role over these desegregation decrees and evaluate why 400 schools are still under court supervision. In addition, the courts should make a commitment to helping districts determine what more they must achieve in terms of remedying de jure segregation before the court removes these desegregation orders, so that school systems can have more freedom and incentive to address the ever-changing needs of their students.

Furthermore, recognition of the problems inherent in the Supreme Court's current jurisprudence concerning desegregation orders and of the merits of a proposal like the twelve-year plan has implications for many more school districts than the 400 still under supervision. Currently, one of the most salient issues in education reform is a growing concern about wealth-based segregation. It has long been recognized that this practice does not violate a federal constitutional right. n177 A number of state courts, however, have recently held that their state constitutions recognize education as a fundamental right, n178 and one state has found that de facto segregation in public schools is unconstitutional. n179 While the twelve-year plan is tailored to remedy de jure instead of de facto segregation, many of the problems that necessitate a solution like the twelve-year plan in the de jure context also arise in the de facto segregation context. Consequently, state courts will hopefully learn from the mistakes of federal desegregation orders and develop remedies that will effectuate self-sustaining change.

Legal Topics:

For related research and practice materials, see the following legal topics:
Education LawDiscriminationRacial DiscriminationAdmission & RecruitmentCriminal Law & ProcedureSentencing-Supervised ReleaseEducation LawDiscriminationRacial DiscriminationDesegregationGeneral Overview

FOOTNOTES:

n1. Edward Blum & Roger Clegg, Pyrrhic Victory, Fulton County Daily Rep., Nov. 29, 2001, at 6.

n2. *Green v. County Sch. Bd., 391 U.S. 430, 438 (1968).*

n3. Id.

n4. *402 U.S. 1, 30-31 (1971).*

n5. *Capacchione v. Charlotte-Mecklenburg Sch., 57 F. Supp. 2d 228, 239-40 (W.D.N.C. 1999),* aff'd sub nom. *Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305, 335 (4th Cir. 2001)* (en banc), cert. denied, *122 S. Ct. 1537 (2002).*

n6. *Belk, 269 F.3d at 335.*

n7. *Bd. of Educ. v. Dowell, 498 U.S. 237, 247 (1991).*

n8. *391 U.S. 430, 438 (1968).*

n9. *Id. at 435.*

n10. *498 U.S. at 249-50.*

n11. *Id. at 245-46.*

n12. Id.

n13. *831 F.2d 313, 320-21 (1st Cir. 1987).*

n14. *118 F. Supp. 2d 577, 585 (W.D. Pa. 2000).*

n15. *Fort Bend Indep. Sch. Dist. v. Stafford, 651 F.2d 1133, 1140 (5th Cir. 1981).*

n16. *Whittenberg v. Sch. Dist., 607 F. Supp. 289, 299 (D.S.C. 1985).*

n17. *Riddick v. Sch. Bd., 784 F.2d 521, 528 (4th Cir. 1986);* see also *Morgan, 831 F.2d at 321.*

n18. *United States v. Corinth Mun. Separate Sch. Dist., 414 F. Supp. 1336, 1339-40 (N.D. Miss. 1976).*

n19. *Id. at 1339.*

n20. *Id. at 1340.*

n21. *498 U.S. 237, 248 (1991).*

n22. *NAACP v. Georgia, 775 F.2d 1403, 1413 n.12 (11th Cir. 1985).*

n23. *Corinth, 414 F. Supp. at 1337.*

n24. See *Dowell, 498 U.S. at 241* (discussing a 1977 court order finding compliance with and dissolving the 1972 school desegregation program).

n25. See, e.g., Joel B. Teitelbaum, Comment, Issues in School Desegregation: The Dissolution of a Well-Intentioned Mandate, *79 Marq. L. Rev. 347, 367 (1995)* (explaining that "the special legal obligations under which these districts operate could potentially interfere with the competing goal[] of school reform" and that the possibility for conflict between these two goals exists for political and structural reasons, as well as the fact that schools under desegregation orders operate under special limitations).

n26. Davison M. Douglas, Swann Song for the Busing Era, *3 Green Bag 2d 1, 2 (1999);* see also Drew S. Days III, Brown Blues: Rethinking the Integrative Ideal, *34 Wm. & Mary L. Rev. 53, 55 (1992)* (noting that "given the initial hope that desegregation would increase the quality of educational opportunity for black students," it is disappointing that "the desegregation process has not necessarily brought about improvements"). While this Note acknowledges that integration is no longer the greatest concern of many parents with regard to educational reform, this Note strongly affirms that integration is an important and necessary goal for school systems after courts have removed their desegregation orders. Consequently, Part V discusses a number of ways school systems can still achieve integration when they are no longer under court supervision.

n27. Days, supra note 26, at 74.

n28. Gary Orfield & David Thronson, Dismantling Desegregation: Uncertain Gains, Unexpected Costs, *42 Emory L.J. 759, 769 (1993)* (noting that the DeKalb County School System had already spent more than one million dollars in litigation fees before participating in arguments on remand from the Supreme Court to achieve a declaration of unitary status and acknowledging the high costs of dismantling desegregation decrees in general).

n29. See infra note 129 and accompanying text (detailing the uncertainty that parents in the Charlotte-Mecklenburg School System faced while awaiting the end of the litigation to determine whether the system was unitary).

n30. See infra Sections IV.B, IV.D (discussing the Charlotte-Mecklenburg School System's attempts to address de facto segregation while under its court desegregation order).

n31. In Swann, the Court established the distinction between de jure and de facto segregation, making clear that only de jure segregation was unconstitutional. See Teitelbaum, supra note 25, at 354-55 (citing *Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 17-18 (1971)).* Furthermore, the Court made clear that "neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." *Swann, 402 U.S. at 31-32;* see also *Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 208 (1973)* (reaffirming that a constitutional violation does not exist unless a school district has engaged in de jure segregation, evidenced by the intent to segregate).

There are scholars who have disagreed with the Court's decision to limit unconstitutional segregation to only de jure segregation. See, e.g., Owen Fiss, School Desegregation: The Uncertain Path of the Law, 4 Phil. & Pub. Aff. 3, 19, 39 (1974) (advocating that society "abandon the illusory search for the incidents of past discrimination" and recognize a distributive conception of the remedy for segregation because desegregated schools are a normative right); see also Steven I. Locke, Comment, Board of Education v. Dowell: A Look at the New Phase in Desegregation Law, *21 Hofstra L. Rev. 537, 560 (1992)* (arguing that instead of distinguishing between de jure and de facto segregation, courts should consider residential segregation a vestige of past de jure segregation). This Note does not seek to enter this debate between the courts and desegregation scholars. Instead, it simply attempts to create a clearer definition of unitary status within the Court's interpretation of what actions constitute unconstitutional segregation.

n32. See *Capacchione v. Charlotte-Mecklenburg Sch., 57 F. Supp. 2d 228, 255 (W.D.N.C. 1999),* aff'd sub nom. *Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305 (4th Cir. 2001)* (en banc), cert. denied, *122 S. Ct. 1537 (2002).*

n33. *Calhoun v. Cook, 525 F.2d 1203, 1203 (5th Cir. 1975).*

n34. See Melva L. Ware, School Desegregation in the New Millennium: The Racial Balance Standard Is an Inadequate Approach to Achieving Equality in Education, *18 St. Louis U. Pub. L. Rev. 465, 479 (1999).*

n35. *Id. at 478.*

n36. Id.

n37. Cheryl Feutz, The Supreme Court's Reanalysis of School Desegregation Remedial Decrees: Is the Majority Placing Subtle Limits on the Trial Court's Vast Equitable Discretion?, *61 Mo. L. Rev. 679, 682 (1996)* (citing *Missouri v. Jenkins II, 515 U.S. 70, 101 (1995)).*

n38. Charles Vert Willie & Michael Fultz, Comparative Analysis of Model School Desegregation Plans, in School Desegregation Plans That Work 197, 197-200 (Charles Vert Willie ed., 1984) (analyzing data collected in the Boston, Milwaukee, Seattle, and Atlanta school systems).

n39. Id. at 197-98.

n40. Id. at 198.

n41. Id. at 202-03.

n42. Id. at 198.

n43. Thomas E. Chandler, The End of School Busing? School Desegregation and the Finding of Unitary Status, *40 Okla. L. Rev. 519, 553 (1987).*

n44. Id.

n45. *Id. at 554.*

n46. *Id. at 555.*

n47. See infra Sections IV.B, IV.D (discussing the Charlotte-Mecklenburg School System's fight to remain under court supervision after it had complied fully with its desegregation order).

n48. See infra Sections IV.B, IV.D.

n49. When testifying before Congress, Alfred Lindseth, an attorney with extensive experience representing school systems seeking unitary status, stated that a number of school systems do not wish for the courts to release them from supervision, because they do not want to lose their court-ordered funding. James E. Ryan, Schools, Race, and Money, *109 Yale L.J. 249, 262 n.41 (1999)* (citing Assessing the Impact of Judicial Taxation on Local Communities: *Hearing Before the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary, 104th Cong., 1996 WL 538968 (1996)* (statement of Alfred A. Lindseth)). Several examples of school systems that Lindseth cited were St. Louis and Kansas City, and he suggested that school districts in other states such as Illinois and Georgia had also joined plaintiffs in resisting a finding that they had

achieved unitary status in order to continue to receive funding. Id.; see also David J. Armor, Forced Justice: School Desegregation and the Law 215 (1995).

n50. Id.

n51. Id.

n52. Chris Hansen, Are the Courts Giving Up? Current Issues in School Desegregation, *42 Emory L.J. 863, 864 (1993).*

n53. See supra note 31.

n54. Orfield & Thronson, supra note 28, at 778.

n55. Wendy Parker has also argued that judges should be more actively involved in monitoring the progress of school systems in desegregating their schools. Wendy Parker, The Future of School Desegregation, *94 Nw. U. L. Rev. 1157, 1161, 1210-20 (2000).*

n56. An example of such an unavoidable choice would be the school system's decision to construct a new school in a wealthy, predominantly white neighborhood because this land was the only suitable property available, even though the majority of the system's schools were already located in white neighborhoods.

n57. For instance, it is possible that a system might make a mistake in developing either its student-or faculty-assignment plan that creates a significant racial imbalance at one of its schools.

n58. On why addressing de facto segregation under federal court orders is a problem, see infra text following note 61.

n59. See Orfield & Thronson, supra note 28, at 759-60.

n60. See id. at 761. This Note agrees with Orfield and Thronson's argument that resegregation within the public schools creates many problems. It argues, however, that there are a number of ways to address these concerns even after courts release schools from supervision. See infra Part V.

n61. Id. at 771 (criticizing a federal court for not considering "changing birth rates, the pattern of white suburbanization that existed long before the busing plan, or the large declines in white enrollment that took place in other similar central cities with neighborhood schools" when dismantling a court desegregation order).

n62. See David Armor, The End of School Desegregation and the Achievement Gap, *28 Hastings Const. L.Q. 629, 637 (2001).*

n63. *Id. at 642* (stating that "unlike the time of Brown, there is no reasonable way that school segregation can be invoked as a primary cause of this achievement gap, nor is there any credible evidence that school desegregation - in the form of racial balancing - has diminished the gap to any important degree").

n64. *Id. at 632, 635.*

n65. *Id. at 632.*

n66. *Id. at 653.*

n67. See Mark V. Tushnet, The "We've Done Enough" Theory of School Desegregation, *39 How. L.J. 767, 771 (1996).*

n68. Book Note, The Desegregation Dilemma, *109 Harv. L. Rev. 1144, 1148 (1996)* (reviewing Armor, supra note 49).

n69. Id.

n70. Jack W. Londen, School Desegregation and Tracking: A Dual System Within Schools, *29 U.S.F. L. Rev. 705, 710 (1995)* (arguing that "tracking is of particular concern in school districts that are under desegregation remedial orders").

n71. See Days, supra note 26, at 55 (recognizing that racially segregated classes limit the likelihood that students of different races will have contact with one another).

n72. Armor, supra note 49, at 8.

n73. Lino A. Graglia, Disaster by Decree: The Supreme Court Decisions on Race and the Schools 276 (1976) (quoting David Armor, The Evidence on Busing, Pub. Int., Summer 1972, at 90, 102).

n74. Id. at 265; see also Days, supra note 26, at 57-58 (noting that a number of blacks believe that ending desegregation orders will increase the involvement of parents and the community in public schools).

n75. Tushnet, supra note 67, at 772.

n76. Orfield & Thronson, supra note 28, at 761.

n77. See *Bd. of Educ. v. Dowell, 498 U.S. 237, 241 (1991)* (discussing a 1977 court order finding compliance with and dissolving the 1972 school desegregation program).

n78. *United States v. Mun. Separate Sch. Dist., 414 F. Supp. 1336, 1337 (N.D. Miss. 1976).*

n79. See generally *Los Angeles v. Lyons, 461 U.S. 95 (1983)* (stating that an individual has standing to litigate a constitutional claim if (1) the individual has suffered an injury, (2) the defendant caused the injury, and (3) the judicial relief the individual has requested can redress the injury).

n80. Orfield & Thronson, supra note 28, at 760.

n81. *402 U.S. 1 (1971).*

n82. Bernard Schwartz, Swann's Way: The School Busing Case and the Supreme Court 8 (1986).

n83. *Id. at 16.*

n84. *Swann, 402 U.S. at 8.*

n85. Schwartz, supra note 82, at 18-19; see also *Swann, 402 U.S. at 9-10* (noting that Finger deviated from the school board's plan and proposed the use of busing for elementary schools as well as for junior and senior high schools).

n86. *Swann, 402 U.S. at 32.*

n87. *Capacchione v. Charlotte-Mecklenburg Sch., 57 F. Supp. 2d 228, 236 (W.D.N.C. 1999),* aff'd sub nom. *Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305, 335 (4th Cir. 2001)* (en banc), cert. denied, *122 S. Ct. 1537 (2002).*

n88. Schwartz, supra note 82, at 192.

n89. William W.E. Robinson, From Desegregation to Resegregation in the Charlotte-Mecklenburg Public Schools: Is Busing Worth the Ride? 4 (1991).

n90. *Capacchione, 57 F. Supp. 2d at 239.*

n91. Id.

n92. Id.

n93. *Id. at 239-40.*

n94. *Id. at 284.*

n95. *Id. at 282.*

n96. Id.

N97. In Adarand Constructors, Inc. v. Pena, the Supreme Court defined the strict scrutiny test, stating that all racial classifications have to serve a compelling state interest and have to be narrowly tailored to further this interest. *515 U.S. 200, 220 (1995).*

n98. *Capacchione, 57 F. Supp. 2d at 287* (quoting CMS's 1992 Student Assignment Plan).

n99. *438 U.S. 265 (1978).*

n100. *57 F. Supp. 2d at 288.*

n101. *233 F.3d 232 (4th Cir. 2000),* rev'd en banc, *269 F.3d 305, 317 (4th Cir. 2001),* cert. denied, *122 S. Ct. 1537 (2002).*

n102. *Id. at 266.*

n103. *Id. at 276.*

n104. *Id. at 255.*

n105. *Id. at 256.*

n106. *Id. at 256-57.*

n107. *Id. at 257.* The court found it particularly alarming that currently eighty percent of the children who ride buses are African Americans. *Id. at 263-64.*

n108. *Id. at 257.*

n109. *Id. at 257-58.*

n110. *Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305, 317 (4th Cir. 2001)* (en banc), cert. denied, *122 S. Ct. 1537 (2002).*

n111. *Id. at 335.*

n112. *Id. at 312.*

n113. *Id. at 342-43.*

n114. *Capacchione v. Charlotte-Mecklenburg Sch., 57 F. Supp. 2d 228, 248 (W.D.N.C. 1999),* aff'd sub nom. *Belk, 269 F.3d 305,* cert. denied, *122 S. Ct. 1537 (2002).*

n115. *Belk, 269 F.3d at 320.* This study was conducted by David Armor, an expert who testified for the plaintiffs in the Capacchione litigation.

n116. *57 F. Supp. 2d at 293.*

n117. *Belk, 269 F.3d at 324.*

n118. *Capacchione, 57 F. Supp. 2d at 251-52.*

n119. *Belk, 269 F.3d at 329.*

n120. *Capacchione, 57 F. Supp. 2d at 267.*

n121. Id.

n122. Id.

n123. In Brown v. Board of Education, the Supreme Court required that all school districts cease segregating their student populations by race. *347 U.S. 483 (1954).*

n124. Douglas, supra note 26, at 1-2.

n125. In Tuttle v. Arlington County School Board, the Fourth Circuit found that an alternative kindergarten could not use a weighted lottery system with race-based preferences to determine admissions. *195 F.3d 698, 705 (4th Cir. 1999).* Similarly, in Eisenberg v. Montgomery County Public Schools, the Fourth Circuit found that the Montgomery County Board of Education could not deny a student the right to transfer to a magnet school because of his race. *197 F.3d 123 (4th Cir. 1999).*

n126. *City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)* (holding that a government program requiring contractors to subcontract a certain percentage of their work to minorities was not narrowly tailored to remedy past discrimination and was therefore unconstitutional); *Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996)* (concluding that a law school's affirmative action plan was not designed to remedy past wrongs and was thus unconstitutional).

n127. Ironically, in Adarand Constructors, Inc. v. Pena, Justice O'Connor stated that the Court "wished to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact.'" *515 U.S. 200, 237 (1995)* (citation omitted).

n128. See infra Part V.

n129. When Judge Potter found that CMS was unitary in September 1999, he mandated that the system implement a new student-assignment plan for the 2000-2001 school year. Charlotte-Mecklenburg Sch. Sys., The History of Public Schools in Charlotte-Mecklenburg (Sept. 15, 2002), at http://www.cms.k12.nc.us/discover/history.asp. The following November, the school system unveiled a new assignment plan; however, when the Fourth Circuit stayed Judge Potter's ruling in December, this action meant that the school system was not required to implement the new plan. Id. Then, in June 2000, the Board of Education adopted a new assignment plan for the 2001-2002 school year. This plan had to be discarded in December 2000 after the Fourth Circuit found that the system was not unitary in some areas. Id. After the Fourth Circuit ruled en banc in September 2001 that the system was unitary, the system once again launched a new student-assignment plan that would take effect during the 2002-2003 school year. Id. Yet, since the Belk plaintiffs appealed to the Supreme Court, parents in the school system did not know whether the new plan would indeed take effect until the Court announced in April 2002 that it would not hear the case. Id.

n130. *Capacchione v. Charlotte-Mecklenburg Sch., 57 F. Supp. 2d 228, 282 (W.D.N.C. 1999),* aff'd sub nom. *Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305 (4th Cir. 2001)* (en banc), cert. denied, *122 S. Ct. 1537 (2002).*

n131. The exact date that the school system began to implement the court-approved plan is uncertain; however, the date that the court removed the case from its active docket was July 11, 1975. *Capacchione, 57 F. Supp. 2d. at 236.* Consequently, I have selected this date as a starting point.

n132. *Belk v. Charlotte-Mecklenburg Bd. of Educ., 233 F.3d 232, 256 (4th Cir. 2000),* rev'd en banc, *269 F.3d 305,* cert. denied, *122 S. Ct. 1537 (2002).*

n133. See infra Subsection V.B.2.

n134. John Charles Boger, Willful Colorblindness: The New Racial Piety and the Resegregation of Public Schools, *78 N.C. L. Rev. 1719, 1762-64 (2000).*

n135. Magnet schools fall into the same category as institutions of higher education because they have a limited number of spaces available.

n136. U.S. Const. amend. XIV, 1.

n137. Boger, supra note 134, at 1764.

n138. *Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 220 (1995)* (holding that race-based actions taken by the state must reflect a compelling state interest and that the means to achieve this goal must be narrowly tailored).

n139. *Gratz v. Bollinger, 122 F. Supp. 2d 811, 821 (E.D. Mich. 2000)* (noting that the Supreme Court has never explicitly decided whether diversity is a compelling state interest), rev'd sub nom. *Grutter v. Bollinger, 288 F.3d 732,* petition for cert. filed, *71 U.S.L.W. 3154* (U.S. Aug. 9, 2002) (No. 02-241).

n140. *San Antonio v. Rodriguez, 411 U.S. 1, 20-28 (1973).*

n141. Elizabeth Jean Bower, Answering the Call: Wake County's Commitment to Diversity in Education, *78 N.C. L. Rev. 2026, 2040 & n.76 (2000).*

n142. *Id. at 2040-41.*

n143. *Id. at 2041* (citing Gary Orfield & John T. Yun, Resegregation in American Schools (1999), at http://www.law.harvard.edu/civilrights/publications/resegregation99/resegregation99.html).

n144. *488 S.E.2d 249 (N.C. 1997).*

n145. Bower, supra note 141, at 2043.

n146. Id. at 2043 & n.94 (citing *Town of Beech Mountain v. County of Watauga, 378 S.E.2d 780, 782 (N.C. 1989)).*

n147. While busing was not the only possible method systems could have used to achieve compulsory integration, the Supreme Court expressed that it was the best way. See Teitelbaum, supra note 25, at 364 (citing *Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 29-30 (1971)).*

n148. Mark Nadler, Charlotte-Mecklenburg, in Busing U.S.A. 310, 312 (Nicholaus Mills ed., 1979); John M. Vickerstaff, Getting off the Bus: Why Many Black Parents Oppose Busing, *27 J.L. & Educ. 155, 159 (1998).*

n149. Nadler, supra note 148, at 310.

n150. Vickerstaff, supra note 148, at 160.

n151. Robinson, supra note 89, at 4.

n152. Id.

n153. Id. at 5-6.

n154. Id. at 8.

n155. Id. at 35. Robinson defined a racially imbalanced course as "[a] course which deviates from the percentage of black students in the school at large by +/-20%." Id. at 7.

n156. Id. at 45.

n157. Derrick Bell, A Model Alternative Desegregation Plan, in Shades of Brown: New Perspectives on School Desegregation 125, 136 (Derrick Bell ed., 1980).

n158. Telephone Interview with Donna Bell, Executive Director for Planning Services, Charlotte Mecklenburg School System (Jan. 31, 2002).

n159. Id.

n160. Id.

n161. Id.

n162. Id.

n163. Charlotte-Mecklenburg Bd. of Educ., Board Resolution 2001 (Apr. 3, 2001), at http://www.cms.k12.nc.us/studentassignment/boardresolution2001.asp.

n164. Telephone Interview with Donna Bell, supra note 158.

n165. Celeste Smith, Speakers Challenge Magnet Moves, Changes for Equity, Charlotte Observer, Nov. 12, 1999, at 1A; Celeste Smith & Debbie Cenziper, Judge to Schools: No Racial Assignment, Charlotte Observer, Sept. 11, 1999, at 1A.

n166. The County Where More Blacks Than Whites Go to College, J. Blacks Higher Educ., Summer 1995, at 36, 37.

n167. See supra Section V.A (discussing the correlations between wealth, race, and student achievement).

n168. Telephone Interview with Donna Bell, supra note 158.

n169. *418 U.S. 717, 741 (1974).*

n170. See, e.g., *United States v. Corinth Mun. Separate Sch. Dist., 414 F. Supp. 1336, 1346 (N.D. Miss. 1976)* (stating that "it seems hardly necessary, in closing this school desegregation case, to remind anyone that the doors of this federal district court remain open to redress grievances condemned by the Constitution and laws of the United States").

n171. Ware, supra note 34, at 482.

n172. Id. (citing *Knight v. Alabama, 14 F.3d 1534 (11th Cir. 1994)).*

n173. Id. at 481 n.64.

n174. The court removed the Swann litigation from its active docket in 1975. *Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305, 332 (4th Cir. 2001)* (en banc), cert. denied, *122 S. Ct. 1537 (2002).*

n175. Douglas, supra note 26, at 2; see also Days, supra note 26, at 54 (explaining that "black parents now express support for school board efforts to end desegregation plans that involve busing, favoring instead a return to neighborhood schools, even though this would result in increases in the number of virtually all-black schools in the inner city").

n176. Jeffrey Rosen, The Lost Promise of School Integration, N.Y. Times, Apr. 2, 2000, at A23 (stating that eighty-two percent of African-American parents believe that it is more important to raise academic standards than to achieve diversity and integration in the nation's schools).

n177. Armor, supra note 49, at 56.

n178. John A. Powell, Living and Learning: Linking Housing and Education, in In Pursuit of a Dream Deferred 21 (John A. Powell et al. eds., 2001).

n179. *Sheff v. O'Neill, 678 A.2d 1267, 1289 (Conn. 1996).* Instead of developing a specific remedy in Sheff, the court decided that "further judicial intervention should be stayed "to afford the General Assembly an opportunity to take appropriate legislative action.'" *Id. at 1290* (citation omitted).

SCHOOL RESEGREGATIO

MUST THE SOUTH TURN BACK

JOHN CHARLES BOGER & GARY ORFIELD, EDITOR

School Resegregation

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Acknowledgments

This book had its inception at a conference, "The Resegregation of Southe Schools?: A Crucial Moment in the History (and the Future) of Public Schoo ing in America," which was conceived simultaneously in the winter of 2001 l the University of North Carolina School of Law's then-fledgling Center for Civ Rights and by The Civil Rights Project at Harvard University. Happily, the Cent and the Project joined forces to cosponsor a combined conference, held in Chap Hill, North Carolina, on 30 August 2002. Many people had important roles i framing that conference. Gary Orfield, Chris Edley, Elizabeth DeBray, Jacin Ma, and Erica Frankenberg in Cambridge; Jack Boger in Chapel Hill; and Joh Brittain at the Thurgood Marshall School of Law at Texas Southern Universit commissioned the original research for the conference from which this book h resulted. *North Carolina Law Review* student editors John Fleming, Jodi Luste and Kara Millonzi recruited speakers, organized production of materials, an performed many other tasks as cohosts. The UNC Center's program assistan Allison Stelljes, provided wonderful overall logistical direction for the conferenc and for the preparation of conference materials. At that time, Marilyn Byrne c The Civil Rights Project also began her involvement, which has ranged fro conference support to coordination of final manuscript preparation.

Public and scholarly response to the conference was so strong—more tha five hundred attendees crowded into the William and Ida Friday Center for Con tinuing Education on a Labor Day weekend, southern news media offered exte sive coverage of the discussions, and hundreds of scholars and activists requeste copies of the conference papers—that the UNC Center and The Civil Right Project agreed to extend their collaboration. The John S. and James L. Knigh Foundation and the Ford Foundation provided generous financial support f the UNC Center and The Civil Rights Project to address southern school rese regation in academic and community settings. In addition, the Charles Stew art Mott Foundation and the John D. and Catherine T. MacArthur Foundatio provided core funding to The Civil Rights Project during the period in whic this volume's research was initially commissioned. The *North Carolina Law R view* planned a special symposium issue (vol. 81 [May 2003]), coedited by Joh Fleming and Jodi Luster, that offers nine articles by scholars expanding on the earlier summary conference papers.

CHAPTER ONE

ERWIN CHEMERINSKY

The Segregation and Resegregation of American Public Education

The Courts' Role

A half century of efforts to end school segregation have largely failed. Gary Orfield's powerful recent study, *Schools More Separate: Consequences of a Decade of Resegregation*, carefully documents that during the 1990s, America's public schools have become substantially more segregated. In the South, for example, he shows that from "1988 to 1998, most of the progress of the previous two decades in increasing integration in the region was lost. The South is still more integrated than it was before the civil rights revolution, but it is moving backward at an accelerating rate."[1]

The statistics presented in his study are stark. For example, the percentage of African American students attending majority white schools has steadily decreased since 1986. In 1954, at the time of *Brown v. Board of Education*, only 0.001 percent of African American students in the South attended majority white schools.[2] In 1964, a decade after *Brown*, this number had increased to just 2.3 percent. From 1964 to 1988, however, significant progress occurred: the figure grew to 13.9 percent in 1967, 23.4 percent in 1968, 37.6 percent in 1976, 42.9 percent in 1986, and 43.5 percent in 1988. But since 1988, the percentage of African American students attending majority white schools has declined. By 1991, the percentage of African American students attending majority white schools in the South had decreased to 39.2 percent, and over the course of the 1990s this number dropped even more, reaching 36.6 percent in 1994, 34.7 percent in 1996, and 32.7 percent in 1998.[3]

Orfield's study shows that the nationwide percentage of African American students attending majority African American schools and schools where more than 90 percent of the students are African American also has increased in the past fifteen years. In 1986, 62.9 percent of African American students attended schools that were 50–100 percent nonwhite; by 1998–99, this number had increased to 70.2 percent.[4]

Quite significantly, Orfield's study shows that the same pattern of resegrega-

tion issue for Latino students.[5] Desegregation efforts have historically focuse on integrating African American and white students, but the burgeoning Latino population requires attention, too.[6] The percentage of Latino students attending schools where the majority of students are of minority races or where students are almost exclusively of minority races increased steadily during the 1990s. Orfield notes that Latinos "have been more segregated than blacks now for a number of years, not only by race and ethnicity but also by poverty."[7]

The simple and tragic reality is that American schools are separate and unequal. As Orfield documents, to a very large degree, education in the United States is racially segregated.[8] By any measure, predominantly minority schools are not equal in their resources or their quality. Wealthy suburban school districts are almost exclusively white; poor inner-city schools are often attended exclusively by African American and Hispanic students. The year 2004 was the fiftieth anniversary of *Brown v. Board of Education*, and American schools marked that occasion with increasing racial segregation and gross inequality.

There are many causes for the failure of school desegregation. None of the recent presidents—Reagan, George H. W. Bush, and even Clinton—have done anything to advance desegregation. None have used the powerful resources of the federal government, including the dependence of every school district on federal funds, to further desegregation. "Benign neglect" would be a charitable way of describing recent presidents' attitudes toward the problem of segregated and unequal education: the issue has been neglected, but nothing about this neglect has been benign. A serious social problem that affects millions of children has simply been ignored.

The federal government—and, for that matter, state and local governments—also have failed to act to solve the problem of housing segregation. In a country deeply committed to the ideal of the neighborhood school, residential segregation often produces school segregation. But decades have passed since the enactment of the most recent law to deal with housing discrimination,[9] and efforts to enhance residential integration seem to have vanished.

There is no simple explanation for the alarming trend toward resegregation. In this chapter, I argue that the courts must share the blame: courts could have done much more to bring about desegregation, but the judiciary has instead created substantial obstacles to remedying the legacy of racial segregation in schools. I do not want to minimize the failure of political will, but every branch and level of government is responsible for the failure to desegregate American public education. I contend that Supreme Court decisions over the past thirty years have substantially contributed to the resegregation that Orfield and others document.

Desegregation will not occur without judicial action: desegregation lacks sufficient national and local political support for elected officials alone to remedy the problem. Specifically, African Americans and Latinos lack adequate political power to achieve desegregation through the political process. This relative political powerlessness was true when *Brown* was decided and remains true today. The courts are indispensable to effective desegregation, and over the past thirty years the courts, especially the Supreme Court, have failed. To be sure, as I discuss later in this chapter, individual court orders have brought about desegregation in many areas of the country. Courts could have done more, but even merely continuing rather than ending existing desegregation orders (as the Supreme Court has mandated) would have limited resegregation of southern schools.

This chapter focuses on two major sets of Supreme Court decisions that have contributed to resegregation. I will first examine the Supreme Court's decisions of the 1970s, especially those decisions rejecting interdistrict solutions to segregation and funding inequities.[10] Second, I will turn to the Supreme Court's decisions of the 1990s ordering an end to desegregation efforts.[11] These cases and subsequent lower court decisions have substantially contributed to resegregation of public schools. The third part of the chapter looks at why this judicial failure has occurred.

Some commentators, including Gerald Rosenberg, have argued that the failure to achieve desegregation reflects inherent limits on judicial power.[12] I strongly disagree: the judiciary's failure instead lies in its actions. Had the Supreme Court decided key cases differently, the nature of public education today would be very different. Although segregated schools have many causes, the overarching explanation for the Court's rulings is simple: justices appointed by Republican presidents have undermined desegregation. Four justices appointed by President Richard Nixon are largely to blame for the decisions of the 1970s: the crucial cases were 5–4 decisions, with those four justices helping to make up the majority.[13] Five justices appointed by Presidents Ronald Reagan and George H. W. Bush are responsible for the decisions of the 1990s that have contributed substantially to resegregation of schools.[14] The resegregation of schools has resulted largely from the Court's decisions, not from the inherent limits of the judicial process.

Today, there are voices—often strong voices—in minority communities that have turned against desegregation as the solution. The rejection of desegregation as a policy objective very much results from the lack of success—and possible success—given the current realities of desegregation described in this chapter. In cities with minority populations of 80–90 percent, meaningful desegregation just is not possible under current law. Understandably, many in these minority communities say that efforts at strengthening education should no longer focus on desegregation but should instead concentrate on improving schools for minority students. But history offers little reason for hope that dual school systems ever will be equal. As Thurgood Marshall expressed thirty years ago in a pro-

phetic[illegible]nt in *Milliken v. Bradley* (1974), "we deal here with the right of all children, whatever their race, to an equal start in life and to an equal opportunity to reach their full potential as citizens. Those children who have been denied that right in the past deserve better than to see fences thrown up to deny them that right in the future. Our nation, I fear, will be ill served by the Court's refusal to remedy separate and unequal education, for unless our children begin to learn together, there is little hope that our people will ever learn to live together."[15]

The Decisions of the 1970s: The Supreme Court Contributes to the Resegregation of American Public Education

The 1970s were a particularly critical time in the battle to desegregate American schools. From *Plessy v. Ferguson* in 1896 until *Brown* in 1954, government-mandated segregation existed in every southern state and in many northern states. As mentioned earlier, in 1954, when *Brown* was decided, only 0.001 percent of the South's African American students attended majority white schools. After *Brown*, southern states used every imaginable technique to obstruct desegregation. Some school systems attempted to close public schools rather than desegregate.[16] Some school boards adopted "freedom of choice" plans, which allowed students to choose the school where they would enroll and resulted in continued segregation.[17] In some places, school systems outright disobeyed desegregation orders.[18] The phrase "massive resistance" appropriately describes what occurred during the decade after *Brown*. By 1964, in *Griffin v. County School Board*, the Supreme Court had grown tired of the delay, lamenting that there had been far too little speed, and ordered that all vestiges of prior segregation be eliminated "quick[ly] and effective[ly]."[19]

The result of this massive resistance was that a decade after *Brown*, little desegregation had occurred. In the South, just 1.2 percent of African American schoolchildren were attending schools with whites.[20] In South Carolina, Alabama, and Mississippi, not one African American child attended a public school with a white child in the 1962–63 school year. In North Carolina, only 0.2 percent of the African American students attended desegregated schools in 1961, and the figure did not rise above 1 percent until 1965. Similarly, in Virginia in 1964, only 1.63 percent of African Americans attended desegregated schools.[21]

But the persistent efforts at desegregation had an impact. One by one, the obstructionist techniques were defeated. Finally, by the mid-1960s, desegregation began to proceed. By 1968, the integration rate rose to 32 percent, and by 1972–73, 91.3 percent of southern schools were desegregated.[22]

Many factors explain the delay between *Brown* and any meaningful desegregation. Efforts to thwart *Brown* had to be defeated. Title VI of the Civil Rights Act of 1964, which tied local receipt of federal funds to agreement to eliminate segregation, played a crucial role.[23] But so did renewed Supreme Court attention to segregated schools. For a decade after *Brown*, the Court largely stayed out of the desegregation effort.[24] Not until 1964 did the Court lament, "There has been entirely too much deliberation and not enough speed" in achieving desegregation.[25]

By the 1970s, as described earlier, the nation finally saw substantial progress toward desegregation. But three crucial problems emerged: white flight to suburbs threatened school integration efforts; northern school systems, which had not enacted Jim Crow laws, required desegregation; and pervasive inequalities existed in funding, especially between city and suburban schools. The Court's handling of these issues was critical in achieving desegregation. In each instance, the Court, with four Nixon appointees in the majority, ruled against the civil rights plaintiffs and dramatically limited the effectiveness of efforts to achieve desegregation and equal educational opportunity.

White Flight

By the 1970s, a crucial problem had emerged: white flight to suburban areas. White flight came about in part to avoid school desegregation and in part as a result of the larger demographic phenomenon of suburban development.[26] In virtually every urban area, the inner city was increasingly composed of racial minorities. By contrast, the surrounding suburbs were almost exclusively white, and what little minority population resided in suburbs was concentrated in towns that were almost exclusively African American.[27] School district lines often parallel town borders, meaning that racial separation of cities and suburbs results in segregated school systems. For example, by 1980, whites constituted less than one-third of the students enrolled in the public schools in Baltimore, Dallas, Detroit, Houston, Los Angeles, Miami, Memphis, New York, and Philadelphia.[28]

Thus, effective school desegregation required interdistrict remedies. The lack of white students in most major cities prevented desegregation, and intradistrict remedies could not desegregate suburban school districts because of the scarcity of minority students in the suburbs.[29]

In *Swann v. Charlotte-Mecklenburg Board of Education* (1971), the Supreme Court held that district courts have broad authority in formulating remedies in desegregation cases.[30] The Court upheld the power of the district courts to take "affirmative action in the form of remedial altering of attendance zones . . . to achieve truly nondiscriminatory assignments."[31] The Court also stated that

courts could use busing as a remedy where needed and that bus transportation is an important "tool of school desegregation."[32] The Court found that busing students is a constitutionally acceptable remedy unless "the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process."[33] But *Swann* focused exclusively on remedies *within* a school district. The holding did not address interdistrict remedies. When a school system comprises predominantly minority students, there is a limit to how much desegregation can be achieved without an interdistrict remedy.

In 1974, the Supreme Court took a different turn in its jurisprudence on the powers of federal courts in desegregation cases. In *Milliken v. Bradley*, the Court imposed a substantial limit on the courts' remedial powers.[34] *Milliken* involved the Detroit-area schools. Like cities in so many areas of the country, Detroit was a mostly African American school district surrounded by predominantly white suburbs and school districts. A federal district court imposed a multidistrict remedy to end de jure segregation. The Supreme Court ruled that this desegregation technique is impermissible, concluding that "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy."[35]

Milliken has had a devastating effect on efforts to achieve desegregation in many areas. In a number of major cities, inner-city school systems are substantially African American and are surrounded by almost all-white suburbs. Desegregation would require transferring students between city and suburban schools because there are simply too few white students in the city and African American students in the suburbs to achieve desegregation without an interdistrict remedy. Yet *Milliken* precludes such a remedy unless plaintiffs offer proof of an interdistrict violation.[36] In other words, a multidistrict remedy can be formulated only for those districts whose policies fostered discrimination or if a state law caused the interdistrict segregation. Otherwise, the remedy can include only those districts found to violate the Constitution. While such proof is often unavailable, plaintiffs in relatively rare cases have met *Milliken*'s requirements.[37]

I grew up in Chicago, an urban area in which the city is predominantly minority but surrounding suburbs are virtually all-white. For example, on the west side of the city, the Austin neighborhood is composed almost entirely of African Americans and Latinos. But just across the city line, suburban Oak Park and especially River Forest are overwhelmingly white. An interdistrict remedy could help to desegregate both the Chicago public schools and the nearby suburban schools. Little would be required except redrawing attendance zones. But *Milliken* has ensured that this kind of remedy will not be used.

This segregated pattern in major metropolitan areas did not occur by accident but rather was the product of myriad government policies.[38] Moreover, *Milliken* has had the effect of encouraging white flight. Whites who wish to avoid desegregation can do so by moving to the suburbs. If *Milliken* had been decided differently, one of the incentives for such moves would be eliminated. In reality, in many areas the *Milliken* holding makes desegregation impossible.

In an important paper presented at the conference on the resegregation of southern schools, Charles T. Clotfelter quantified the causes for segregation of public schools.[39] Clotfelter's study dramatically proves *Milliken*'s impact in perpetuating segregation and preventing effective remedies. According to Clotfelter, private schools lead to only about 17 percent of the nation's segregation.[40] By far the most important factor accounting for segregation is racial disparities among public school districts.[41] In most instances, *Milliken* precludes courts from remedying this problem and thus is significantly responsible for the segregation of U.S. schools today.

Proving Discrimination in Northern School Systems

Plaintiffs had no difficulty in proving discrimination in states that by law had required separation of the races in education. But in northern school systems, where segregated schools were not the product of express state laws, an issue arose about what would suffice to prove an equal protection violation and to justify a federal court remedy. Northern school systems were generally segregated; the issue was what plaintiffs had to prove for courts to provide a remedy.

The Supreme Court addressed this issue in *Keyes v. School District no. 1, Denver, Colorado* (1973). Substantial segregation existed in Denver's public schools even though Colorado law had never mandated the separation of the races.[42] *Keyes* held that absent laws requiring school segregation, plaintiffs must prove intentional segregative acts on the part of a school board or other local officials and affecting a substantial part of the school system.

The Court therefore drew a distinction between the de jure segregation that existed throughout the South and the de facto segregation that existed in the North. The latter is deemed to be a constitutional violation only if there is proof that the racially separate student populations were the product of some official discriminatory purpose. This approach is consistent with the Supreme Court cases holding that when laws are facially neutral, proof of a discriminatory impact is not sufficient to show an equal protection violation; proof of a discriminatory purpose must also exist.[43] But requiring proof that local school officials acted with discriminatory purpose created a substantial obstacle to desegregation in northern school systems, where residential segregation—a product of myriad discriminatory policies—caused school segregation. *Keyes* in reality created an almost insurmountable obstacle to judicial remedies for desegregation

in northern cities. The government was responsible for segregation in northern schools, but plaintiffs often found it impossible to prove that responsibility.

Inequality in School Funding

By the 1970s, substantial disparities existed in school funding. In 1972, education expert Christopher Jencks estimated that, on average, the government spent 15–20 percent more on each white student's education than on each African American child's schooling.[44] This disparity existed throughout the country. For example, the Chicago public schools spent $5,265 for each student's education, but the Niles school system, just north of the city, spent $9,371.[45] The disparity also corresponded to race: in Chicago, 45.4 percent of the students were white and 39.1 percent were African American; in Niles Township, the schools were 91.6 percent white and 0.4 percent African American.[46] In New Jersey, largely black Camden spent $3,538 on each pupil, while highly white Princeton spent $7,725.[47]

A simple explanation exists for the disparities in school funding. In most states, education is substantially funded by local property taxes. Wealthier suburbs have significantly larger tax bases than poor inner cities and can tax at lower rates and still have more to spend on education.[48] The Court had the opportunity to remedy this inequality in education in *San Antonio Independent School District v. Rodriguez* (1973) but failed profoundly, concluding that the inequalities in funding did not deny equal protection.[49]

Rodriguez involved a challenge to the Texas system of funding public schools largely through local property taxes.[50] Texas's financing system meant that poor areas had to tax at a high rate but had little to spend on education; wealthier areas had low rates and more funds. One poorer district, for example, could afford only $356 per pupil, while a wealthier district spent $594 per student.[51]

The plaintiffs challenged this system on two grounds: it violated equal protection as impermissible wealth discrimination, and it denied children in the poorer districts the fundamental right to education.[52] The Court rejected the former argument by holding that poverty is not a "suspect classification"; consequently, discrimination against the poor need meet only rational basis review.[53] Under equal protection analysis, discrimination against racial minorities is treated as highly suspect and must meet "strict scrutiny"—that is, must be found necessary to achieve a compelling government interest. The government usually loses when strict scrutiny is used. At the opposite end of the continuum, laws that do not discriminate with regard to "suspect classifications" have to meet only rational basis review. That is, they only have to be "reasonably related to a legitimate government interest." The government usually wins under rational basis review. Thus, the Court's choice of rational basis review ensured the government's triumph. The Court explained that where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages. In thoroughly reviewing the Texas system of funding schools, the Court determined that the state had plausible concerns about maintaining "local control" of educational funding that were constitutionally adequate if not very compelling.[54]

Moreover, the Court rejected the claim that education is a fundamental right. Justice Lewis Powell, writing for the majority, concluded that "education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected."[55] The Court came to this conclusion in spite of the fact that education obviously is inextricably linked to the exercise of constitutional rights such as freedom of speech and voting.

The Court also noted that the Texas government did not completely deny an education to students; the challenge was to inequities in funding. In concluding, the Court found that strict scrutiny was inappropriate because neither discrimination based on a suspect classification nor infringement of a fundamental right occurred.[56] The Court found that the Texas system for funding schools met the rational basis test.

In *Kadrmas v. Dickinson Public Schools* (1988), the Court reaffirmed that education is not a fundamental right under the Equal Protection Clause.[57] *Kadrmas* involved a challenge brought by a poor family against a North Dakota statute authorizing local school systems to charge a fee for the use of school buses. The Court reiterated that poverty is not a suspect classification and that discrimination against the poor must meet only rational basis review.[58] The Court found that the law did not deny any child an education because the fee did not preclude the student from attending school. Hence, the Court said that rational basis review was appropriate and concluded that the plaintiffs "failed to carry the 'heavy burden' of demonstrating the challenged statute is both arbitrary and irrational."[59]

These decisions are wrong—tragically wrong—in holding that no fundamental right to education exists. The Court should have recognized a fundamental right to education under the Constitution, as it has recognized other rights that are not enumerated, including the right to travel,[60] the right to marry,[61] the right to procreate,[62] the right to custody of one's children,[63] the right to control the upbringing of one's children,[64] and many others.[65] Education is essential for the exercise of constitutional rights, for economic opportunity, and ultimately for achieving equality. Chief Justice Earl Warren eloquently expressed this view in *Brown*:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures

for[illegible]ation both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.[66]

The combined effect of *Milliken* and *Rodriguez* cannot be overstated. *Milliken* helped to ensure racially separate schools, and *Rodriguez* ensured that the schools would be unequal.[67] American public education is characterized by wealthy white suburban schools that spend a great deal on education surrounding much poorer African American city schools that spend much less.[68]

The Decisions of the 1990s: The Supreme Court Ends Desegregation Orders

Orfield briefly but accurately notes a cause for the resegregation of the 1990s: Supreme Court decisions ending successful desegregation orders.[69] In several cases, the Court concluded that school systems had achieved "unitary" status and consequently decreed that federal court desegregation efforts were to end.[70] These decisions resulted in the cessation of remedies that had been effective and, ultimately, in resegregation. Many lower courts followed the lead of the Supreme Court and have likewise ended desegregation orders, causing resegregation.

In several cases during the 1990s, the Supreme Court considered when a federal court desegregation order should end. In *Board of Education of Oklahoma City Public Schools v. Dowell* (1991), the Court determined whether a desegregation order should continue even when its termination would mean a resegregation of the public schools.[71] Oklahoma schools had been segregated under a state law mandating separation of the races. Not until 1972—seventeen years after *Brown*—did courts finally order desegregation. The federal court order subsequently succeeded in desegregating the Oklahoma City public schools. Evidence indicated that ending the desegregation order would likely result in dramatic resegregation.[72] Nonetheless, the Supreme Court held that after Oklahoma City's racially dual school system had become "unitary," a federal court's desegregation order should end, even if the action could lead to resegregation of the schools.[73]

The Court did not define "unitary system" with any specificity; it simply declared that the desegregation decree should end if the school board has "complied in good faith" and "the vestiges of past discrimination have been eliminated to the extent practicable."[74] In evaluating these two factors, the Court instructed the district court to look "not only at student assignments, but 'to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities.'"[75]

In *Freeman v. Pitts* (1992), the Supreme Court held that a federal court desegregation order should end after a school district complies with the order, even if other desegregation orders for the same school system remain in place.[76] A federal district court ordered desegregation of various aspects of a school system in Georgia that previously had been segregated by law. Part of the desegregation plan had been met: the school system had achieved desegregation in pupil assignment and in facilities. Another aspect of the desegregation order, concerning assignment of teachers, had not yet been fulfilled, however.[77] The school system planned to construct a facility that likely would benefit whites more than African Americans.[78] Nonetheless, the Supreme Court held that the federal court could not review the discriminatory effects of the new construction because the part of the desegregation order concerning facilities had already been met. The Court stated that when a portion of a desegregation order is met, the federal court should cease its efforts to enforce that part and remain involved only with those aspects of the plan that had not been achieved.[79]

Finally, in *Missouri v. Jenkins* (1995), the Court mandated an end to a school desegregation order for the Kansas City schools.[80] Missouri law had previously required the racial segregation of all public schools, and not until 1977 did a federal district court order the desegregation of the Kansas City schools. The federal court's desegregation effort made a difference. In 1983, twenty-five schools in the district had an African American enrollment of greater than 90 percent. By 1993, no elementary-level student attended a school with an enrollment that was 90 percent or more African American. At the middle school and high school levels, the percentage of students attending schools with an African American enrollment of 90 percent or more declined from about 45 percent to 22 percent.[81]

This progress was halted, however, in an opinion authored by Chief Justice William Rehnquist that ruled in favor of the state on every issue. The Court's holding consisted of three parts. First, the Court ruled that the district court's effort to attract nonminority students from outside the school district was impermissible because the plaintiffs had not proved an interdistrict violation. Chief Justice Rehnquist applied *Milliken v. Bradley* to conclude that the interdistrict remedy—incentives to attract students from outside the district into the Kansas City schools—was impermissible because there was proof only of an intradistrict violation.[82]

Second, the Court ruled that the district court lacked authority to order an increase in teacher salaries. Although the district court had found that an across-

the[illegible]d salary increase to attract teachers was essential for desegregation, tl. Supreme Court concluded that the increase was not necessary as a remedy.[83]

Finally, the Court ruled that a continued racial disparity in student test scores did not justify continuance of the federal court's desegregation order. The Court concluded that the Constitution requires equal opportunity, not equal result; consequently, disparities between African American and white students on standardized tests were not a sufficient basis for concluding that desegregation had not been achieved. Disparity in test scores is not a basis for continued federal court involvement.[84] The Supreme Court held that when a district has complied with a desegregation order, the federal court effort should end.[85]

Together, *Dowell*, *Freeman*, and *Jenkins* have given a clear signal to lower courts: the time has come to end desegregation orders, even when the effect could be resegregation. And the lower courts have followed this lead. Indeed, it is striking how many lower courts have ended desegregation orders in the past decade, even when provided with clear evidence that the result will be to increase segregation of the public schools. For example, in *People Who Care v. Rockford Board of Education* (2001), the U.S. Court of Appeals for the Seventh Circuit reversed a federal district court decision that refused to end desegregation efforts for the Rockford, Illinois, public schools.[86] The court began its analysis by observing that the Supreme Court has called for "bend[ing] every effort to winding up school litigation and returning the operation of the schools to the local school authorities."[87] The Seventh Circuit noted the substantial disparity in achievement between white and minority students but stated that although the board "may have a moral duty [to help its failing minority students], it has no federal constitutional duty."[88] This analysis is the same reasoning followed by other courts throughout the country in ending desegregation orders.

Similarly, the U.S. Court of Appeals for the Fourth Circuit recently ended federal judicial oversight of the Charlotte-Mecklenburg school system.[89] Although the school system had historically been segregated and although desegregation had succeeded, the court nonetheless ordered an end to desegregation efforts. In Charlotte, local control was taken away by the court's order not to use race in student assignment, even though the school district fought to maintain the desegregation policy.

The U.S. Court of Appeals for the Eleventh Circuit ended the desegregation order for the Duval County schools in Jacksonville, Florida, concluding that district had achieved unitary status.[90] At the time of the Eleventh Circuit's conclusion, Latino students outnumbered whites and African Americans combined at thirteen Duval County schools.[91] The Eleventh Circuit stated that the segregation resulted from white flight and voluntary residential segregation and thus did not provide a basis for continued desegregation efforts.[92]

In addition to these decisions by federal courts of appeals, m[illegible]district courts have ordered an end to desegregation efforts, including several in 2002.[93] In none of these cases did the courts give weight to the consequences of ending the desegregation orders in causing resegregation of the public schools.

The nationwide trend of federal courts ending desegregation efforts means that resegregation will increase, potentially dramatically, in the next decade. Orfield documents the resegregation that occurred during the 1990s. Recent decisions indicate that the first decade of the twenty-first century may see a much worse return to resegregation.

Why Have Courts Failed?

Scholars such as Gerald Rosenberg see the failure to achieve desegregation as reflecting inherent limitations of courts. I strongly disagree. Desegregation likely would have been more successful and resegregation less likely to occur if the Supreme Court had made different choices.

If from 1954 to 1971 the Court had acted more aggressively in imposing timetables and outlining remedies, desegregation might have occurred more rapidly. If the Court had decided *Milliken* differently—not a fanciful possibility considering that the case was a 5–4 decision—interdistrict remedies could have produced much more desegregation of American public education. If the Court had decided *Keyes* differently, courts could have fashioned desegregation remedies if the plaintiffs could offer proof of a discriminatory impact. Requiring nonwhite plaintiffs to show that a school system has acted with discriminatory intent dramatically limited the ability of the federal courts to order desegregation of de facto segregated northern city school systems. If the Court had decided *Rodriguez* differently, there would have been more equality in school funding and educational opportunity.[94] If the decisions of the 1990s had differed, successful desegregation orders in many cities would have remained in place. Therefore, the dismal statistics about current segregation are less an indication of the inherent limits of the judiciary and more a reflection of the Supreme Court's choices.

What, then, explains the Court's choices? The answer is obvious: its decisions result from the conservative ideology of the majority of the justices who sat on the Court in the 1970s, when these cases were decided. *Milliken* and *Rodriguez* were both 5–4 decisions, and the majority included the four Nixon appointees who joined the Court in the few years before those rulings. If the Warren Court had decided the cases in 1968, six years before *Milliken* and five years before *Rodriguez*, the cases would almost certainly have been resolved in favor of interdistrict remedies. If Hubert Humphrey had won the 1968 presidential election

and appointed the successors to Justices Warren, Abe Fortas, Hugo Black, and John Marshall Harlan, these cases would likely have had different results.

Similarly, the decisions of the 1990s were the product of conservative, Republican justices. In each of the cases, five Reagan and George H. W. Bush appointees—Chief Justice Rehnquist (whom President Reagan nominated as chief justice) and Justices Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, and Clarence Thomas—constituted the majority in ordering an end to desegregation orders.

The cause for the judicial failure could not be clearer: conservative justices have effectively sabotaged desegregation. In June 2002, Justice Thomas wrote a concurring opinion in *Zelman v. Simmons-Harris*, in which the Court upheld the constitutionality of the use of vouchers in parochial schools.[95] Justice Thomas lamented the poor quality of education for African Americans in inner cities and urged voucher systems as a solution.[96] The irony—and indeed, hypocrisy—of Justice Thomas's opinion is enormous. The rulings of his conservative brethren have contributed significantly to the educational problems of racial minorities. Justice Thomas has never suggested that the Court reconsider any of the decisions discussed in this chapter. But he is very willing to allow vouchers, which would take money from the public schools and transfer it to private, especially parochial, institutions.

Conclusion

During the Vietnam War, Senator George Aiken said that the United States should declare victory and withdraw from Vietnam.[97] The Supreme Court seems intent on declaring victory over the problem of school segregation and withdrawing the judiciary from solving it. But as Orfield demonstrates, the problem has gotten worse, not better.[98] The years ahead look even bleaker as courts end successful desegregation orders.[99]

People can devise rationalizations to make this desegregation failure seem acceptable: that courts could not really succeed; that desegregation does not matter; that parents of minority students do not really care about desegregation. But none of these rationalizations are true. *Brown v. Board of Education* stated the truth: separate schools can never be equal. Tragically today, America has schools that are increasingly separate and unequal.

Notes

1. G. Orfield, *Schools More Separate*, 2.
2. Ibid., 29.
3. Ibid.
4. Ibid., 31.
5. Ibid.
6. Desegregation in the South has traditionally focused on whites and African Americans because they were the concern of the litigation of the civil rights movement. At the time, the states did not have a significant Latino population. Now, however, the growth in the Latino population requires that this group also be considered in evaluating desegregation efforts. See Grieco and Cassidy, "Overview" (on file with the *North Carolina Law Review*) (illustrating that Latinos are the largest minority group in the United States); see also G. Orfield, *Schools More Separate*, 17, table 1 (indicating that from 1968 to 1998, the Latino population enrolled in public schools has grown from 2 million to 6.9 million, a 245 percent growth in thirty years).
7. G. Orfield, *Schools More Separate*, 2.
8. Ibid., 48. Orfield explains that segregation by race relates to segregation by poverty and to many forms of educational inequality for African American and Latino students.
9. The last national housing law addressing discrimination, the Fair Housing Act, was enacted in 1968.
10. *San Antonio Independent School District v. Rodriguez* held that inequities in school funding do not deny equal protection; *Milliken v. Bradley* limits the power of the courts to impose interdistrict remedies for school segregation.
11. *Board of Education v. Dowell* held that after a public school system has achieved unitary status, desegregation orders should end, even if a resegregation of the public schools would result; *Freeman v. Pitts* clarified that partial compliance with a desegregation order should end that part of the order, even if other parts of the order remain to be met; *Missouri v. Jenkins* (1995) held that disparities in white and African American students' test scores alone does not prove the lack of a unitary system or justify continuing desegregation orders.
12. Rosenberg, *Hollow Hope*.
13. The four Nixon appointees—Warren Burger, Harry Blackmun, Lewis Powell, and William Rehnquist—were joined by Justice Potter Stewart to comprise the majority opinion. *Milliken*, 720; *Rodriguez*, 2–3.
14. Recent desegregation cases, such as *Missouri v. Jenkins*, have been 5–4 decisions, with the majority comprised of Chief Justice Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, and Clarence Thomas. *Missouri v. Jenkins* (1995), 72.
15. *Milliken*, 783 (Marshall, J., dissenting).
16. See, e.g., *Griffin v. County School Board*, holding that the closing of public schools, combined with tuition grants and tax breaks to private segregated schools, violates the Constitution.
17. See, e.g., *Green v. County School Board*, overturning New Kent County's "freedom of choice" plan as unconstitutional, finding that it burdened students and parents with a responsibility that properly remained on the school board.
18. See, e.g., *Cooper v. Aaron*, demanding that states follow Supreme Court orders.

19. *Griffin*, 232.
20. Sugarman, "*Brown*," 9.
21. Ibid.
22. Ibid., 10.
23. See Devins, *Judicial Matters*, 1034.
24. *Cooper* is a notable exception: the Court insisted on state compliance with a federal court desegregation order.
25. *Griffin*, 229.
26. See Asher, "Note," 1173–74, which discusses white flight in many major cities and argues that federal and state constitutional grounds justify interdistrict relief in a wide range of situations.
27. See *Milliken*, 785 (Marshall, J., dissenting): "Negro children had been intentionally confined to an expanding core of virtually all negro schools immediately surrounded by a receding herd of all white schools."
28. See Smedley, *Developments*, 412.
29. Ibid.
30. See *Swann v. Charlotte-Mecklenburg Board of Education*, 30.
31. Ibid.
32. Ibid.
33. Ibid., 30–31.
34. *Milliken*, 752–53.
35. Ibid., 745.
36. Ibid., 744–45. But see *Evans v. Buchanan*, implementing a metropolitan plan, and *United States v. Missouri*, finding a school district to be a remaining vestige of segregation.
37. See, e.g., *United States v. Board of School Commissioners*, 191–92, finding that housing discrimination warranted interdistrict desegregation; *Metropolitan School District v. Buckley*; and *Evans*, 352–53, approving interdistrict remedies when disparity in enrollment patterns are caused by government activity. See also *Hills v. Gautreaux*, allowing an interdistrict remedy for housing discrimination.
38. See Massey and Denton, *American Apartheid*; and powell, Kearney, and Kay, *In Pursuit*.
39. See Clotfelter, "Private Schools," 3–4.
40. Ibid., 13, 32, table 5.
41. Ibid., 8–14.
42. *Keyes v. School District no. 1, Denver, Colorado*, 201.
43. See, e.g., *McCleskey v. Kemp*, holding that proof of disparate impact is insufficient to establish a constitutional violation in administration of the death penalty; *Washington v. Davis*, 239–45, holding that proof of discriminatory impact alone is not enough to prove a racial classification; there also must be proof of discriminatory purpose.
44. Jencks, *Inequality*.
45. Kozol, *Savage Inequalities*, 236, table 1.
46. Steele, "Note," 620 n. 173.
47. Kozol, *Savage Inequalities*, 236, table 2.
48. Coons, Clune, and Sugarman, *Private Wealth and Public Education*, 45–51; Shalala and Williams, *Political Perspectives*, 368.
49. *San Antonio Independent School District*, 55.
50. Ibid., 10–11.
51. Ibid., 12–13.
52. Ibid., 17.
53. Ibid., 28–29. The Court determined that the system of alleged discrimination and the class it defines did not have the "traditional indicia of suspectness" (28). In the Court's view, the class was not saddled with such disabilities, subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.
54. Ibid., 47–53. After analyzing the various aspects of the Texas plan, the Court determined that it was "not the result of hurried, ill-conceived legislation [or] the product of purposeful discrimination against any group or class" (55). To the extent that the plan of school financing resulted in unequal expenditures between children who resided in different districts, the Court found that such disparities were not the product of a system that is so irrational as to be invidiously discriminatory.
55. Ibid., 35.
56. Ibid., 28, 37–39.
57. See *Kadrmas v. Dickinson Public Schools*, 457–59.
58. Ibid., 458.
59. Ibid., 463 (quoting *Hodel v. Indiana*, 332).
60. See *Shapiro v. Thompson*, 629–31.
61. See *Boddie v. Connecticut*, 382–83.
62. See *Skinner v. Oklahoma*, 541–43.
63. See *Stanley v. Illinois*, 650–51.
64. See *Troxel v. Granville*, 63–66.
65. See, e.g., *Cruzan v. Director, Missouri Department of Health*, 278–80, finding a fundamental right under the Due Process Clause to refuse unwanted medical treatment; *Roe v. Wade*, 153: "Th[e] right of privacy . . . is broad enough to encompass a woman's decision to terminate her pregnancy"; *Griswold v. Connecticut*, 485, finding that the right to use contraceptives falls within a constitutionally protected zone of privacy.
66. *Brown v. Board of Education (I)*, 493.
67. This is not to minimize the adverse effects of the other decisions, but *Milliken* and *Rodriguez* are crucial because the former ensured the separateness of American public education and the latter ensured their inequality. In theory, effective desegregation could still have occurred through actions of the federal or state legislatures, but such actions did not occur, and *Milliken* and *Rodriguez* ensured that courts, the most likely agents for change, would not achieve desegregation.
68. See generally Patterson, *Brown*, discussing the combined impact of *Milliken* and *Rodriguez*.
69. G. Orfield, *Schools More Separate*, 16.
70. See, e.g., *Missouri v. Jenkins* (1995).
71. *Board of Education v. Dowell*, 249–50.
72. Ibid., 242. After the school board was released from the continuing constitutional supervision of the federal court, it adopted the Student Reassignment Plan (SRP). Under the plan, which relied on neighborhood assignments for students in grades K–4, a student

could transfer from a school where he or she was in the majority to a school where he or she would be in the minority. In 1985, it appeared that the SRP had caused a return to segregation. If the SRP were to continue, eleven of sixty-four schools would be greater than 90 percent African American, twenty-two would be greater than 90 percent white plus other minorities, and thirty-one would be racially mixed. In light of this evidence, the district court refused to reopen the case.

73. Ibid., 247–49.

74. Ibid., 249–50.

75. Ibid., 250 (quoting *Green*, 435).

76. *Freeman*, 490–91.

77. Ibid., 481, finding that a racial imbalance existed in the assignment of minority teachers and administrators.

78. Ibid., 483.

79. Ibid., 490–91.

80. *Missouri v. Jenkins* (1995), 103. Earlier in *Jenkins*, the Supreme Court ruled that a federal district court could order a local taxing body to increase taxes to pay for compliance with a desegregation order, although the federal court should not itself order an increase in the taxes.

81. Ibid., 75.

82. Ibid., 90, 92–94, 97.

83. Ibid., 100.

84. Ibid., 102.

85. Ibid.

86. *People Who Care v. Rockford Board of Education* (2001), 1078.

87. Ibid., 1074, quoting *People Who Care v. Rockford Board of Education* (1998), 835.

88. Ibid., 1076.

89. *Belk v. Charlotte-Mecklenburg Board of Education*, 335.

90. *NAACP v. Duval County Schools*, 976.

91. M. Brown, "Beyond Black and White," A1.

92. *NAACP v. Duval County Schools*, 971–72.

93. See, e.g., *Berry v. School District*, ending desegregation efforts for the Benton Harbor, Michigan, public schools; *Lee v. Butler County Board of Education*, ending desegregation order for the Butler County, Alabama, public schools; *Lee v. Opelika City Board of Education*, ending desegregation order for Opelika, Alabama, schools; *Davis v. School District*, ending desegregation order for the Pontiac, Michigan, public schools.

94. Indeed, a number of state supreme courts have found that inequalities in funding violate provisions of their state constitutions. See, e.g., *Serrano v. Priest*, holding that the California school financing system violated equal protection provisions of the state constitution; *Rose v. Council for Better Education*, finding Kentucky's common school financing system unconstitutional; *McDuffy v. Secretary of Education*, holding that the Massachusetts school financing system violated the state's constitution; *Abbott v. Burke*, finding New Jersey's Public School Education Act unconstitutional; *Tennessee Small School System v. McWherter*, declaring educational funding statutes unconstitutional; *Edgewood Independent School District v. Kirby*, finding the Texas school financing system in violation of the state constitution.

95. In *Zelman v. Simmons-Harris*, the Supreme Court upheld the constitutionality of an Ohio law that allowed parents to use vouchers in the Cleveland city schools. Approximately 96 percent of parents used their vouchers in parochial schools (2466). In a 5–4 decision, the Court upheld this use as constitutional (2480). The Court's division was identical to that in the 1990s decisions ordering an end to desegregation orders: the majority comprised Rehnquist, O'Connor, Scalia, Kennedy, and Thomas (2462).

96. Ibid., 2480 (Thomas, J., concurring). Indeed, Justice Thomas lamented the current condition of inner-city schools in very powerful language: "Frederick Douglass once said that '[e]ducation . . . means emancipation. It means light and liberty. It means the uplifting of the soul of man into the glorious light of truth, the light by which men can only be made free.' Today many of our inner-city public schools deny emancipation to urban minority students. Despite this Court's observation nearly 50 years ago in *Brown v. Board of Education*, that 'it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education,' urban children have been forced into a system that continually fails them."

97. Krebs, "George Aiken," B10.

98. See G. Orfield, *Schools More Separate*, 2. Orfield's report, including statistics from the 2000 Census, illustrates that from 1988 to 1998 southern school segregation intensified (see esp. tables 1, 3, 6). This trend occurred during a period in which three Supreme Court decisions authorized a return to segregated neighborhood schools and limited the reach and duration of desegregation orders. Orfield concludes that from 1988 to 1998, "most of the progress of the previous two decades in increasing integration in the [South] was lost" and provides numerous recommendations for a stable interracial education system.

99. The issue of what could be done differently is beyond the scope of this essay, except as it is implicit in the criticism of what the Supreme Court has done. A major national initiative for school desegregation is needed. This initiative could come through Congress, which would document extensive segregation and inequalities in the public schools and adopt a comprehensive statute mandating interdistrict remedies and equity in school funding. There would be constitutional challenges based on recent federalism decisions, yet remedying such inequalities lies at the core of Congress's powers under the Thirteenth and Fourteenth Amendments. Alternatively, the Supreme Court could reverse course and reconsider the decisions discussed in this chapter, which have contributed so much to the resegregation and inequalities in American public education. There is no indication whatsoever that these—or any—actions from Congress or the Supreme Court are likely in the foreseeable future.

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Practical Guide to Issues Related to Unitary Status

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"Unitary" is a term courts use to describe a school system that has made the transition from a segregated or "racially dual" system to a desegregated or "unitary" system. Many school districts under court orders to desegregate face the challenge of determining when they can consider themselves unitary. This article provides an outline of the issues which need to be addressed by school systems that believe all or part of their operations may be unitary. The first section of the article outlines the general standards for unitary status as defined by the Supreme Court in Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. 237 (1991), and Freeman v. Pitts, 503 U.S. 467 (1992). The next section sets out guidelines for districts to use in interpreting the significance of pre-Dowell court orders referring to the district as unitary or relinquishing jurisdiction over the case. The final section of the article provides a general outline of an analysis that districts can use to conduct an internal assessment in order to determine whether it can prove to a court that it has achieved unitary status. References to the most recent court decisions interpreting Dowell and Freeman appear throughout the article.

SUPREME COURT STANDARDS FOR UNITARY STATUS

Until the United States Supreme Court's 1991 decision in Dowell, many lower courts had expressed divergent understanding of both the substantive accomplishments and procedural steps that would make a dual

system unitary. Dowell and the Supreme Court's subsequent decision in Freeman have clarified what it means to be a unitary system and the process by which a district may be declared unitary. The Supreme Court has held that a declaration of unitary status is only appropriate after a hearing at which the defendant school district bears the burden of proving that it has: (1) complied with the desegregation order for a reasonable period of time; (2) eliminated all vestiges of past discrimination to the extent practicable; and (3) demonstrated its good faith commitment to the constitutional rights that were the predicate for judicial intervention. Dowell, 498 U.S. at 249-50. The Court in Freeman also authorized district courts to exercise their discretion to withdraw supervision from some general areas of school district operations, even if unitary status has not been achieved in every area of school district operations. In order to achieve partial unitary status, a school district must show that: (1) "the vestiges of past discrimination [in that area] ha[ve] been eliminated to the extent practicable"; (2) "there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn"; (3) "retention of judicial control is [not] necessary or practicable to achieve compliance with the decree in other facets of the system"; and (4) the defendant "has demonstrated, to the public and to the parents and students of the once disfavored race, its good faith commitment to the whole of the court's decree and to those provisions of the law and the constitution that were the predicate for judicial intervention in the first instance." Freeman v. Pitts, 503 U.S. 467, 494 (1992) (quoting Board of Educ. of Oklahoma City v. Dowell, 498 U.S. 237, 249-50 (1991)). In Dowell, the Court stated that a court assessing whether a school district has eliminated the vestiges of de jure segregation to the extent practicable must look at "not only student assignments, but 'to every facet of school operations -- faculty, staff, transportation, extracurricular activities and facilities.'" 498 U.S. at 250, quoting, Green v. New Kent County School Bd., 391 U.S. 430 (1968). Therefore, the starting point for reviewing this factor of unitary status requires reviewing the district's progress in each of these areas. The

Court recognized in Freeman, however, that a district court could exercise its discretion to address not only the elements discussed in Green but also to "inquire whether other elements ought to be identified, and to determine whether minority students were being disadvantaged in ways that required the formulation of new and further remedies to insure full compliance with the court's decree." Freeman, 503 U.S. at 492. For example, in Freeman, the Court recognized that quality of education can be one such element. Id. The Supreme Court's most recent decision dealing with unitary status issues addressed the quality of education element. Missouri v. Jenkins, 115 S. Ct. 2038 (1995). Specifically, the Court considered the use of standardized test scores as an indication of quality of education. The Court held that it would be improper for a court to deny partial unitary status in the area of quality of education simply because the students within the district scored below the national norms on standardized tests. Id. at 2055.

INTERPRETING PRE-DOWELL "UNITARY" ORDERS

Before Dowell and Freeman clarified the standards for unitary status, many courts had used the term "unitary" in their desegregation orders, but its meaning was not interpreted in a consistent manner. The Supreme Court addressed this issue in Dowell. In Dowell the Court determined that a 13 year-old district court order making an ambiguous finding that the district was unitary and relinquishing its jurisdiction was not a sufficient declaration of unitary status. 498 U.S. at 244-45. The Court noted that prior lower court decisions had been "inconsistent in their use of the term 'unitary'" and held that the "District Court's 1977 order [wa]s unclear with respect to what it meant by unitary and the necessary result of that finding." Id. at 246. The Court indicated that before a district could consider itself unitary, certain steps must be completed by the district court. First, the court must make specific findings establishing that the school district has met the three requirements for unitary status set out by the Supreme Court in Dowell. Second, the court must relinquish jurisdiction over

the school district's operations. Therefore, a district under a desegregation order may have a pre-Dowell court order stating that the district is "unitary," but this language may not be a sufficient basis for discontinuation of the district's obligations. The orders must be interpreted in light of the Dowell/Freeman standard in order to determine whether a school district can consider itself unitary. If the order cannot be interpreted as a declaration of unitary status, as that term is now understood, the district must continue to fulfill its affirmative obligation to desegregate. In Dowell, the Court remanded the case to the district court for a determination as to whether the school district had complied in good faith with the decree and whether the vestiges of past discrimination had been eliminated to the extent practicable. Id. at 249. Therefore, a court reviewing a pre-Dowell order using unitary language will likely look to whether an evidentiary proceeding was held. Lower federal courts applying the mandates of Dowell and Freeman have generally required an evidentiary hearing before declaring a school district unitary. In Lee v. Etowah County Bd. of Educ., 963 F.2d 1416 (11th Cir. 1992), for example, a consolidated appeal of three Alabama desegregation cases, the Eleventh Circuit reversed the district court's order declaring three Alabama school districts unitary in a summary proceeding and remanded the cases to the district court for full evidentiary hearings on the issue of unitary status. Id. at 1420. After reviewing the standards for establishing unitary status set out in Dowell and Freeman and the facts presented in briefs submitted by all of the parties, the Eleventh Circuit held that a full evidentiary hearing was necessary in each case to resolve genuine issues of fact about whether the legal standards for unitary status had been met. Id. at 1426; see also Lockett v. Board of Educ. of Muscogee County, 92 F.3d 1092, 1101 (11th Cir. 1996) (requiring the school district to present "a reliable body of data [assuring] the district court that the school district has desegregated its schools to the maximum extent practicable" before unitary status could be declared). A court interpreting a pre-Dowell order referring to a district as unitary will look to the intent of the court using the language. One important indicator of a district court's intent will be the

continuation or discontinuation of the court's jurisdiction. If the court retained jurisdiction, it is not likely that a court would find the district unitary. Both Dowell and Freeman indicate that unitary status requires that a court relinquish control over those aspects of a school district's activities that are unitary. Dowell, 498 U.S. 244-45; Freeman, 503 U.S. at 1445-46. The Dowell case demonstrates, however, that even if the court relinquishes jurisdiction over a desegregation case, the district may not be able to consider itself unitary if the court has not made the necessary findings under the Dowell/Freeman standard for unitary status. In Dowell, the Court determined that a prior district court order indicating that the school district at issue was "unitary" was not a sufficient declaration of unitary status. Id. at 244-45. The Court came to this conclusion despite the fact that the order in question in that case specifically stated that it was not retaining jurisdiction over the case. Id.

ASSESSING WHETHER THE REQUIREMENTS OF UNITARY STATUS HAVE BEEN MET

A school district considering a motion for unitary status should conduct an internal assessment of the implementation of its desegregation orders to determine whether it can prove to a court that it has met the three Supreme Court requirements for unitary status. Below is an outline for a standard unitary status analysis based on the Dowell/Freeman standard and subsequent lower court cases. Has the district complied with the desegregation order for a reasonable period of time? The district should review previous court orders to confirm that the district has not ignored any aspects of the order. If a district's efforts in implementing the order have lapsed for any time period, the district should determine whether any additional racial isolation took place during that time period and attempt to identify additional steps taken by the district to compensate for any lapses. The district should review any reports or other data submitted to the court for documentation of the district's efforts to desegregate. If the existing data is not complete, additional data may need to be gathered regarding the district's efforts. Educational consultants may be needed to

assist the district in its analysis. The district should not assume that it is unitary based on its own assessment or on vague language in a prior court order referring to the district as "unitary." As discussed above, prior orders may not be interpreted as valid declarations of unitary status. The Eleventh Circuit's recent decision in Lockett demonstrates the danger related to assuming unitary status before a formal unitary status hearing is held. In Lockett, the school district concluded that it was unitary based on its own analysis. The district curtailed its desegregation efforts with respect to student assignment once it determined that it had met the court's guidelines for proportionate racial composition. The district did not seek unitary status or a modification of the desegregation order. As a result, the court concluded that the district had not met the requirement of compliance with the order for a reasonable period of time. Lockett, 92 F. 3d at 1100.

Have the vestiges of segregation been eliminated to the extent practicable?

Overlap will likely exist between the data and analysis of compliance with the court's orders (previous section) and the data and analysis of the extent to which vestiges have been eliminated. The district should use existing district data to measure the district's progress in eliminating the vestiges of segregation. Again, the district may have to gather new data and educational experts will likely be needed to assist the district in compiling and interpreting the data. The district must assess progress in the areas of district operations delineated in Green v. County School Board of New Kent County, 391 U.S. 430 (1968). Additional factors or areas of concern may have been identified by the district court. If so, these areas also will need to be assessed. Below are the Green factors and some other important areas that a district should include in its analysis.

Student Assignment

In the area of student assignment, a district must examine data to determine whether a district has met its student assignment goals and has achieved the greatest amount of desegregation practicable. The district may

consider the effect of demographic changes on student ratios. Freeman, 503 U.S. at 494. In Freeman, the Court affirmed the district court's conclusion that the racial imbalances in DeKalb County were attributable to demographic shifts. Id. The court noted that there was no showing that the government actors did anything to negatively alter demographic patterns. Id. Nevertheless, a district must be careful about making assumptions about the connection between racial imbalances and demographic shifts and about denying responsibility for racial imbalances because of an assumption that they are not in the school district's control. As the Eleventh Circuit emphasized in Lockett, the school district has the burden of demonstrating that no causal link exists between any racial imbalances and prior de jure segregation. Lockett, 92 F.3d at 1099; see also Freeman, 503 U.S. at 494. The court in that case indicated that a school district under a desegregation order has an obligation to "affirmatively combat demographic shifts" or, at the very least, to prevent exacerbation of racial imbalances caused by demographic changes. Id. at 1099-1100. In Lockett, the court held that the district had not done so and, indeed, had improperly curtailed its desegregation efforts without obtaining a modification or termination of its desegregation order from the court. Id. at 1100. The court reversed the district court's order declaring unitary status. Id. With respect to student assignment, 28 of the district's 48 schools were not within the court's goal of within a 20% range of the district-wide average and 12 schools were more than 90% of one race. Id. at 1096. The Third Circuit Court of Appeals recently upheld a district court decision declaring the public schools in New Castle County, Delaware unitary, including in the area of student assignment. Coalition to Save Our Children v. State Board of Educ., 90 F.3d 752, 762 (3rd Cir. 1996). At the time of the unitary status motion, individual schools had achieved a ratio of African American to white students within +/- 10% of the district-wide average. Id. During periods of years since the desegregation plan was implemented, some schools fell outside that ratio. Id. at n.8. The court noted, however, that the fact that some schools did not meet the goals could be explained by demographic shifts and were largely offset

by the school district's desegregation efforts. Id. Likewise, in the Dallas desegregation case, the court held that the racial imbalance in the district's schools was caused by a "dramatic change in the ethnicity of the student population in the District over the years." Tasby v. Woolery, 869 F. Supp. 454, 461 (N.D. Tex. 1994). In that case, of the district's 190 schools, 45 were one ethnicity (>90%) schools, 43 were predominantly one ethnicity (>75%) schools, 62 were predominantly minority (>75% combined Black and Hispanic) schools, 32 were desegregated schools, and 8 were desegregated magnet schools. Id. at 461, n.13. Courts have recognized that schools with student populations of predominantly one race may be unavoidable. It is difficult to predict just how many schools outside the goal delineated by a desegregation plan an individual court will tolerate. In Morgan v. Nucci, 831 F.2d 313 (1st Cir. 1987), the First Circuit upheld a finding of unitary status for the Boston public schools, despite the fact that some 25 schools failed to comply with the district court's student assignment orders, and 13 schools had student bodies exceeding 80 percent of one race. Likewise, in Stell v. Board of Education for City of Savannah, 860 F. Supp. 1563 (S.D. Ga. 1994), the court held that the district was unitary despite the fact that 11 out of 44 schools had not attained the court's goal for all schools to be within 20% of the district-wide ratio.

Faculty Assignment

In the area of faculty assignment, a district should analyze data to determine whether faculty and staff meet the court-ordered goals and are assigned on an equitable basis throughout the district regardless of race. In the Duval County, Florida desegregation case, the court indicated that a court may be more strict in reviewing progress with respect to faculty assignment than student assignment since a school district has more control over faculty assignment than it does over student assignment. Jacksonville Branch, NAACP v. Duval County Sch. Bd., 883 F.2d 945, 951 (11th Cir. 1989). In that case, the court order required that each school have a faculty that was within 5 percentage points of 30% African American.

The Eleventh Circuit affirmed the district court's denial of unitary status with respect to faculty because approximately 30 of the district's 140 schools consistently failed to meet that goal over the 27 years that the desegregation order had been implemented. Id. at 952. The district court's recent decision in the Freeman case declared DeKalb County unitary with respect to faculty assignments. Mills v. Freeman, 942 F. Supp. 1455 (N.D. Ga. 1996). The standard for achieving unitary status in the area of faculty assignments applied by that court was whether "the school staffs (faculty and administrators) of all schools vary from the system-wide average by no more than 15%." Id. The court held that all of the school district's schools met this goal with respect to faculty assignment. Id. The court also held that the district met the court's goals with respect to the level of training and teaching experience of its faculty members. Id. In some cases, a district court may also have found discrimination in the hiring of faculty and thus ordered the district to have additional African American or minority teachers. In those cases, the district must examine its record with respect to hiring and assignment separately. With respect to hiring goals, a district must assess whether it has been effective in increasing the percentages of under-represented minorities or African American teachers to levels equal to their representation in the relevant labor market. A district should compare its data regarding the number of faculty hires in each racial group to relevant census data. In addition, the district should document its efforts to increase the number of minorities hired. For example, the district should document recruiting efforts at historically black colleges and universities, advertising of openings in newspapers targeted at minority groups and attempts to create racially diverse hiring committees. If the district has not met the court's goals with respect to hiring, the district may be able to present evidence providing a sufficient justification for the lack of progress. For example, in Coalition, the court concluded that the Delaware districts had achieved unitary status with respect to faculty hiring, despite the fact that there had been a decline in the overall percentage of minority teachers. 90 F.3d at 767. The court pointed to the fact that there was a national decline in the number of black students

graduating from college with bachelor degrees in the field of education. Id. The court also found it significant that the district had hired African American candidates at a rate two to four times greater than the percentage available in regional and national pools. Id.

Transportation

With respect to transportation, a district should assess whether the burdens of mandatory transportation for desegregation are shared equitably among the racial and ethnic groups. In recent years, some districts have implemented plans that include more voluntary desegregation measures, such as magnet schools. Where magnet schools or other voluntary measures are part of the plan, the analysis should include whether all children have access to transportation in order to take advantage of special programs. In Tasby, the court noted that the district in Dallas provided transportation on a non-discriminatory basis. 869 F. Supp. at 475. The court also found it significant that the district provided free transportation to students attending schools other than their home schools, because they were majority to minority students, curriculum transfer students and magnet students. Id. In addition, the court found it significant that transportation was provided for extracurricular activities for these students. Id.

Extracurricular Activities

In the area of extracurricular activities, a district should collect data to determine whether it encourages participation and has participation in a wide-range of co-curricular activities by members of all racial and ethnic groups. A district may wish to sample involvement in various types of activities such as academically-oriented activities, leadership activities and sports. If certain racial groups are not participating in a particular category of activity, the district should attempt to determine why and eliminate, to the extent practicable, any barriers to participation within the district's control. In Coalition, the appellate court reviewed the district court's findings regarding the school districts' extracurricular

activities and held that the districts involved were unitary with respect to extracurricular activities, even though there were disparities in the participation rates of African American and white students. The court held that the record supported the district court's finding that such disparities were caused by socioeconomic factors and not de jure segregation. The court commended the following actions taken to reduce the racial identifiability of extracurricular activities by the school districts in that case: 1) inviting middle school students and their parents to high schools to meet representatives from activities; 2) announcing upcoming activities in newsletters and physical education classes; and 3) recruiting and exposing students to sports through the physical education curriculum. Coalition, 90 F.3d at 768.

Facilities

A district must assess whether educational facilities available at predominantly minority schools are equitable to those at predominantly majority schools so that all schools are capable of providing modern educational programs to all students. A desegregation order also may require a district to take specific action with respect to facilities. For example, in Coalition, the court ordered the district to develop nondiscriminatory guidelines for construction and maintenance of school buildings. 90 F.3d at 769-776. In Tasby, the court required that all proposals for new facilities be approved by the court. 869 F. Supp. at 472. In concluding that the district was unitary, the court acknowledged that the district had consistently complied with this requirement. Id.

Educational Opportunities

As discussed above, the Supreme Court has recognized that a court may look beyond the Green factors in assessing whether the vestiges of segregation have been eliminated. See Freeman, 503 U.S. at 492. In Freeman, the Court affirmed the district court's consideration of resource allocation as an indication of quality of education. Id. The district court looked at the average per-pupil expenditure at schools of

predominantly one race. In its recent decision declaring the district unitary in the area of quality of education, the court held that the differential between resource allocation at predominantly black and predominantly white schools was not significant enough to preclude a finding of unitary status. Mills, 942 F. Supp. at 1460. The average per-pupil expenditure at predominantly black schools was $4,995.89 and $5,037.51 in predominantly white schools. Id. If quality of education is defined by the district court as a relevant issue in a desegregation case, a district should analyze those factors identified by the court as indicators of quality of education. Each school district must review its court orders to ensure that all of the aspects of quality of education which the court considers important are assessed. The factors considered by courts to be relevant to quality of education are varied. For example, the school districts in the Coalition case had to assess their progress with respect to an in-service training program for teachers, an affirmative reading and communication skills program, new curriculum offerings, a nondiscriminatory counseling and guidance program, and a human relations program in assessing the quality of education in their districts. 90 F.3d at 760. Some other indicators of quality of education include standardized test results, drop out rates, graduation rates, attendance rates, discipline statistics and participation rates in special programs such as special education and gifted and talented. Below are some issues a district should consider with respect to the more common measures used to assess educational opportunities. Educational opportunities may be measured by performance on standardized testing. As discussed above, in Jenkins, the Supreme Court held that a district court could not deny a partial unitary status motion with respect to quality of education programs solely because national norms have not been met. 115 S. Ct. 2055. The Court held that the appropriate standard was "whether the reduction in achievement by minority students attributable to prior de jure segregation has been remedied to the extent practicable." Id. Based on this decision, it is unlikely that a lower court will rely heavily on standardized test scores in rejecting a motion for unitary status. Indeed, relying on

Jenkins, the recent district court decision in Coalition held that the plaintiffs had the burden to prove that disparities in performance were vestiges of de jure segregation. Id. at 777. If the court with jurisdiction over a district's desegregation efforts finds test scores relevant, the district should review scores on standardized tests to see if disparities exist by race. If so, the district should consider whether it has taken any action to identify and address the underlying causes of any such disparity. Participation in special programs (e.g., gifted programs and special education programs) may also be part of a court order to desegregate as one aspect of educational opportunities. If so, the district should review its placement process for special programs. In Vaughns v. Board of Educ. of Prince George's County, 758 F.2d 983, 990-91 (4th Cir. 1985), the Fourth Circuit held that if a school district is not yet unitary with respect to student assignment, racial disparities in special education and gifted and talented programs are presumed to be vestiges of de jure segregation. The court in Coalition, however, noted that if a district is unitary with respect to student assignment, the plaintiffs have the burden of showing that the disparities are a vestige. 90 F.3d at 776. Nevertheless, if this is an area of concern for the court, a school district should determine whether disparities exist in this area. A district should also review its placement procedures to ensure that they are nondiscriminatory and appropriate. In Coalition, the court concluded that racial imbalances in special education did not prohibit a declaration of unitary status. 90 F.3d at 763. The court considered it significant that the defendant State Board of Education had created "numerous statewide special education task forces; ha[d] authorized five comprehensive studies relating to special education; and thoroughly ha[d] investigated intervention strategies, mainstreaming and the application of selection procedures." Id. If a court order considers student discipline as an indication of quality of education, a district should review statistics regarding student discipline (e.g., suspensions and expulsions). If disparities exist on the basis of race, the district should review what actions, if any, it has taken to identify and address the underlying causes of any such disparity. In

Coalition, the order included the development of codes of conduct for nondiscriminatory discipline as a specific program of "ancillary remedial relief." 90 F.3d at 760.

Is the district committed in good faith to its constitutional obligations?

The third prerequisite for unitary status is a demonstration that the district has a good faith commitment to its constitutional obligation. The district should review its actions and public statements in the recent past to determine whether they demonstrate a good faith commitment to desegregation. The district's record of compliance with the court's orders (discussed above) will be considered relevant to this analysis. For example, in Lockett, the court determined that this requirement was not satisfied because of the district's unilateral decision to discontinue some of its desegregation efforts before seeking a unitary status motion. Lockett, 92 F.3d at 1101. This case illustrates the need for continuous diligence on a school district's part to implement its current desegregation plan until the court has allowed modification when appropriate or dismissal by declaration of unitary status. See also Reed v. Rhodes, 934 F. Supp. 1552 (N.D. Ohio 1996) (pointing to the district's record of compliance with the court's remedial orders as an indication of their good faith). In Reed, the court also pointed to voluntary measures by the district as further support of the school district's good faith commitment to desegregation. Id. The types of programs the court found significant were "initiatives designed to develop self-esteem and enhance the academic potential of all students regardless of race," remedial programs targeted in African-American schools, and programs designed to involve parents and offset negative socioeconomic factors. Id. Therefore, a school district should take account of any voluntary initiatives or programs designed to promote desegregation that it has implemented when analyzing whether a motion for unitary status is appropriate. The adoption of post-unitary status policies demonstrating a commitment to diversity in schools also can demonstrate a district's good faith commitment to desegregation. Therefore, a

district considering a unitary status motion should contemplate the adoption of voluntary plans or programs which will continue the district's efforts to maintain diversity and equal educational opportunity. Such policies demonstrate that a district can be trusted not to return to its segregated past by committing itself to the long-term preservation of its current desegregation plan. Examples of some appropriate post-unitary status policies are: (1) a student assignment policy which takes race into account as one factor; (2) a student transfer policy that takes race into account as one factor; (3) a faculty assignment policy that states a commitment to having diverse faculty at each school; (4) a minority recruitment policy that states a commitment to having a diverse faculty; and (5) a facility policy that guarantees equity in the district's facilities and in new school site selection.

CONCLUSION

Districts implementing court ordered desegregation plans must be careful in their decision-making regarding moves to discontinue desegregation efforts. A district in this situation must carefully analyze any pre-Dowell court order declaring the district unitary before taking action in reliance on them. This analysis must be part of the district's overall internal assessment of whether it is ready to move for unitary status. The district must assure itself that it can prove to a court that it has met the three requirements for unitary status established by the Supreme Court. Application of these three requirements must be particularized in light of the district court's orders in the case applicable to a school district. Nevertheless, the analysis in this article can be used as a general framework.

Federal Oversight, Local Control, and the Specter of "Resegregation" in Southern Schools
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Abstract

Analyzing data for the 100 largest school districts in the South and Border states, we ask whether there is evidence of "resegregation" of school districts and whether levels of segregation can be linked to judicial decisions. We distinguish segregation measures indicating the extent of racial isolation from those indicating the degree of racial imbalance across schools. For the period 1994 to 2004 the trend in only one measure of racial isolation is consistent with the hypothesis that districts in these regions are resegregating. Yet the increase in this measure appears to be driven by the general increase in the nonwhite percentage in the student population rather than policy-determined increases in racial imbalance. Racial imbalance itself shows no trend over this period. Racial imbalance is nevertheless associated with judicial declarations of unitary status, suggesting that segregation in schools might have declined had it not been for the actions of federal courts. This estimated relationship is subject to a lag, which is in keeping with the tendency for courts to grant unitary status only if districts agree to limit their own freedom to reassign students.

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Federal Oversight, Local Control, and the Specter of "Resegregation" in Southern Schools[1]

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I. Introduction

The historic movement toward racially integrated schools, initiated by *Brown v. Board of Education* and advanced by subsequent Supreme Court decisions, was marked by a dramatic decline in the number of students attending "racially identifiable" schools. In the South, the percentage of black students enrolled in schools with 90-100% nonwhite enrollments fell from 100% in 1954 to 78% in 1968 and to 25% by 1972. Consistent with this decline, the comparable percentage for the country as a whole fell from 64% in 1968 to less than 34% in both 1980 and 1989 (Clotfelter 2004, p.56).

Since 1990, however, this measure of racial isolation has begun to creep up again. It rose to 37.4% for the nation by the fall of 2000 and between 1991 and 2000 it increased in every region of the country (Clotfelter 2004, p. 56). These developments have raised alarms about the "resegregation" of schools. Observers have expressed special concern about the South, where Jim Crow apartheid gave way to sweeping change in the late 1960s, transforming schools in that region from the most segregated to the least segregated in the country.

A prominently cited culprit behind this apparent turnaround is the federal judiciary.

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According to Orfield and Eaton (1996, p. 1), the key to understanding the reversal in trends after 1990 is a pair of Supreme Court decisions in 1991 and 1992. The 1991 decision, *Board of Education of Oklahoma v. Dowell*, allowed districts to be released from judicial control once they had been declared "unitary" and thus to be free to assign students to schools, if they wished, by neighborhood of residence. Owing to the pervasive racial segregation in existing housing patterns, the use of such neighborhood-based attendance zones quite naturally tends to produce de facto segregation in schools. In the second decision, *Freeman v. Pitts* (1990), the Court effectively eased the requirements necessary for a district to be declared unitary.[2] Orfield and Eaton (1996, p. 1) state:

> these historic High Court decisions were a triumph for the decades-long powerful, politicized attacks on school desegregation. The new policies reflected the victory of the conservative movement that altered the federal courts and turned the nation from the dream of *Brown* toward accepting a return to segregation.

The NAACP Legal Defense Fund's 2000 annual report concurs: "When there are findings of unitary status, as in Oklahoma City and Norfolk, resegregation has become the rule" (NAACP 2000, p. 8).

Whatever its causes, not everyone agrees that resegregation is in fact occurring. Logan (2004) argues that increases in measures of racial isolation are merely a reflection of the country's changing racial composition and that schools are no more segregated today than they were before these court decisions were handed down. Using data on public schools from across

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[2]Rather than having to eliminate simultaneously all vestiges of past discrimination, as enumerated by *Green v. New Kent County* (1968) in order to achieve unitary status, the Court ruled that these factors only needed to be addressed successfully sometime.

the country, he documents the general increase in the proportion of nonwhite students between 1990 and 2000. He shows that the proportion of all students attending predominantly white schools declined, for example, while the percentage attending schools 90% or more nonwhite increased (Logan 2004, p. 9). According to Logan, it is the increase in the nonwhite share and the consequent increase in predominantly nonwhite schools that raises measures of racial isolation such as the percentage of black students attending 90-100% nonwhite schools.

Our aims in this paper are two-fold. One goal is to examine the extent to which "resegregation" has occurred during the past 10 years, with particular reference to the 100 largest districts in Southern and near-Southern (or "Border") states. We focus on districts in these states because, given their policy of official segregation before 1954, they have been a focal point for the widely-expressed concern about resegregation.[3] The second goal is to determine what role the courts have played in whatever resegregation has occurred, with particular attention to judicial declarations of unitary status and the rulings in the Fourth Circuit.

To preview our conclusions, we find first that whether and to what extent segregation appears to be reemerging differs according to the construct used to measure segregation. If we define segregation as racial isolation, we find some evidence of increasing segregation across schools within districts during the 1993-2003 period, but only when we use the specific measure cited at the beginning of the paper, the percentage of black students attending schools 90-100%

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[3] Following Orfield and Monfort (1992, p. 2), these regions are defined as follows: Border: Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia; South: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia. In fact, public schools had been segregated by law not only in the eleven states of the former Confederacy, the six Border states, and the District of Columbia, but also in parts of Kansas, Arizona, and New Mexico (Clotfelter 2004, p. 18)

nonwhite. If we define segregation not as racial isolation, but rather as racial imbalance within districts, we find, somewhat to our surprise, no evidence of resegregation. Nor, however, do we find any evidence that segregation is declining. Thus, within districts, the trends in school segregation contrast markedly with the trends for the same period in residential segregation (measured at the metropolitan level), which decreased quite substantially in some Southern metropolitan areas (Glaeser and Vigdor, 2003). The decline in residential segregation creates the possibility that, even in the absence of rising school segregation, were it not for judicial rulings of unitary status, racial segregation across schools might have declined.

Second, we find some suggestive links between the decisions of federal courts and school segregation as reflected in two measures of racial imbalance, but these findings are by no means definitive proof that court decisions have opened the door to resegregation. We find higher levels of racial imbalance among districts that were declared unitary before 1993 than among those which have never been so declared. We also find an increase over time in racial imbalance among districts in the Fourth Circuit, which finding could be the result of decisions unique to that circuit. With the exception of one specification, we find no association between judicial rulings or jurisdictions and a measure of racial isolation, probably because that measure is so strongly influenced by demographic changes. Since those demographic changes are outside the control of district policymakers, it is difficult to isolate the effects of judicial action on the school assignment decisions over which they do have control.

Section II of the paper discusses various measures of segregation and section III documents changes over the 10-year period for our sample of 100 large districts. Section IV provides an overview of legal issues related to school desegregation cases, with emphasis on the

role of declarations of unitary status and decisions in the Fourth Circuit. That historical overview serves as background to the empirical investigation of their effects on segregation in section V. The paper ends with a brief concluding section.

II. Recognizing "Resegregation"

The "segregation" referred to in the *Brown* decision was a system of laws whereby students of different races were assigned to separate schools with separate faculties.[4] In contemporary discussions in the school context, the term segregation has become an attribute of enrollment patterns by race – typically across schools within a district – and is typically measured in quantitative terms so that one pattern can be judged more segregated than another. Contemporary measures of segregation can be grouped into two main categories: measures of racial isolation and measures of racial imbalance.

Racial Isolation

The measure used at the beginning of this paper, the percentage of black students in schools that are 90-100% nonwhite, is one widely used measure of racial isolation. By summarizing the extent to which black students are in schools primarily with other minority students, it indicates the degree to which black students are isolated from (non-Hispanic) white students. Its focus on the nature of schools attended by black students reflects the historical fact

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[4] The preponderant importance of de jure segregation at the time of *Brown* is also illustrated by the emphasis placed on state support of segregation in a statement by prominent social scientists that was submitted as part of an *amicus* brief to the Court in 1953 ("The Effects of Segregation..." 1953).

that blacks were both the principal minority group in the South and the group whose history of subjugation and discrimination made its legal status central to the *Brown* case.

In recent years, owing to the growth in Hispanic and other nonwhite enrollments, the percentage of nonwhite students who are black has fallen in many districts. Thus it is useful to distinguish this first measure from a closely related measure of racial isolation that also focuses on the schools attended by black students: the percentage of black students in schools that are 90-100 percent black. In contrast to the prior measure, this one measures the extent to which black students are concentrated in schools with students like themselves. In the absence of Hispanic or other non-black minority students, the two measures would of course be identical. In districts with a growing number of Hispanic students, however, trends in the two measures could well diverge.

A somewhat different measure of racial isolation, defined once again from the perspective of black students, is the rate at which they attend school with other black students. Also referred to as the exposure rate of black students to black students, this rate is:

$$E_{bb} = [\sum B_j \ \ b_j \ ] / \sum B_j,$$

where B_j is the number of black students in school j and b_j is the school's percentage of black students. Equivalent to the proportion black in the typical black student's school, this exposure rate is one way of indicating how isolated black students are from students of other races.

Importantly, measures of racial isolation are not independent of a district's overall racial composition. In general the higher is the proportion of black or of nonwhite students, depending on the measure used, the higher will be one of these measures of isolation. Stated differently, measures of racial isolation incorporate into a single measure any imbalance in the racial mix of

students across schools as well as the overall racial composition of the district. As a descriptive device, measuring segregation by means of an index of racial isolation is undoubtedly useful. From the perspective of district policy makers, however, who are likely to have far greater control over the extent to which students of different races are distributed among schools in a balanced or unbalanced manner than over the racial mix of students in the district, it is useful to have a segregation measure that isolates the aspect of enrollment patterns over which they have more control. Segregation indexes that measure racial imbalance fit this requirement in that they are not a function of a school district's racial composition.

Racial Imbalance

Such indexes are designed to measure the extent to which students of a particular race are unevenly distributed across schools within the district. At one extreme, segregation would be complete if members of each racial group attended schools with members of their own race alone. At the other, there would be no segregation, according to this approach, if all schools had the same racial composition, which by definition would be the racial composition of the district as a whole. The calculation of any measure of racial imbalance must begin with a decision about which racial groups to highlight. For most of our analysis of racial imbalance, we look at the balance between white and nonwhite students.

One useful measure of racial imbalance is a gap-based segregation index, *S*, which takes the following form for segregation within district *k*:

$$S_k = (n_k - E_{wn}) / n_k ,$$

where n_k is the proportion of the district's students who are nonwhite and in this case E_{wn} is the

exposure rate of whites to nonwhites, defined as

$$E_{wn} = [\sum W_j \ n_j] / \sum W_j,$$

W_j is the number of whites in school j, and n_j is its nonwhite percentage. The exposure rate E_{wn} can be interpreted as the nonwhite percentage in the typical white student's class, and can range from zero, where schools are fully separated by race, to n_j, where they are racially balanced. Thus the segregation index is the difference between the maximum exposure rate of whites to nonwhites, which is simply the nonwhite share of students in the district, and the actual exposure rate, expressed as a fraction of the maximum. The segregation index runs from 0, which represents no segregation, to 1, which represents complete segregation.

Another well-known measure of racial imbalance is the dissimilarity index.[5] This index, which also runs from 0 to 1, has a simple intuitive interpretation: it indicates the proportion of any one racial group of students that would have to switch schools to achieve racial balance across the district. The closer is the number to 1, the more segregated is the district. Though the dissimilarity index is commonly used in studies of residential segregation, we prefer the gap-based measure of segregation which we have used extensively in our previous research of school segregation in North Carolina. Though not of particular usefulness for this paper, a major advantage of the gap-based measure is that it can be readily decomposed into segregation between and within schools.

A drawback to measures of racial imbalance such as the gap-based segregation index and

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[5]The index of dissimilarity is defined as

$$D = 0.5 \sum | N_j / N - W_j / W |,$$

where N and W are total nonwhite and white enrollment in a district, and N_j and W_j are the nonwhite and white enrollment in school j.

the dissimilarity index is that, because they are calculated by dividing the relevant population into two groups, they cannot reflect differences in racial balance among multiple groups. One index that is able to account for multiple groups is the entropy index, based on Theil's information theory where *g* indexes racial groups and *j* indicates schools. A district's entropy index is

$$H = \sum_{j} t_j (F - F_j) / F$$

where t_j is school j's proportion of district enrollment,

$$F_j = \sum_{g} p_{gj} \ln (1/p_{gj}), \text{ and}$$

$$F = \sum_{g} p_g \ln (1/p_g),$$

where p_{gj} is group *g*'s proportion in school *j*, and p_g is group *g*'s proportion of district enrollment.[6] We divide students into four groups: white, black, Hispanic, and other nonwhites. Like the other two measures of racial imbalance, noted above, H has a maximum value of 1, indicating schools that are completely separated by race, and a minimum value of 0, indicating racially balanced schools.

Level of Analysis

Quite apart from the concept of segregation employed, another issue central to the measure of school segregation is the level of analysis. The standard approach is to measure segregation across schools within a single school district. That is the approach implicit in the summary measures cited at the beginning of the paper and also in our discussion of the various

[6]For expositions of this index, see, for example, Theil 1972 or Iceland 2002.

definitions of racial segregation. Although we have used data at the classroom level to measure segregation in some of our previous work (Clotfelter, Ladd, and Vigdor 2003), we are restricted to data collected at the school level for the analysis in this paper.[7] In some of our work, we have also examined segregation at the metropolitan area level, making it possible to separate segregation attributable to racial disparities within school districts – the basis for conventional measures – from that due to racial disparities between school districts. It turns out that changes in school segregation at the metropolitan level between 1970 and 2000 were affected by contrary movements in these two components: the movement of whites to suburban school districts caused segregation of the second variety to increase at the same time that within-district segregation was declining.[8]

In this paper, we restrict our attention to segregation within school districts. Consequently changes in measures of segregation based on imbalance, which effectively abstract from any changes in the racial composition of the district, will fail to pick up any new segregation that results from growing racial disparities between districts within a metropolitan area. In contrast, changes in measures of racial isolation at the district level inevitably reflect in part changes in the

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[7]In our earlier work, we used classroom-level data on racial composition for the entire state of North Carolina. We found only a minimal amount of within-school segregation in elementary schools. At secondary schools, which are more likely to employ tracking and other curricular policies that separate students on different academic tracks, within-school segregation is more prominent. We found evidence that all forms of segregation, both within- and between-school, increased between 1994 and 2001. These increases were found in both urban and rural districts, and in parts of the state varying widely in terms of racial composition.

[8] For an explanation of the decomposition into these two parts, see Clotfelter (1999) or Clotfelter, Ladd, and Vigdor (2003); for a discussion of these changes over time, see Clotfelter (2004, chapter 2). The last of these also includes the effect of private school enrollment, but the quantitative effect of that aspect is not large.

racial mix of students in each district, changes that may be the result of differential movement of students by race across districts within a metropolitan area. In particular, the movement of white students out of city districts either to suburban districts or to private schools will result in rising nonwhite proportions in city districts, and, most likely, into greater racial isolation. Because they reflect different aspects of racial segregation, we therefore draw attention both to measures of racial isolation and to measures of imbalance to assess whether recent enrollment trends justify the characterization of "resegregation." We turn now to that assessment.

III. Segregation Trends in the 100 Largest Southern Districts

We base our analysis on enrollment data for the largest 100 districts in the South and Border regions (based on 2001/02 enrollments), some of which we have collected ourselves directly from the districts. These districts represent some 15% of total K-12 enrollment in the South and Border regions in the 2001/02 school year.[9] In size, these districts ranged from 31,190 in Calcasieu Parish (Lake Charles) to 365,343 in Dade County (Miami), Florida. In racial composition, they ranged from 13.3% nonwhite in Pasco County (suburban Tampa) to 97.5% in Birmingham, Alabama.

Table 1 presents summary statistics for a number of district characteristics as well as the six segregation measures defined in the previous section. Means and standard deviations are

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[9] Percentage based on K-12 enrollments from the NCES Common Core of Data. For districts that were subject to consolidation or annexation, we included all of the subsequent components throughout the time period of analysis. For school years through 2002/03, the data were generally available in the Common Core of Data. To supplement these publicly available data with information from the most recent school year, we requested from individual districts comparable data on enrollment by race of each school for the 2003/04 year. A complete listing of these districts is given in Appendix Table 1.

reported for the 1993/94 and 2003/04 school years, which comprise the endpoints for our panel dataset. All summary statistics are weighted by enrollment. Most school districts in our sample experienced substantial population growth during this time period, reflecting strong growth rates in the region as a whole. Almost all of this growth occurred in the nonwhite population: average white enrollment shows virtually no trend, and the nonwhite share of enrollment increased by ten percentage points over ten years. The bottom panel of the table refers to information related to judicial decisions to which we will return in section IV. At this point, we simply note that districts in the Fourth Circuit serve about 1 out of 4 students in the sample and that districts in the Eleventh District serve more than a third of the students.

With respect to trends in segregation, the table shows a small increase in one measure, the dissimilarity index, and a substantial increase in the percent of black students in 90-100 percent nonwhite schools. As shown in the first row, that measure of racial isolation increased from about 27 percent in 1993-94 to 34 percent in 2003/04. Intriguingly, this trend does not appear to be attributable to an increased tendency for blacks to attend overwhelmingly black schools. The share of black students attending 90-100% black schools fell slightly and the exposure rate of blacks to other blacks ended the decade unchanged. Thus, any increase in racial isolation of black students appears to have far more to do with the growth in proportions of students who are neither non-Hispanic white nor non-Hispanic black, the majority of whom are likely to be Hispanic, than with changes in enrollment patterns of black and white students.

Consistent with the view that district-wide demographic changes are driving the growth in the proportion of black students in 90-100 percent nonwhite schools, the measures of racial imbalance show little or no increase in segregation over time. Thus, aside from changes over

time in the racial composition of enrollments in the 100 large districts, we find no strong evidence of a rise in racial segregation.

Figure 1 plots the five segregation measures over time, incorporating enrollment data from intervening years.[10] The graph confirms the basic summary statistics in Table 1. Only the proportion of black students attending 90-100% nonwhite schools shows any significant time trend over this ten-year period, a very smooth upward progression spanning the entire ten-year period. The other five indices, including the proportion of blacks attending 90-100% black schools, display only a small amount of fluctuation over this time period, with no discernible drift either upward or downward.

The contribution of students who are neither white nor black to trends in racial isolation is underscored by Figure 2, which displays the racial composition of the school attended by the typical white, black, Hispanic, or other nonwhite student in 1993/94 and 2003/04. The graph shows that students of all races, including whites, tended to witness decreases in the proportion of non-Hispanic white students in their schools between 1993/94 and 2003/04. The average share of black students, though generally higher for blacks than for students of other races, remained virtually unchanged for students of every race. Whites, Hispanics, and students of other races attended schools that were about 25% black in both 1993/94 and 2003/04. The typical black student attended a school slightly more than 45% black in both years, as indicated by the black-black exposure rate in Table 1. In the case of each racial group, the reduction in white student share was almost exactly compensated by an increase in the proportion of Hispanic

[10] For the purpose of making the figure, values were interpolated for five districts with missing data in several years.

and other nonwhite students.

The relative stability of mean values shown in Figure 1 may mask considerable variation across particular types of districts or between regions. Table 2 shows mean values for two segregation indices, one measure of racial isolation and one of racial imbalance, at two points in time for various categories of districts. We categorize districts by region, and, whether central city, suburban or consolidated, and by percent nonwhite enrollment in the initial year of the panel, 1993/94 as well as by federal court circuit.

The regional breakdown is of general interest because of the regions' different histories. Whereas districts in the Border region generally began to comply with *Brown* almost immediately, those in the South were famously reluctant, often aggressively so. The table shows that the Border districts in the sample tended to have higher levels of racial imbalance and racial isolation, as well as greater rates of white enrollment loss. However, the ten-year trends in racial separation, whether measured by imbalance or by racial isolation, appear quite similar in both regions.

As shown by the next set of categories, school segregation is most severe in districts that serve central cities of metropolitan statistical areas (MSAs). More than three of every four students enrolled in these districts in the 1993/94 school year were nonwhite. Over the decade analyzed here, segregation as measured by imbalance declined somewhat in these districts while the isolation of black students rose, possibly reflecting the substantial losses in white enrollment over the period. While continued "white flight" is a sensible explanation for the increased isolation of black students in central city districts, trends in suburban and city-county

consolidated districts imply a more complicated story.[11] In these districts, where losses in white enrollment were much less severe, the proportion of black students in 90-100% nonwhite schools increased just as rapidly, if not more, than in central city districts. Among the 42 suburban districts in the sample, for example, ten experienced increases in their percentage nonwhite of 20 points or more. By 2003/04, seven suburban districts had nonwhite percentages of 80% or more. White enrollments declined the least rapidly in consolidated districts, which helped served to stabilize their racial compositions. Over the 10-year period, none of the 36 consolidated districts experienced an increase in the nonwhite percentage as large as 20 points.

Classifying districts by initial percent nonwhite as in the next panel of the tables reveals some noteworthy differences in trends. Rates of white enrollment loss were largest in majority-nonwhite districts, a pattern confirmed by the scatterplot in Figure 3. As white enrollment declined in these districts, the share of black students attending overwhelmingly nonwhite schools increased, as shown in Table 3. That the segregation indices posted either very modest gains or declines in the face of these losses implies that districts managed to maintain a similar degree of racial balance in attendance patterns across schools despite the change in racial composition. A somewhat different pattern emerges in overwhelmingly white school districts.

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[11] For purposes of this analysis, school districts serving independent cities or cities that attained county-equivalent status prior to World War II are classified as central city districts. Districts affected by this classification rule include Orleans parish (coterminous with the City of New Orleans since 1870), Baltimore City, St. Louis City, Newport News, Norfolk, Virginia Beach, and Washington, DC. Our choice of cutoff date reflects the onset of rapid suburbanization in the postwar era. Cities consolidating with their overlying counties after World War II, including Jacksonville, Miami, Nashville, Augusta, Lexington, and Louisville, are classified as consolidated districts.

The final panel refers to differences by federal judicial circuit.[12] We return to these differences later in the paper.

For a comprehensive overview of changes in segregation and racial isolation between 1993/94 and 2003/04, Figures 4 and 5 show scatterplots of index values from the two years, with a 45-degree line separating those districts experiencing increases from those exhibiting decreases. In Figure 4, the gap-based measure of racial imbalance displays some mean-reversion over time. Districts experiencing increases in segregation tended to have low levels to start with, while those with high levels were more likely to decrease than increase. Figure 5, which plots the share of black students attending 90-100% nonwhite schools in the two years, shows a cluster of points near zero in both years, but a generally larger collection of points above the 45-degree line, highlighting the general increase in this measure of racial isolation.

IV. Changes in the Legal Landscape

We now turn to the more complex question of what role judicial actions have played in the segregation patterns just described. The data presented so far suggest that the relaxation of judicial constraints may be far less implicated in the changes than analysts such as Orfield have claimed. Recall that trends in measures of racial isolation such as the percentage of black students in 90-100 percent nonwhite schools have been used to support the notion that racial segregation in schools is increasing. Yet, as we have already shown, the rise in this measure is

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[12] The federal judicial circuits for the relevant states containing the sample districts are: Fourth: Maryland, North Carolina, South Carolina, and Virginia; Fifth: Louisiana, Mississippi, and Texas; Sixth: Kentucky and Tennessee; Eighth: Missouri; Eleventh: Alabama, Florida, and Georgia; D.C.: D.C.

largely attributable to the changing demographics of the districts in our sample. Because our measures of racial imbalance are not affected by such changes, they provide a "cleaner" measure of the segregation that results from district level decisions about student assignment. Given that these measures show no upward trend over time, one might conclude that there is nothing left to be explained by the court decisions. At the same time, however, because residential segregation declined during the same 10-year period, it could be that in the absence of judicial decisions, segregation in the schools would have declined. In addition, because court decisions apply to particular districts or sets of districts, such decisions could help explain the variation in trends across districts.

Before turning to our empirical analysis we provide some background regarding federal judicial rulings in desegregation cases, with emphasis on those rulings relating to racial balance in school assignments and declarations of unitary status. As we will show, identifying the judicial actions relevant to our empirical analysis is not an easy task. We begin with rulings in which the courts declared districts to be unitary, and, hence, no longer subject to active judicial oversight.

Unitary Status

The Supreme Court's 1968 decision in *Green v. County School Board of New Kent County* stated emphatically that segregated, or "dual," school systems could not meet the admonition promulgated in *Brown* unless racially identifiable schools were eliminated.[13] As one of six factors set down in this case, this pupil assignment criterion suggested, but did not dictate, racial balance as a desideratum. Three years later, in *Swann v. Charlotte-Mecklenburg Board of*

[13] 391 U.S. 430 (1968). See also Boger (2000, p. 1733).

Education, the Court came close to ordering just that, stating "a presumption against schools that are substantially disproportionate in their racial composition."[14] Ratifying a plan that paired schools and transported students across the district to achieve racially balanced schools, the decision set off a series of lower court decisions in the South and Border states that employed methods such as these to achieve racially balanced schools.[15] In the same decision, however, the Court also implied that court supervision, and thus extraordinary measures to maintain racial balance in schools, along with racial guidelines for schools, would not be a permanent state of affairs. Once deemed unitary, a school district would not have to make continual adjustments to maintain racially balanced enrollments in its schools.[16]

In *Green* and *Swann*, therefore, the Court set the stage for a district to be freed from active judicial oversight once it had been declared unitary. In two decisions, *Board of Education of Oklahoma v. Dowell* (1991) and *Freeman v. Pitts* (1992), the Supreme Court clarified what it meant to be deemed unitary.[17] After a district has shown a good-faith effort to eliminate vestiges of past segregation and has satisfied the requirements of *Green*, it stated, the district can be declared unitary, after which any racial imbalance among its schools arising from residential

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[14] "No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26 (1971).

[15] 402 U.S. 1 (1971); Armor (1995).

[16] 402 U.S. 1, 31 (1971). Some critics maintain that lower courts ignored this distinction, instead equating desegregation with racial balance. See, for example, Armor (1995, p. 32).

[17] 498 U.S. 237 (1991); 503 U.S. 467 (1992); Boger (2000, p. 1737).

segregation would be permitted.[18] Since desegregation orders often entailed extensive micro-management, very often extending down to the detail of specifying precise attendance boundaries for individual schools, receiving a unitary status declaration would appear to free a district to determine student assignments for itself. In fact, however, the practical import of unitary status has rarely been as simple as the evaporation of outside control, as we discuss below.

Fourth Circuit Rulings on Race-conscious Assignment

A related but distinct legal question is whether a district *not* under court order to desegregate – either by having been declared unitary or by never having been subject to an order – can base school assignments by race. Needless to say, any desegregation plan that aimed at racial balance had to devise assignment patterns that would keep all schools in a district close to the district's overall racial composition. But in a series of decisions meant to apply to districts not under court order, the Fourth Circuit Court of Appeals ruled that race could not be used in assigning students, presumably making it impossible for a district to maintain racial balance through the adjustment of student assignments.[19] Boger (2000, p. 1794) warns that these decisions could have dire consequences:

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[18] See, for example, Armor (1995, pp. 52-54); Orfield and Eaton (1996, p. 2) state: "These decisions view racial integration not as a goal that segregated districts should strive to attain, but as a merely temporary punishment for historic violations, an imposition to be lifted after a few years. After the sentence of desegregation has been served, the normal, "natural" pattern of segregated schools can be restored."

[19] The decisions are *Capacchione v. Charlotte-Mecklenburg Schools*, 57 F. Supp. 2d 228 (W.D.N.C. 1999), *Eisenberg v. Montgomery County Public Schools*, 197 F.3d 123 (4th Cir. 1999), and *Tuttle v. Arlington County School Board*, 195 F.3d 698 (4th Cir. 1999). For a discussion of these cases, see Boger (2000, pp. 1721, 1740, and 1780).

> if willing school boards cannot assign students by race or ethnicity, we risk a rapid return to a time when each school child could, and did, identify "white schools" and "black schools" simply by reference to the predominant race of the children attending them. Far more certainly than school boards' good-faith efforts to assure of educational diversity, this de facto resegregation of our schools will re-create the conditions condemned in *Brown* in 1954.

As of this writing, the legal status of these Fourth Circuit rulings remains unsettled. The Supreme Court's 2003 decision in *Grutter v. Bollinger* reaffirmed that race could be taken into consideration in making admissions decisions to a law school if this aspect were merely one part of a full evaluation of candidates; it is as yet uncertain how this ruling will be applied to K-12 school assignment plans that take race into account.[20] And whether these Fourth Circuit rulings could have influenced the decisions of school districts before 1999, when they were handed down, is highly uncertain. Only to the extent that school districts in the Fourth Circuit anticipated the subsequent rulings could the rulings have had an impact before 1999.

Variations in the Meaning of Unitary Status

Overlaying these general legal issues is local particularity. Each district has its own particular history of policies, political forces, issues in dispute, rulings, and compliance, and the meaning of unitary status has likewise differed across districts, to be sure. A few districts seem to present clear cases of how changes in judicial doctrine can open the door to de facto

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[20] As of this writing, two federal district courts have allowed racially conscious school assignment plans, citing *Grutter* and *Gratz*, but one circuit's court of appeals has disallowed another such plan, citing the same decisions. See *Comfort v. Lynn School Committee* (2003), *McFarland v. Jefferson Co. Public Schools* (2004), and *Parents Involved in Community Schools v. Seattle School District, No. 1* (2004).

segregation. Two such examples are Charlotte-Mecklenburg and Winston-Salem/Forsyth, North Carolina. After tiring of the extensive pairing and busing plan made famous in the *Swann* case for more than 20 years, Charlotte-Mecklenburg in 1992 launched a magnet school program, hoping to attract whites to downtown schools voluntarily, with racial balance maintained by quotas for acceptance. It was these quotas that were challenged, successfully, establishing one of the Fourth Circuit's rulings against race-conscious assignments *(Capacchione v. Charlotte-Mecklenburg Schools,* 2001). The school board adopted a new student assignment plan (in the fall of 2002) allowing families limited choice among schools, but which guaranteed most students the option of attending neighborhood schools.[21] The apparent result of this change in assignment plans was an increase in racial isolation. Whereas the percentage of black students attending 90-100% minority schools in 1995 was 4%; this share rose to 11% in 2001/02 and 23% in 2003/04. In the case of Charlotte-Mecklenburg, the change in assignment (2002) occurred immediately after the official ruling of unitary status (2001).

A similar district with a similar history yields a quite different sequence of dates. Winston-Salem/Forsyth, another county-wide district in North Carolina, operated a district-wide busing plan much like Charlotte's beginning in 1971, making its schools, like Charlotte's, very balanced. The district was declared unitary soon thereafter, in 1974, but continued nevertheless to operate its desegregation plan. In 1995 a newly elected school board voted to adopt a new approach to student assignment based, like Charlotte's, on parental choice. The plan divided the district into eight zones and would, when fully implemented, give each elementary and middle

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[21] Website of the Charlotte-Mecklenburg Schools, www.cms.k12.nc.us/discover/narrative.asp, last visited 1/31/03.

school a unique theme and allow parents to choose their children's school from among those within their own geographic zone. Although the school board expressed a wish that the resulting enrollment patterns would not produce large racial disparities across schools (in the form of a guideline that no school would deviate by more than 20 percentage points from the district's overall nonwhite percentage), no controls were put in place to limit parental choices. Indeed, the plan did lead to racial disparities among schools, which sparked complaints. After investigating these complaints, the Office for Civil Rights, in light of the Fourth Circuit decisions disallowing the use of race in assignment, officially gave its blessing to the plan in 2000, after the district pledged to create several district-wide magnet schools.[22] The resulting measure of racial isolation, like Charlotte's, showed increases. The percentage of black students attending 90-100% minority schools in the district rose from 6% in 1995 to 22% in 2001 and to 23% in 2003.

But unitary status has not always meant handing a district a free pass, as might be inferred from these two examples from North Carolina. To be sure, in some cases a court's declaration that a district is unitary has been by all appearances an official blessing with few strings attached. The unitary declarations covering such districts as Oklahoma City in 1991, Chatham County (Savannah) in 1994, DeKalb County (suburban Atlanta) in 1996, Muscogee County (Columbus, GA) in 1997, and the Florida districts of Dade (Miami), Duval (Jacksonville), and Hillsborough (Tampa) in 2001 were more or less unconditional terminations of formal, continuing oversight of a desegregation plan. In these cases, unitary status meant that the court had formally washed its hands of further involvement in the details of student assignment and would instead merely stand

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[22] Dawn Ziegenbalg, "Civil-Rights Inquiry into Schools Ending; No Major Redistricting Changes Expected," *Winston-Salem Journal*, January 7, 2000, p. A1; telephone conversation with Doug Punger, attorney for the Winston-Salem/Forsyth School Board, May 15, 2003.

by to adjudicate any new complaint alleging racial discrimination.[23] But in more than a few instances, unitary status has been granted only with strings attached. In these cases, unitary status was merely one component of a broader consent decree or other agreement in which the district commits itself to certain practices for some period. Nor do unitary declarations always coincide with the end of court supervision. Five examples serve to illustrate the varied meanings of unitary status.

First, Nashville-Davidson was ruled unitary in 1998, but only as part of a negotiated agreement that allowed the district to replace its cross-district busing plan and the accompanying racial goals for schools with a plan that allowed students to choose neighborhood schools or magnets but also obligated the district to spend some $200 million over the following five years on construction and renovation of schools, many in predominantly black neighborhoods.[24] Second, in Lee County (FL), a federal judge declared the district unitary in 1999, but did not end supervision until 2004. And these declarations were made only after the school district agreed to

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[23] To illustrate, the decision in Muscogee County stated: "The district court's conclusions that the school board has eliminated the vestiges of *de jure* segregation as far as practicable and that the school board has shown a good faith commitment to and compliance with the desegregation plan were not clearly erroneous. Accordingly, we affirm the district court's final dismissal and declaration that the school board has attained unitary status." *Lockett v. Muscogee Board of Education*, 111 F.3d 839 (1997). Other references are: Oklahoma City: *Dowell ex rel. Dowell v. Board of Educ.*, 778 F.Supp. 1144 (1991); Chatham County: *US and Stell v. Savannah-Chatham County Board of Education,* 860 F. Supp. 1563 (1994); DeKalb County: *Mills v. Freedman*, 942 F. Supp. 1449 (1996); Dade County: "Miami District Declared Unitary," *Education Week*, July 11, 2001; Duval: *NAACP v. Duval County*, 273 F.3d 960 (2001); Hillsborough: *Manning v. Board of Public Instruction of Hillsborough County,* 244 F.3d 927, (2001). The Dade County decision allowed the district to maintain race conscious programs until 2002.

[24] Kathleen Kennedy Manzo, "Curtain Falls on Desegregation Era in Nashville," *Education Week*, October 7, 1998; http://www.edweek.org/ew/vol-18/06deseg.h18. last visited 7/6/04.

consult with a Unitary School System Advisory Committee regarding certain future decisions, including changes in its student assignment plan and school opening or closings. The school district also committed itself to continuing a school choice plan that would keep minority populations in the bulk of its schools within 20 percentage points of the system average.[25] Third, Pinellas County (FL) was declared unitary by a federal district court in 2000, but only subject to the terms of a negotiated settlement that called for a seven-year transition from an existing attendance plan utilizing magnet schools and assignments designed to achieve racial balance to a choice plan that would eventually be unconstrained by racial controls.[26]

Fourth, as part of a settlement in 2003, the Fulton County (GA) school district agreed to continue its longstanding minority-to-majority transfer policy for nine years and to examine enrollments in advanced placement and foreign language courses in its predominantly black southern schools (Fulton Co., p.6). Fifth, a federal court's unitary declaration for East Baton Rouge was similarly made subject to an agreement, covering in this case the succeeding four school years. This agreement requires the district to continue its existing system of magnet schools, specifying a target racial composition of 55% black for them and appointing an independent overseer for the program, continue and actively recruit for its majority-to-minority

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[25] Dave Breitenstein, "'Children Have Changed Our Community" Lee Official Says," *Naples Daily News*, May 16, 2004; http://www.naplesnews.com, last visited 7/6/04.

[26] For the 2000/01 to 2002/03 years, the previous assignment plan would be continued; for the 2003/04 to 2006/07 years, a controlled choice plan would be implemented whereby schools would have no more than 42% black enrollments. U.S. District Court, Case No. 8:64-CV-98-T-23B. http://www.pinellas.k12.fl.us/usi/htm/FinalOrder.pdf
School Board of Pinellas County, Choice Plan, October 24, 2000
http://www.pinellas.k12.fl.us/USI/choiceplan.html

transfer policy, with rules for transfers stated in terms of specific racial compositions, provide free transportation for both of these programs, attempt to further desegregation in redrawing attendance lines, make additional expenditures for certain schools, and continue pre-kindergarten programs.[27] A sixth example, though not technically a unitary declaration, was the ending of federal oversight over the St. Louis district in 1999. There the court made this withdrawal subject to a detailed settlement, by which the district agreed to continue operating its group of magnet schools and the state agreed to continue funding the city-to-suburb transfer voluntary busing program and to finance the construction and renovation of schools in the district.[28]

Thus unitary status, or the ending of judicial oversight of a desegregation plan, has meant different things in different districts at different times. Nor can it be assumed that districts never subject to any desegregation order, such as Montgomery County, Maryland or Cumberland County, North Carolina, are not influenced by federal court rulings. As noted above, Montgomery County was the district to which one of the Fourth Circuit rulings regarding race-conscious school assignments applied. For districts not under a specific court order, school boards must worry about potential law suits or federal sanctions arising from the 1964 Civil Rights Act, by which the federal government can cut off funding to discriminating districts. To

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[27] For magnet schools the agreement specified a target racial composition of 55% black and 45% nonblack. It give preference to students nearby and who attend racially identifiable schools. "Final Settlement Agreement," U.S. District Court for the Middle District of Louisiana, Civil Action 56-1662-D-M3, July 16, 2003. See also website for U.S. Attorney, http://www.usdoj.gov/usao/lam/press/press0204.html.

[28] Hendrie, Caroline. 1999. "Settlement Ends St. Louis Desegregation Case." *Education Week* March 24, 1999. (http://www.edweek.org/ew/vol-18/28louis.h18)

recap, then, there is no one-to-one connection between unitary status and freedom to return to de facto segregation.

Because of the importance attached to unitary status in discussions of resegregation, we have endeavored to ascertain for each of the 100 districts analyzed in the current paper whether the district has been deemed unitary and, if so, when that declaration was made. For this purpose, we have drawn on a variety of sources, including published court decisions, district web pages, and news reports.[29]

V. The Impact of Court Rulings

We focus here on two main aspects of judicial rulings: the declaration of unitary status and whether or not a district is located in the Fourth Circuit and, hence, subject to that circuit's admonitions to eschew the use of race in student assignments. We begin with some simple trend analysis and then turn to a more complete multivariate model that permits us to isolate the effects of the court decisions from other changes.

Role of Fourth Circuit Decisions

The bottom panel of Table 2 above provides some initial insight into the role of the Fourth Circuit decisions, with attention to our two preferred measures of segregation, one that measures racial isolation and one that measures racial imbalance. If, as Boger (2000) argues, the admonitions in that circuit against race-based student assignments had teeth, one might expect

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[29] The years in which districts in our sample were declared unitary are listed in Appendix Table 1. A detailed summary of the sources used to make these designations is available at http://www.pubpol.duke.edu/people/faculty/clotfelter/.

segregation to rise more over the period in the Fourth Circuit than in other federal circuits. Indeed, the two districts with the largest increases in the segregation index over the period, Charlotte-Mecklenburg and Winston-Salem/Forsyth, are both in the Fourth Circuit. For the circuit as a whole the table entries confirm that pattern. During the 10-year period, racial isolation increased in all of the circuits identified, but it grew far faster in the Fourth Circuit (57 percent) than in the other circuits (10 to 33 percent). With respect to racial imbalance, as measured by the gap-based segregation index, only the Fourth Circuit exhibited an increase – and quite a substantial one at that – in its segregation index. In each of the other relevant federal court circuits, schools became less racially unbalanced over the 10-year period. Thus we have some initial evidence that the rulings in the Fourth District exacerbated segregation.

Unitary status

Our initial trend analysis of unitary status leads to a different conclusion. For this purpose we compared the trend in the proportion of students attending schools in districts deemed to unitary to the trends in segregation indexes. The bottom panel of Table 1 shows that by 2003 a far higher percentage of students in our sample districts were attending schools in districts declared unitary than in 1993, and Figure 6 shows how the number of districts so designated increased year by year. Between 1993 and 1999, the fraction of districts deemed unitary, weighted by enrollment, increased gradually, from about 12% to just over 20%. Starting in 1999 and continuing over the next three years, the rate of growth increased markedly, with the (weighted) share of districts with unitary status increasing from just over 20% to 45%. This clearly nonlinear pattern contrasts with the smoother trends exhibited by segregation indices in

Figure 1. Were unitary status responsible for a large portion of the increases in segregation, we would expect a break in trend coinciding with or following closely the surge in unitary status declarations after 1999. But the trends in segregation are not consistent with this supposition; indeed, with one exception our measures of segregation are not even rising. At first blush, therefore, we find little reason to blame judicial decisions relating to unitary status for any rise in segregation levels. This conclusion must be tempered, however, considering that the counterfactual is not clearly specified and the possibility that any effects of unitary status might occur with a substantial lag. For these reasons we turn to a more comprehensive multivariate analysis.

Multivariate Regression Analysis

Beyond enabling us to simultaneously examine the impact of multiple explanatory factors, the analysis in this section expands on the simple examination of trends above by introducing cross-sectional variation in segregation. As Figures 4 and 5 indicate, districts differed widely in their experiences over time.

The ordinary least squares regression estimates in Table 3 use three segregation measures as dependent variables: a racial isolation measure (the fraction of black students attending schools with nonwhite shares between 90 and 100%) and two racial imbalance measures (the gap-based measure of segregation between whites and nonwhites and the entropy index).[30] The

[30] The sample covers years from 1993/94 to 2003/04, with these exceptions necessitated by missing data in the Common Core of Data. Data for Georgia districts in 1992/93 were missing, which necessitated omitting observations in 1993/94, owing to the use of lagged variables. School-level data for Tennessee districts were missing in 1997/98 and 1999/2000 to 2002/03, making it impossible to calculate segregation measures for those years.

specifications in columns (1), (2) and (3) include only year fixed effects, to illustrate the overall time trend in each segregation measure. In all three columns, none of the coefficients on individual year indicator variables is statistically distinguishable from zero, indicating that we cannot reject the hypothesis that differences in segregation between 1993 and any subsequent year are due to random fluctuations in the data.[31] In general, the coefficients confirm the patterns shown in Figure 1: the racial isolation measure trends upward over time, while there is no discernible trend in either measure of racial imbalance.

In columns (4) through (6), we add a number of controls for school district characteristics, including an indicator variable for whether a district had been declared unitary by a particular year. Comparison of columns (1) and (4) reveals that this set of control variables is sufficient to explain the upward trend in racial isolation over time. The only statistically significant coefficient on a time-varying variable in this regression pertains to the lagged nonwhite share of enrollment in the district. As suggested by much of the simple evidence presented above, the best explanation for the increasing proportion of black students attending overwhelmingly nonwhite schools is the relative increase in the nonwhite, non-black population in the districts they attend.

We find significant associations between segregation and several time-invariant control variables. Physically large districts tend to be more segregated, holding enrollment levels constant. This may reflect the desire in lower density districts to reduce overall transportation costs by operating more schools. Operating more schools, in turn, enables greater separation of

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[31] Nor do F-tests of the coefficients in columns 1 and 2 allow us to reject the hypothesis that either racial isolation or racial imbalance was the same in all years.

students by race. Districts with a greater proportion of nonwhite students also tend to be more segregated by either measure. Such a pattern would occur, for example, if "white flight" tends to occur when the nonwhite share in a white student's school exceeds a certain threshold, and districts take explicit or implied actions to ensure that this threshold is not exceeded (Clotfelter, Ladd and Vigdor 2003).

Coefficients on judicial circuit indicator variables show no evidence of persistently higher segregation levels in the Fourth Circuit. In fact, school districts in the Fourth Circuit have the lowest proportion of black students attending 90-100% nonwhite schools, controlling for other factors. It is important to note that this coefficient tests only for a permanent difference in segregation *levels* across appeals court circuits. In Table 2 above, we found suggestive evidence of differential *trends* in segregation across circuits. We test the hypothesis of differential trends in a regression framework below.

As shown in column (4), unitary status is not significantly related to racial isolation. In contrast, we find evidence in columns (5) and (6) that districts covered by a unitary status ruling tend to have higher degrees of racial imbalance across schools. The statistically significant positive coefficient in (5) indicates that such districts tend to have white-nonwhite segregation indices almost four percentage points, roughly one-third of a standard deviation, higher than otherwise equivalent districts without unitary status. The estimated effect of unitary status on the entropy measure is also statistically significant, but smaller, roughly one-fifth of a standard deviation. Whether these findings represent a causal effect of unitary status or simply a positive correlation between being unitary and having other factors that raise segregation is impossible to say.

Table 4 presents results from two alternative specifications that expand the set of control variables to include some related to time. To examine the possibility that the Fourth Circuit's prohibition of race-conscious school assignments might have led to greater segregation over time, in columns (1) through (3) we interact the Fourth Circuit indicator with a linear time trend. The main linear time trend effect in this specification is subsumed by the year fixed effects. The results in columns (2) and (3) show that racial imbalance in school districts within the Fourth Circuit increased significantly over time relative to similar districts served by other federal circuits. A similar result does not hold when the racial isolation index is substituted for the measure of imbalance (column (1)). Because it was not until 1999 that the Fourth Circuit Court of Appeals handed down their decisions prohibiting race-conscious student assignments, one would not expect any effort before that year except to the extent the decision was anticipated. When we added additional variables to allow for a change in circuit effect in that year, however, we obtained statistically insignificant estimated coefficients, leaving us unpersuaded that these decisions were responsible in any increase in segregation by the end of our sample period.

Columns (4) through (6) test for a potential lagged impact of unitary status rulings, by replacing the single unitary status indicator variable with a series of four mutually exclusive indicators, which indicate whether a district was declared unitary in the year of observation, one year earlier, two years earlier, or three or more years earlier. As in previous specifications, there is no significant impact of unitary status on our measure of racial isolation, shown in column (4). The last two regressions in this table, however, show significant evidence of a latency period of at least three years between the declaration of unitary status and a significant impact on our

measure of racial imbalance. In contrast, more recent unitary declarations are not associated with higher levels of segregation.

There are two reasons to be cautious in interpreting the unitary status results in Tables 3 and 4. First, we have only a limited number of district-specific control variables available. The positive effect of unitary status in Table 3 and for unitary status after three years in Table 4 are identified largely by comparing districts that have had unitary status for the duration of our panel to districts that never received unitary status. Differences between these types of districts could generate significant variation in racial imbalance even in the absence of court rulings. A second reason is the potential for serial correlation in the outcome measure of interest. In a panel framework such as ours, we must be attuned to the possibility of spurious difference-in-difference estimates rooted in serial correlation in outcomes.

To address both of these concerns, we re-estimated equations (4)-(6) in Tables 3 and 4 using district fixed effects. By so doing, we restricted our ability to observe an association between segregation and unitary status to those districts in which unitary status actually changed during the sample period or shortly before. These fixed-effects regressions appear in Table 5. As in the two previous tables, equation (1) shows that the measure of racial isolation is unrelated to unitary status. Equations (2) and (3) in the table show that the addition of district fixed effects greatly attenuates the association with unitary status, the estimated coefficient being about half the size of the corresponding coefficient in the equation without fixed effects and being statistically significant only in equation (3). The second set of equations allows for the same type of lagged effect of unitary status as shown in Table 4. As in those previous equations, there is no statistically significant association between any of the three measures of segregation and unitary

status declarations in the current year, in the previous year, or in the year before that. However, for all three of the measures unitary status declarations three or more years before do show a statistically significant association with the designated measures of segregation. These equations suggest again that unitary status is associated with increased segregation, but the effect appears only with a lag. These findings are broadly consistent with those of Lutz (2004). Employing a model that allows for more flexibility in the time pattern of effects, he finds that the end of court-ordered desegregation in a district was followed by a gradual linear increase in segregation.[32]

This delayed response to unitary status is very much in keeping with the common tendency for courts to attach conditions when declaring school districts to be unitary. As our review of specific cases indicated, it was typical for the end of court supervision to be accompanied by an agreement by the school district to continue certain specified practices for a period of time that would have the effect of maintaining some degree of racial balance in enrollments. Only when the period covered by those agreements came to an end were districts really free to chart their own course regarding student assignments, including the return to neighborhood school assignments and hence to racially imbalanced schools.

VI. Conclusion

Analysis of the 100 largest districts in the South and Border regions shows unmistakably that public schools in these regions have become more nonwhite over the past ten years. They have not, however, witnessed a systematic increase in the segregation of white students. Rather,

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[32] Lutz's (2004) paper differs in several other ways from ours, including the use of slightly different measures of segregation and a sample that is larger and which includes districts outside of the South and Border states.

black and white students alike now attend schools with greater proportions of Hispanic, Asian, and students of other races. This development creates the impression of increasing segregation when segregation is measured by one widely-used index – the proportion of blacks attending 90-100% nonwhite schools – but the rise in this measure is the result of demographic change rather than any growing racial imbalance among schools. As a consequence of the increasing racial diversification of American schools, this particular measure of racial isolation may have lost much of its meaning as a measure of racial segregation. All of the other school segregation measures examined in this paper point to a different conclusion – that the average level of segregation in large Southern school districts has not changed much over the last decade.

Averages are not the whole story, however. One of our main objectives in this paper has been to investigate the effect of unitary status declarations by federal courts. A fear has been that such a declaration essentially gives a district permission to base school assignments solely on neighborhood residence, which will tend to make schools more racially segregated, given the segregation in existing housing patterns. The case of Charlotte-Mecklenburg – where a neighborhood assignment plan and resegregation did indeed follow quickly on the heels of a unitary declaration – appears to offer graphic justification for this fear. In our regression analysis examining the experience of 100 districts over 10 years, we found that unitary status is in fact associated with increased white-nonwhite segregation, in the sense of racial imbalance. Our estimates suggest that, for the districts serving nearly half of all students in the sample where courts have issued unitary status declarations, segregation levels were higher than in other districts. But this result is largely driven by higher segregation rates in districts that were declared unitary before 1993. For only one of our two measures of racial imbalance do we observe any

effect of unitary status declarations during our sample period, and the size of that effect is only about as half as large as that implied by previous specifications. The absence of a contemporaneous effect could be due to the tendency of such declarations to be accompanied by agreements that placed constraints on the freedom of school districts to return to neighborhood school assignment or by other factors that delay the effect. We also find that segregation as racial imbalance increased in districts governed by the Fourth Circuit, the judicial circuit that has most prominently ruled against racially-conscious student assignments, but that effect is not restricted to the period after the relevant rulings.

In all but one of the regressions explaining the percentage of blacks in 90-100% nonwhite schools, neither unitary status nor Fourth Circuit jurisdiction has any explanatory power, suggesting, as above, that this measure is driven largely by the steady increase in the nonwhite percentage in the public school population, not by increases in racial imbalance. Only in the fixed-effect regression using lags is this measure associated at standard levels of statistical significance with unitary status.

A final caveat is worth re-emphasizing. In this paper, we base our measures of segregation and racial isolation on disparities between schools in districts. Our analysis measures neither disparities between districts nor disparities within schools. Nor do our measures account for segregation arising from private school enrollment. Our previous research suggests that the first two of these sources of segregation is generally quite important and that the third can be significant in some localities.[33] Although it considers only segregation across schools in public school districts, however, the current paper is quite relevant to the current

[33] See Clotfelter, Ladd, and Vigdor (2003) and Clotfelter (2004).

concern over resegregation and the role of federal court rulings, for it finds some justification for fears that the two are linked. Participants in these debates need to be wary of the evidence they cite, however, especially when using statistics that reflect racial isolation rather than racial imbalance.

References

Armor, David J. 1995. *Forced Justice: School Desegregation and the Law.* New York: Oxford University Press.

Boger, John Charles, "Willful Colorblindness: The New Racial Piety and the Resegregation of Public Schools," *North Carolina Law Review* 78 (September 2000), 1719-1796.

Clotfelter, Charles T. 1999. "Public School Segregation in Metropolitan Areas," *Land Economics* 75 (November), 487-504.

Clotfelter, Charles T. 2004. *After Brown: The Rise and Retreat of School Desegregation.* Princeton, N.J.: Princeton University Press.

Clotfelter, Charles T., Helen F. Ladd, and Jacob L. Vigdor. 2003. "Segregation and Resegregation in North Carolina's Public School Classrooms," *North Carolina Law Review* 81 (May), 1463-1511.

"The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement," *Minnesota Law Review* 37 (1953), 427-439.

Frankenberg, Erica and Chungmei Lee. 2002. "Race in American Public Schools: Rapidly Resegregating School Districts," The Civil Rights Project, Harvard University, August.

Frankenberg, Erica, Chungmei Lee, and Gary Orfield, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* Civil Rights Project, January 2003.

Fulton County Schools. 2003. *Annual Report to the Community.* http://www.fulton.k12.ga.us/ez/detail.asp?q=160, 7/6/04.

Glaeser, E.L. and J.L. Vigdor. "Racial Segregation: Promising News." in *Redefining Urban & Suburban America: Evidence from Census 2000, Volume I,* B. Katz and R. Lang, eds., pp.211-234. Brookings Institution Press, 2003.

Iceland, John. 2002. "Beyond Black and White: Metropolitan Residential Segregation in Multi-Ethnic America," paper presented at the American Sociological Association meetings, August.
www.census.gov/hhes/www/housing/resseg/pdf/beyond_black_and_white.pdf, last visited 11/27/04

Logan, John. 2004. "Resegregation in American Public Schools? Not in the 1990s." Report, Lew Mumford Center for Comparative Urban and Regional Research, University at Albany, April 26.

Lutz, Byron F., "After *Brown*: The Effects of the End of Court-Ordered Desegregation," unpublished paper, MIT Department of Economics, November 2004.

Massey, Douglas S. and Nancy A. Denton, "The Dimensions of Residential Segregation," *Social Forces* 67 (December 1988), 281-315.

NAACP Legal Defense and Educational Fund, Inc., Herschel Lee Johnson, ed. *2000 Annual Report.* New York: NAACP. http://www.naacpldf.org/content/pdf/pubs/annual/2000_Annual_Report.pdf (7/7/2004).

Orfield, Gary, and Susan E. Eaton. 1996. *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education.* New York: The New Press.

Orfield, Gary and Nora Gordon, "Schools More Separate: Consequences of a Decade of Resegregation," unpublished paper, Harvard University, July 2001.

Orfield, Gary and Chungmei Lee. 2004. "Brown at 50: King's Dream or Plessy's Nightmare?" The Civil Rights Project, Harvard University, January.

Orfield, Gary and Frank Monfort. 1992. *Status of School Desegregation: The Next Generation.* Cambridge, MA: Metropolitan Opportunity Project, Harvard University. March.

Theil, Henri. 1972. *Statistical Decomposition Analysis.* Amsterdam: North-Holland Publishing Co.

Cases

Board of Education of Oklahoma v. Dowell, 498 U.S. 237 (1991).
Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
Capacchione v. Charlotte-Mecklenburg Schools, 57 F. Supp. 2d 228 (W.D.N.C. 1999).
Comfort v. Lynn School Committee, 28 F. Supp. 2d 328 (D. Mass. 2003).
Eisenberg v. Montgomery County Public Schools, 197 F.3d 123 (4th Cir. 1999).
Freeman v. Pitts, 503 U.S. 467 (1992).
Green v. County School Board of New Kent County, 391 U.S. 430 (1968).
Grutter v. Bollinger, 71 U.S.L.W. 4498 (2003).
McFarland v. Jefferson Co. Public Schools, 330 F. Supp. 2d 834 (W.D. Ky. 2004).
Parents Involved in Community Schools v. Seattle School District, No. 1, 377 F. 3d 949 (9th Cir. 2004)
Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

Tuttle v. Arlington County School Board, 195 F.3d 698 (4th Cir. 1999).

Table 1. Mean Values of Variables, Weighted by Enrollment, 100 Districts

	1993/94		2003/04	
Variable	Mean	Std. dev.	Mean	Std. dev.
Segregation				
%B in 90-100%NW schools	0.269	0.303	0.341	0.331
%B in 90-100%B schools	0.170	0.233	0.153	0.231
Black-black exposure	0.464	0.245	0.464	0.237
White-nonwhite segregation	0.201	0.120	0.200	0.101
Dissimilarity index (W-NW)	0.413	0.151	0.426	0.142
Entropy	0.197	0.121	0.195	0.103
District characteristics				
Average district enrollment	88,908	66,188	107,790	82,082
Average white enrollment	37,352	24,448	36,713	26,083
Percent nonwhite	0.503	0.251	0.601	0.225
%NW: 0 to less than 25%	0.170	0.429	0.048	0.465
%NW: from 25 to less than 50%	0.416	0.493	0.324	0.468
%NW: from 50 to less than 75%	0.141	0.349	0.337	0.473
%NW: from 75 to 100%	0.272	0.445	0.291	0.454
Average district land area*	615	543	639	549
Type				
Central city*	0.248	0.483	0.208	0.488
Consolidated*	0.417	0.493	0.426	0.494
Suburban*	0.335	0.472	0.367	0.482
Region				
Border state*	0.159	0.366	0.143	0.350
Southern state*	0.841	0.366	0.857	0.350
Judicial characteristics				
Unitary	0.121	0.326	0.446	0.497
Fourth Circuit*	0.241	0.415	0.244	0.407
Fifth Circuit*	0.272	0.445	0.260	0.439
Eleventh Circuit*	0.374	0.484	0.402	0.490
All other federal circuits*	0.113	0.316	0.094	0.292
Unitary status before 1993*	0.176	0.476	0.161	0.477
Unitary status in '93-'03*	0.288	0.453	0.295	0.456
Never became unitary*	0.535	0.499	0.544	0.498

Source: Common Core of Data, unpublished data from districts, and authors' calculations, for the 100 largest school districts in the South and Border in 2001/02. See Appendix 1A for a list of the districts.

* Difference across years are due to difference in weights used in the averages.

11/30/04

Table 2. Mean Values of Selected Measures, for Selected Categories, 100 Districts

Sample	Number of districts	Average growth rate of whites 2003-1993	1993/94 %NW	Racial isolation: %B in 90-100% NW schools 1993/94	Racial isolation: %B in 90-100% NW schools 2003/04	Racial imbalance: W-NW segregation 1993/94	Racial imbalance: W-NW segregation 2003/04	Entropy 1993/94	Entropy 2003/04
Full sample	100	-0.017	0.503	0.269	0.341	0.201	0.200	0.197	0.195
Region									
Border	15	-0.026	0.517	0.293	0.370	0.228	0.218	0.193	0.192
South	85	-0.015	0.501	0.264	0.336	0.196	0.197	0.218	0.213
Type		***	***	***	***	***	*	***	***
Central city	22	-0.044	0.771	0.585	0.660	0.268	0.244	0.304	0.272
Consolidated	36	-0.007	0.448	0.215	0.299	0.196	0.195	0.180	0.191
Suburban	42	-0.013	0.374	0.101	0.210	0.158	0.180	0.140	0.156
% nonwhite, 93/94		***	***	***	***	***		***	
0-25%	24	0.008	0.185	0.019	0.034	0.122	0.159	0.121	0.198
25-50%	39	-0.004	0.371	0.121	0.200	0.190	0.202	0.149	0.222
50-75%	19	-0.034	0.602	0.258	0.399	0.208	0.214	0.183	0.192
75-100%	18	-0.052	0.853	0.655	0.817	0.264	0.220	0.326	0.121
Federal Circuit		**	**	**					
Fourth	24	-0.010	0.413	0.133	0.210	0.173	0.203	0.152	0.166
Fifth	32	-0.030	0.629	0.362	0.431	0.191	0.181	0.211	0.190
Eleventh	32	-0.009	0.466	0.262	0.351	0.211	0.203	0.207	0.206
All others	12	-0.031	0.503	0.353	0.390	0.255	0.228	0.230	0.235

Source: Common Core of Data, unpublished data from districts, and authors' calculations, for the 100 largest school districts in the South and Border in 2001/02. See Appendix 1A for a list of the districts. Means are weighted by district enrollment.

*; **; *** : Means are different from each other within the category at 10% level; 5% level and 1% level, respectively.

Table 3. Regressions Explaining Segregation and Racial Isolation, Pooled Sample

	(1)	(2)	(3)	(4)	(5)	(6)
Independent variable	%B 90-100% NW	W-NW Seg.	Entropy	%B90-100%NW	W-NW seg.	Entropy
Years (omitted 1993)						
1994	0.008	0.001	-0.000	0.001	0.008	0.003
	[0.047]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
1995	0.015	0.001	0.001	-0.002	0.007	0.001
	[0.047]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
1996	0.022	0.002	0.004	-0.008	0.007	0.003
	[0.047]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
1997	0.026	-0.003	-0.004	-0.011	0.002	-0.004
	[0.047]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
1998	0.036	0.003	0.002	-0.007	0.008	-0.000
	[0.046]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
1999	0.040	-0.002	-0.002	-0.011	0.003	-0.005
	[0.047]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
2000	0.047	-0.001	-0.002	-0.011	0.002	-0.007
	[0.047]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
2001	0.056	-0.002	-0.002	-0.014	0.000	-0.011
	[0.046]	[0.016]	[0.016]	[0.023]	[0.015]	[0.012]
2002	0.060	-0.001	-0.002	-0.019	-0.001	-0.012
	[0.046]	[0.016]	[0.016]	[0.024]	[0.015]	[0.012]
2003	0.070	-0.004	-0.005	-0.017	-0.006	-0.018
	[0.046]	[0.016]	[0.016]	[0.024]	[0.016]	[0.012]

Lagged log(enrollment)	—	—	—	-0.005 [0.011]	-0.001 [0.007]	0.003 [0.006]
Log(land area)	—	—	—	0.066*** [0.008]	0.039 [0.005]	0.041*** [0.004]
Lagged %NW District	—	—	—	0.972*** [0.029]	0.157*** [0.019]	0.230*** [0.015]
Type (omitted central city)						
Consolidated	—	—	—	-0.158*** [0.019]	-0.039*** [0.012]	-0.076*** [0.010]
Suburban	—	—	—	-0.101*** [0.107]	-0.021* [0.011]	-0.043*** [0.009]
Federal circuit (omitted Fifth)						
Fourth Circuit	—	—	—	-0.034** [0.014]	0.007 [0.009]	-0.005 [0.007]
Eleventh Circuit	—	—	—	0.034** [0.015]	0.023** [0.010]	0.020*** [0.008]
All Others	—	—	—	0.048** [0.019]	0.042*** [0.012]	0.043*** [0.010]
Unitary status	—	—	—	0.015 [0.013]	0.038*** [0.009]	0.022*** [0.007]
Observations	1070	1070	1070	1061	1061	1061
R^2	.00	.00	.00	.72	.20	.41

Note: No GA observations for 2003 due to missing lag of NW%
11/4/04

Table 4. Additional regressions specifications, with time trend (Year-1992) variable

Independent variable	(1) %B 90-100% NW	(2) W-NW Seg.	(3) Entropy	(4) %B90-100%NW	(5) W-NW seg.	(6) Entropy
Lagged log(enrollment)	-0.005	-0.001	0.003	-0.004	-0.007	0.005
	[0.011]	[0.007]	[0.006]	[0.011]	[0.007]	[0.006]
Log(land area)	0.066***	0.039	0.041***	0.066***	0.038***	0.040***
	[0.008]	[0.005]	[0.004]	[0.008]	[0.005]	[0.004]
Lagged %NW District	0.972***	0.157***	0.230***	0.973***	0.159***	0.231***
	[0.029]	[0.019]	[0.015]	[0.029]	[0.019]	[0.015]
Type (omitted central city)						
Consolidated	-0.158***	-0.039***	-0.076***	-0.154***	-0.031**	-0.072***
	[0.019]	[0.012]	[0.010]	[0.019]	[0.013]	[0.010]
Suburban	-0.101***	-0.021*	-0.043***	-0.099***	-0.015	-0.040***
	[0.107]	[0.011]	[0.009]	[0.017]	[0.011]	[0.009]
Federal circuit (omitted Fifth)						
Fourth Circuit	-0.031	0.024	-0.021	-0.035**	0.005	-0.007
	[0.026]	[0.017]	[0.013]	[0.014]	[0.009]	[0.007]
Eleventh Circuit	0.034**	0.024**	0.020***	0.035**	0.025**	0.021***
	[0.015]	[0.010]	[0.008]	[0.015]	[0.010]	[0.008]
All Others	0.048**	0.041***	0.043***	0.049**	0.045***	0.044***
	[0.019]	[0.012]	[0.009]	[0.019]	[0.013]	[0.010]
Unitary status	0.015	0.039***	0.022***	—	—	—
	[0.013]	[0.009]	[0.007]			

Fourth Circuit*Linear time trend (Year-1992)	-0.001 [0.004]	0.005** [0.002]	0.003 [0.002]	—	—	—
Declared unitary this year	—	—	—	0.005 [0.035]	-0.005 [0.023]	0.001 [0.018]
Declared unitary one year ago	—	—	—	0.001 [0.039]	-0.005 [0.025]	-0.003 [0.020]
Declared unitary two years ago	—	—	—	-0.027 [0.040]	-0.003 [0.026]	-0.001 [0.021]
Declared unitary three or more years ago	—	—	—	0.022 [0.015]	0.053*** [0.010]	0.029*** [0.008]
Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1061	1061	1061	1061	1061	1061
R^2	.72	.20	.41	.72	.20	.41

Note: No GA observations for 2003 due to missing lag of NW%

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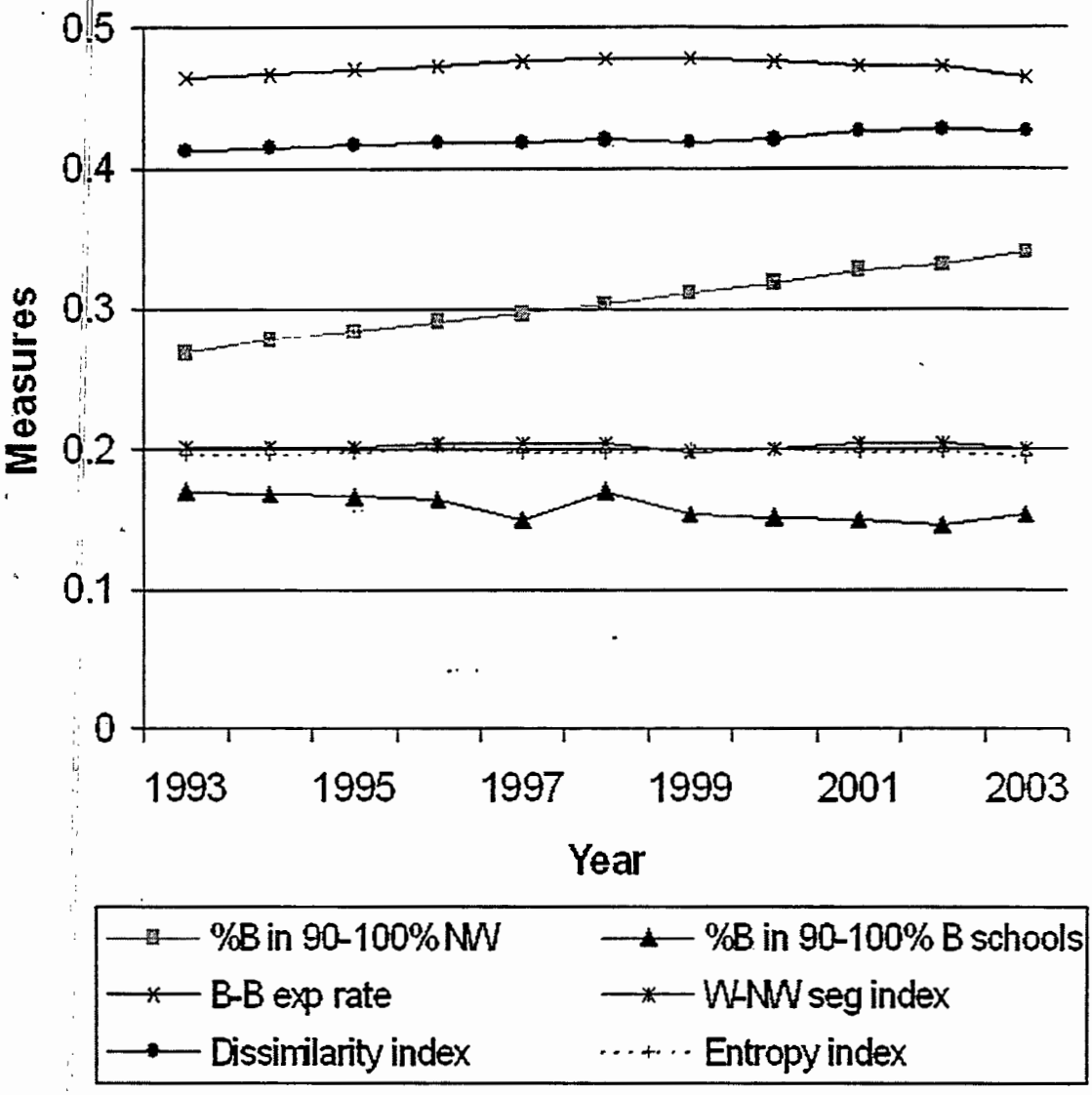
Table 5: Regressions Explaining Segregation and Racial Isolation, Pooled Sample with District Fixed Effects

	(1)	(2)	(3)	(4)	(5)	(6)
	%B 90-100%NW	W-NW seg.	Entropy	%B 90-100%NW	W-NW seg.	Entropy
Lagged log(enrollment)	-0.172*** [0.027]	0.044*** [0.013]	0.011 [0.012]	-0.169*** [0.027]	0.045*** [0.013]	0.013 [0.012]
Lagged %NW	0.762*** [0.078]	0.004 [0.038]	0.087** [0.035]	0.782*** [0.077]	0.015 [0.038]	0.096*** [0.035]
Unitary status	0.014 [0.009]	0.004 [0.005]	0.011*** [0.004]	—	—	—
Unitary status current year	—	—	—	-0.001 [0.012]	-0.006 [0.006]	0.003 [0.006]
Unitary status past year	—	—	—	0.015 [0.014]	0.002 [0.007]	0.009 [0.006]
Unitary status two years ago	—	—	—	0.004 [0.014]	0.009 [0.007]	0.012* [0.006]
Unitary status three or more years ago	—	—	—	0.055*** [0.013]	0.022*** [0.007]	0.030*** [0.006]
N	1061	1061	1061	1061	1061	1061
R^2	.48	.04	.31	.50	.07	.31
Year fixed effects?	Yes	Yes	Yes	Yes	Yes	Yes

11/24/04

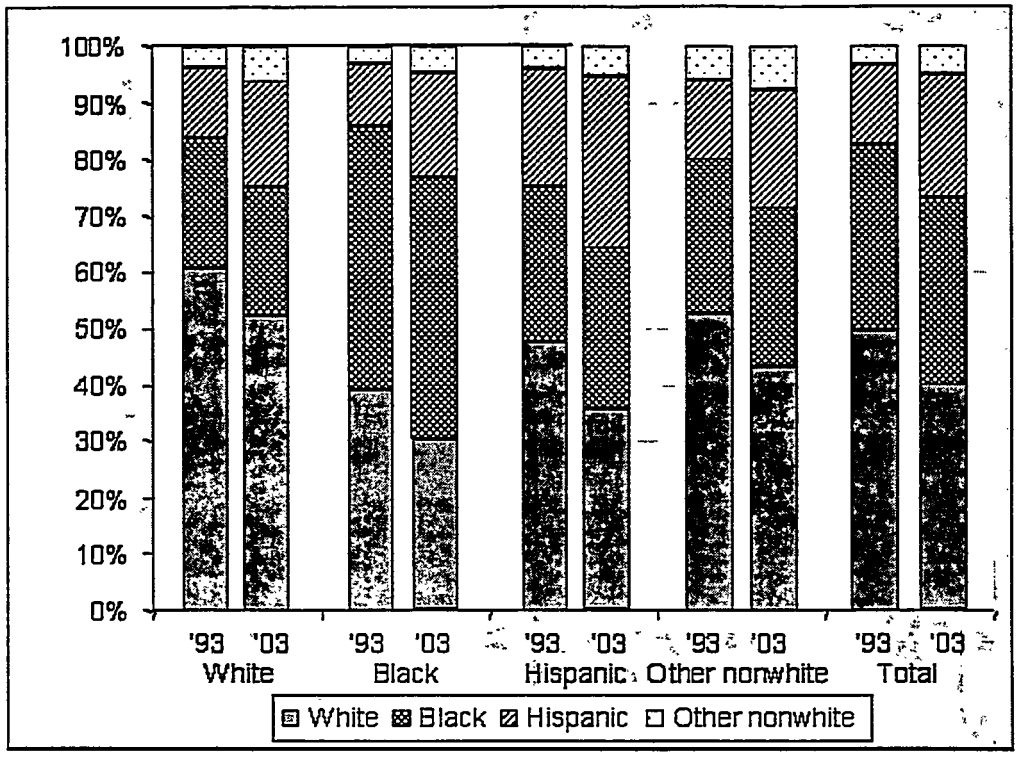
Figure 1. Measures of Segregation, Isolation, and Interracial Exposure, 100 Districts, 1993/94 to 2003/04.



Note: Data interpolated for 5 districts in TN due to missing data in 1997, 1999-2002.

11/30/04

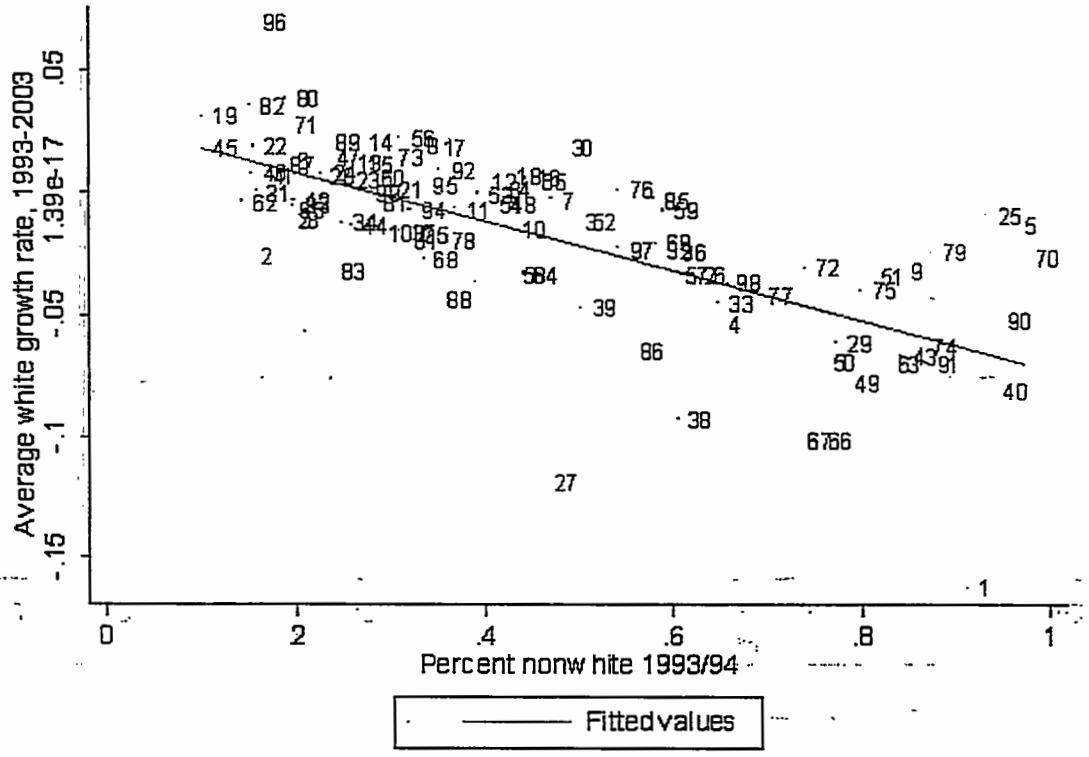
Figure 2. Exposure Rates by Race and Overall Racial Composition, 100 Districts, 1993/94 and 2003/04



Source: See Table 1.

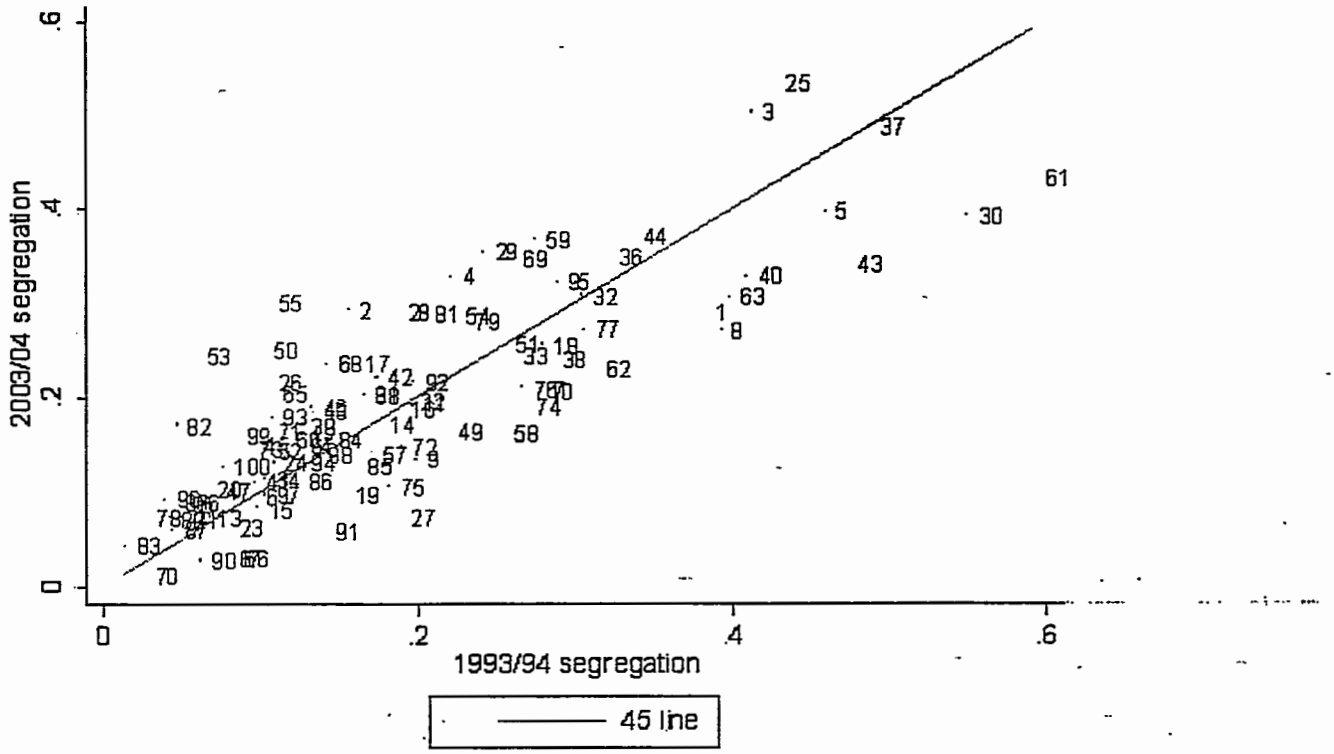
Note: Each of the first eight bars gives the racial composition for the school attended by the typical student of each indicated racial group for the indicated year. The last two bars give the overall racial composition of schools in the 100 districts.

Figure 3. Racial Composition and White Growth Rate, 1993/94 – 2003/04



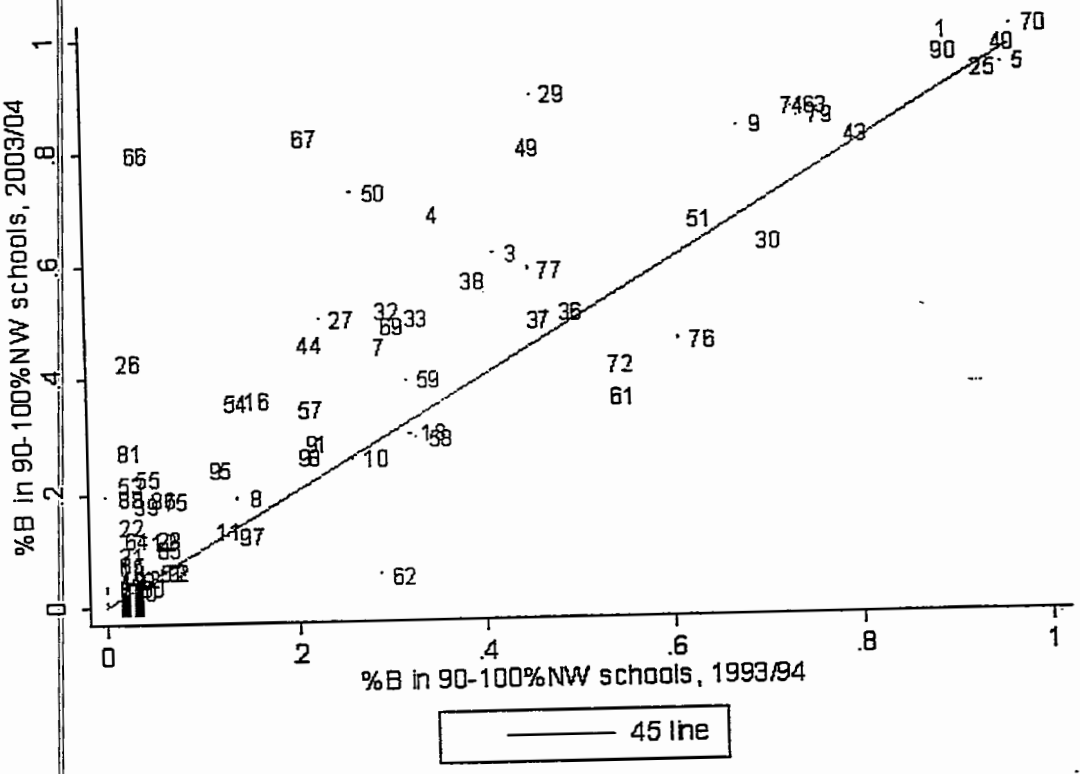
Source: See Table 1

Figure 4. White-nonwhite Segregation Index, 1993/94 and 2003/04



Source: See Table 1

Figure 5. Percentage of Black Students in 90-100% Nonwhite Schools, 1993/94 and 2003/04



Source: See Table 1

Figure 6. Districts in Sample with Unitary Status (fraction of total enrollment)

Source: See text

Appendix Table 1. 100 Largest School Districts in South and Border States, 2003/04.

State	District	Obs. #	Enrollment	Percent nonwhite (%)	Segregation index	Dissimilarity index	Percentage black students in schools 90-100% nonwhite (%)	Entropy measure	Unitary status
Alabama	Birmingham City	01	34,377	98.1	0.291	0.653	99.1	.341	
	Jefferson Co.	02	38,631	30.7	0.293	0.468	5.4	.244	
	Mobile Co.	03	64,975	54.1	0.503	0.646	61.6	.432	1997
	Montgomery Co.	04	32,521	78.1	0.329	0.614	68.7	.310	
DC	D.C. Public Schools	05	58,075	95.4	0.397	0.854	93.5	.448	
Florida	Brevard Co.	06	75,800	24.5	0.096	0.285	0.0	.095	
	Broward Co.	07	271,353	64.5	0.210	0.393	45.3	.194	1994
	Collier Co.	08	38,347	50.5	0.272	0.438	18.8	.180	
	Dade Co.	09	358,173	89.9	0.136	0.456	83.3	.330	2001
	Duval Co.	10	123,786	53.2	0.207	0.358	25.5	.174	2001
	Escambia Co.	11	44,572	42.4	0.193	0.353	13.4	.146	
	Hillsborough Co.	12	181,504	53.9	0.161	0.339	11.7	.136	2001
	Lee Co.	13	64,758	39.4	0.076	0.246	0.0	.082	2004
	Manatee Co.	14	41,843	37.5	0.172	0.338	7.0	.116	
	Marion Co.	15	39,983	34.6	0.084	0.236	1.2	.084	1995
	Orange Co.	16	168,334	60.4	0.190	0.369	36.4	.185	
	Osceola Co.	17	43,874	59.2	0.236	0.416	2.0	.132	
	Palm Beach Co.	18	171,848	56.5	0.256	0.448	30.3	.202	2002
	Pasco Co.	19	55,859	17.4	0.099	0.277	5.2	.091	
	Pinellas Co.	20	119,948	31.6	0.105	0.296	0.0	.095	2000
	Polk Co.	21	80,982	40.2	0.073	0.215	0.0	.077	2000
	Sarasota Co.	22	39,273	23.4	0.197	0.367	14.1	.162	
	Seminole Co.	23	64,192	36.3	0.063	0.209	0.0	.055	
	Volusia Co.	24	63,383	29.9	0.132	0.309	0.0	.148	
Georgia	Atlanta City	25	51,315	92.8	0.534	0.847	92.4	.479	1975
	Chatham Co.	26	33,364	71.7	0.218	0.440	43.5	.189	1994

	Clayton Co.	27	49,854	88.3	0.074	0.321	50.3	.097	
	Cobb Co.	28	100,999	44.4	0.292	0.479	12.2	.246	
	DeKalb Co.	29	96,875	89.8	0.355	0.741	89.1	.405	1996
	Fulton Co.	30	73,138	57.4	0.392	0.582	62.8	.350	2003
	Gwinett Co.	31	128,386	49.6	0.205	0.384	9.3	.130	
	Muscogee Co.	32	32,076	67.0	0.309	0.541	51.8	.242	1997
	Richmond Co.	33	32,969	76.4	0.244	0.492	50.4	.204	
Kentucky	Fayette Co.	34	32,624	32.8	0.114	0.295	0.0	.109	
	Jefferson Co.	35	92,694	42.6	0.088	0.250	0.0	.069	2000
Louisiana	Caddo Parish	36	43,209	63.6	0.351	0.568	51.1	.309	2001
	Calcasieu Parish	37	31,096	35.3	0.488	0.615	49.5	.396	
	East Baton Rouge Parish	38	44,876	79.2	0.242	0.531	56.6	.245	2003
	Jefferson Parish	39	49,739	64.6	0.171	0.352	18.1	.144	
	Orleans Parish	40	64,461	96.4	0.329	0.768	97.0	.366	
	St. Tammany Parish	41	34,218	20.3	0.111	0.319	0.0	.105	
Maryland	Anne Arundel Co.	42	73,262	27.5	0.223	0.424	5.2	.160	
	Baltimore City	43	91,738	90.7	0.342	0.676	81.2	.368	
	Baltimore County	44	108,792	44.1	0.371	0.523	45.9	.281	
	Frederick Co.	45	38,519	15.8	0.150	0.434	0.0	.133	
	Harford Co.	46	40,015	22.1	0.190	0.475	0.0	.165	
	Howard Co.	47	46,516	34.5	0.102	0.269	0.0	.069	
	Montgomery Co.	48	136,915	55.1	0.185	0.363	4.9	.124	
	Prince George's Co.	49	137,177	91.9	0.166	0.532	80.1	.237	2002
Missouri	Kansas City School District 33	50	30,472	85.7	0.251	0.523	72.7	.317	2003
	St. Louis City	51	37,142	84.9	0.258	0.599	66.8	.294	1999*
N Carolina	Cumberland Co.	52	53,584	59.9	0.143	0.333	6.1	.090	
	Forsyth-Winston-Salem Co.	53	46,354	49.7	0.244	0.411	21.7	.184	1974
	Guilford Co.	54	66,733	54.8	0.286	0.458	35.7	.198	
	Charlotte-Mecklenburg	55	113,729	58.6	0.302	0.490	22.5	.192	2001
	Wake Co.	56	108,175	41.6	0.092	0.256	0.6	.085	
Oklahoma	Oklahoma City	57	38,180	72.6	0.142	0.335	34.4	.224	1991
	Tulsa City	58	41,413	59.7	0.162	0.326	29.2	.157	
S Carolina	Charleston Co.	59	42,901	60.0	0.369	0.569	39.2	.291	1992

	Greenville Co.	60	63,452	35.6	0.156	0.321	3.5	.118	1985
Tennessee	Hamilton Co.	61	40,507	38.3	0.433	0.564	36.0	.352	1986
	Knox Co.	62	52,698	18.1	0.232	0.415	5.1	.214	
	Memphis City	63	116,857	92.1	0.308	0.710	86.2	.340	
	Nashville-Davidson Co.	64	70,002	59.7	0.151	0.316	11.9	.152	1998
	Shelby Co.	65	47,042	33.1	0.204	0.366	7.5	.154	
Texas	Aldine	66	53,086	93.3	0.031	0.251	79.9	.089	
	Alief	67	43,188	93.1	0.032	0.279	82.5	.045	
	Arlington	68	59,301	59.3	0.237	0.425	3.4	.142	
	Austin	69	73,922	68.3	0.347	0.564	49.0	.150	1983
	Brownsville	70	42,687	98.1	0.014	0.379	100.0	.095	
	Conroe	71	38,102	28.4	0.164	0.348	0.0	.126	
	Corpus Christi	72	37,899	79.4	0.148	0.419	41.6	.128	
	Cypress-Fairbanks	73	72,623	47.2	0.147	0.318	0.0	.084	
	Dallas	74	152,684	93.6	0.192	0.600	86.1	.301	2003
	El Paso	75	60,615	86.5	0.106	0.408	18.7	.155	
	Fort Bend	76	60,067	68.0	0.211	0.439	45.8	.218	
	Fort Worth	77	76,080	81.6	0.273	0.552	58.6	.302	1990
	Garland	78	53,259	59.7	0.074	0.233	0.0	.062	
	Houston	79	195,686	90.4	0.282	0.664	84.6	.344	1983
	Katy	80	40,881	35.6	0.090	0.273	0.0	.083	
	Klein	81	34,645	44.7	0.290	0.482	27.6	.162	
	Lewisville	82	43,249	30.9	0.172	0.373	0.0	.141	
	Mesquite	83	33,591	53.9	0.044	0.187	0.0	.042	
	North East	84	55,035	54.2	0.156	0.339	2.5	.114	
	Northside	85	69,453	68.2	0.127	0.326	10.4	.090	
	Pasadena	86	43,922	80.0	0.111	0.344	19.1	.142	
	Plano	87	50,228	37.1	0.060	0.192	0.0	.085	
	Richardson	88	33,205	58.7	0.202	0.374	19.3	.166	
	Round Rock	89	34,792	39.0	0.073	0.225	0.0	.083	
	San Antonio	90	52,697	96.3	0.028	0.322	95.6	.253	
	Ysleta	91	44,769	93.1	0.059	0.447	28.4	.124	
Virginia	Chesapeake City	92	39,412	40.2	0.218	0.410	6.2	.160	

Chesterfield Co.	93	54,124	32.8	0.181	0.354	0.0	.129	1972
Fairfax Co.	94	161,890	47.1	0.133	0.305	2.9	.105	
Henrico Co.	95	43,958	45.3	0.323	0.496	23.8	.276	1972
Loudoun Co.	96	39,004	27.9	0.094	0.265	0.0	.074	
Newport News City	97	31,142	64.2	0.097	0.250	12.4	.076	
Norfolk City	98	32,650	74.3	0.141	0.351	26.1	.123	1986*
Prince William Co.	99	64,192	49.0	0.159	0.344	0.0	.095	
Virginia Beach City	100	75,900	40.0	0.127	0.305	2.8	.085	

* No official designation of unitary status, but effectively treated by courts as such.
Source: Tabulations provided by school districts; authors' calculations.
Note: Following Orfield and Monfort (1992, p. 2), regions are defined as follows: *Border*: Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia; *South*: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.

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Post Brown vs. the Board of Education: The Effects of the End of Court-Ordered Desegregation

Byron F. Lutz

2005-64

Post Brown vs. the Board of Education: The Effects of the End of Court-Ordered Desegregation

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Federal Reserve Board

December 19, 2005

Abstract

In the early 1990s, nearly forty years after Brown v. the Board of Education, three Supreme Court decisions dramatically altered the legal environment for court-ordered desegregation. Lower courts have released numerous school districts from their desegregation plans as a result. Over the same period racial segregation increased in public schools across the country – a phenomenon which has been termed resegregation. Using a unique dataset, this paper finds that dismissal of a court-ordered desegregation plan results in a gradual, moderate increase in racial segregation and an increase in black dropout rates and black private school attendance. The increased dropout rates and private school attendance are experienced only by districts located outside of the South Census region. There is no evidence of an effect on white student dropout rates or private school attendance rates.

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1 Introduction

Court-ordered desegregation was one of the most ambitious and controversial government policies of the last fifty years. Beginning in 1954 with the Brown v. Board of Education decision, the majority of the nation's large school districts were subject to mandatory desegregation plans. The plans produced dramatic increases in racial integration in the short-run. The long-run integrative effects varied from district to district. In some districts, long-run integration was achieved. In other districts the response of whites to the plans, often referred to as "white flight", undermined the plans' ability to achieve stable integration (Rossell and Armor 1996; Reber 2002; Welch and Light 1987). There is strong evidence that the plans reduced black dropout rates (Guryan 2004).

The number of new court-ordered desegregation plans peaked in the early 1970s and declined steadily thereafter. The Supreme Court, having been largely silent on the issue of desegregation during the 1980s, issued three decisions in the early 1990s which significantly altered the legal basis for court-ordered desegregation. It became easier to terminate court-mandated plans and the return of school control to local authority became the stated goal of all desegregation cases. These decisions signaled the end of the era of court-ordered desegregation: a large and possibly accelerating number of school districts have had their desegregation plans dismissed in the post-1990 period.

Racial segregation increased in public schools over the same period – a development which has been termed resegregation (Orfield and Eaton 1996; Boger 2002; Frankenberg, Lee and Orfield 2003; for a dissenting view, see Armor and Rossell 2002). Numerous observers have assumed an explicit link between the dismissal of desegregation plans and increasing segregation in public schools. A recent *New York Times* editorial states that "much of the blame [for resegregation] goes to the courts' increased hostility to desegregation suits" (*New York Times* 2003). Many scholarly articles have made similar assumptions (e.g. Boger 2002 pg. 3; Cherminsky 2002 pg. 5; Orfield 2001 pg. 15 – 16).

The effect of the end of court-ordered desegregation, however, is unclear. The dismissal of a desegregation plan does not necessarily result in increased segregation. Most plans have been in place for many years and there is evidence that a plan's ability to achieve integration erodes over time (Reber 2002). It is unclear whether or not desegregation plans are still imposing a constraint on racial segregation in the post-1990 period. If they are not imposing a constraint, segregation will not increase when a plan is dismissed.

Furthermore, even if the termination of a plan causes an increase in segregation, the termination may or may not have adverse welfare consequences for black students. The phase-out of the plans is occurring in a very different environment than that in which they were implemented.

Residential segregation has decreased significantly (Glaeser and Vigdor 2002) and funding is much more equalized across schools (Card and Payne 1998; Murray, Evans and Schwab 1998; Hoxby 2001). Given the different environment, it is not clear that the dismissal of the plans will reverse the gains achieved by their implementation.

This paper examines the two questions raised above. First, does dismissal of a desegregation plan result in an increase in segregation? Second, what are the welfare implications of the end of court-ordered desegregation?

The first question is answered by providing estimates of the causal link between the dismissal of court-ordered desegregation plans and changes in racial segregation in public schools. Segregation is of interest because racial integration was the primary aim of court-ordered desegregation. Examining segregation levels provides evidence on the efficacy of what has been called the most ambitious and idealistic social experiment in U.S. history (Merelman 2002).

Segregation is also of interest because of a possible link with educational outcomes. There are numerous reasons why segregation levels may affect educational outcomes. Peer effects potentially play an important role in human capital production (Boozer, Krueger and Wolkon, 1992; Hoxby 2000; Angrist and Lang 2004; Hanushek, Kain and Rivkin 2002). The degree of segregation also likely influences the distribution and level of educational resources provided to minority students – a point expressed memorably in the Brown decision's premise that separate schools are inherently unequal.

The second question this paper examines, what are the welfare implications of the end of court-ordered desegregation, is addressed by estimating the causal link between dismissal and dropout rates and rates of private school attendance. A dismissal potentially causes a complex transformation of the school environment. The peer group a student experiences may change. In some cases long-distance bus rides are replaced by neighborhood school attendance. School districts under a court-ordered desegregation plan are monitored by the courts in regard to minority student performance. Dismissal of a desegregation plan returns a district to local control, removes the external monitoring and may therefore reduce the effort and resources expended on minority students. Finally, there is anecdotal evidence that dismissed school districts often engage in capital investment in minority neighborhoods (NAACP 2000; Goldring and Smrekar 2002).

These changes alter both the value and cost of education provided in a dismissed district. For example, the elimination of busing may reduce the costs associated with attendance, while a change in the peer group may increase or decrease the expected return to attendance. If the net value of the educational services provided by a school district is decreased by dismissal, there is an expectation that students previously on the margin for exiting the school district (i.e. those for

whom the benefits of attendance were only marginally greater than the costs of attendance) will exit after dismissal. Dropout rates and rates of private school attendance rates for both black and white students are therefore examined in order to assess the net impact of the changes induced by the end of court-ordered desegregation.

My analysis uses a unique dataset, compiled from multiple sources, and an identification strategy based on the idiosyncratic timing of desegregation plan dismissals. The results suggest that dismissal induces a gradual increase in segregation levels. The magnitude of the increase is moderate. It is significantly smaller than the decrease in segregation that was achieved by the plans implementation. It should be noted, however, that the estimates reflect short-run effects. The long-run effects may be larger. In independent contemporaneous work, Clotfelter, Ladd and Vigdor (2005) also explore the connection between the dismissal of court-ordered desegregation plans and racial segregation and find that post-1993 dismissals result in an increase in racial segregation – a finding broadly consistent with the results of this paper.[1]

The increase in segregation documented in this paper does not necessarily reduce black welfare. The dropout and private school attendance results suggest, however, that the end of court-ordered desegregation does have negative welfare consequences for black students. Black dropout rates and black rates of private school attendance both increase in response to the dismissal of a desegregation plan. Viewed individually, these results might be ambiguous in regards to the welfare impact of dismissal. Viewed jointly, they strongly suggest the value of the educational services provided to black students decreases when a district is dismissed. The decrease in value reduces the welfare of black students and families residing in a dismissed district. These negative welfare consequences are confined to non-southern districts. The estimates are precise enough to rule out any sizeable effect on black student attendance patterns in the south.

Dismissal has no apparent impact on white dropout rates or white private school attendance rates. There is limited evidence, however, that the demographic profile of whites in a dismissed

[1]There are many differences in approach between this paper and Clotfelter, Ladd and Vigdor (2005) (henceforth CLV). Three of the more significant differences are as follows. First, CLV use a sample of the largest southern school districts. This paper uses a national sample restricted to those districts under court-order in 1991. The different samples provide different counterfactuals for those districts dismissed within the sample period. CLV uses all large southern districts not dismissed in the sample period to provide a counterfactual (including districts never under court-order and those dismissed before the sample period), while this paper uses districts which remained under court-order as the counterfactual. As discussed below, the approach used in this paper appears justified based on observable school district characteristics. Second, this paper examines several outcome measures in addition to racial segregation such as dropout rates and rates of private school attendance by race. Examining these outcomes provides insight into the welfare implications of the end of court-ordered desegregation. Finally, this paper allows for more flexibility in the time pattern of effects of dismissal of a desegregation plan. This flexibility (in particular the estimation of a vector of coefficients for the period prior to dismissal – see below), as well as a set of rigorous robustness checks, is useful in assessing whether or not the estimated increase in segregation reflects the causal impact of dismissal.

district changes – the education level of white mothers is higher and there is a lower probability of a white child being beneath the poverty line.

The paper proceeds as follows. Section 2 provides background information. Section 3 discusses the data. Section 4 presents the empirical model and results for the segregation outcome variables. Section 5 presents the empirical model and results for the dropout and private school enrollment outcome variables. Section 6 provides interpretation.

2 Background Information

2.1 Court-Ordered Desegregation

Although Brown v. Board of Education was issued in 1954, widespread desegregation did not begin until the Civil Rights Act of 1964, which banned racial discrimination in schools receiving federal aid. The 1968 Green decision (*Green v. County School Board of New Kent County*, 391 U.S. 430), which stipulated that school desegregation must begin immediately, further accelerated the process. Numerous southern districts were placed under court-ordered desegregation plans, many with mandatory busing components, and southern schools ultimately became the least segregated in the country.

The Keyes decision (*Keyes v. Denver School District*, 413 U.S. 189), issued in 1973, ruled that court-ordered desegregation could proceed in areas which had not practiced du jure segregation. Desegregation became viable in areas outside of the south and numerous northern and western school districts were placed under mandatory desegregation plans.

The Supreme Court issued no significant decisions relating to school desegregation between the mid-1970s and 1990. The flow of new desegregation orders from lower courts increased through the early 1970s and declined gradually thereafter. By 1990, the flow of new orders had virtually stopped. There has been only a single federal desegregation order that involved a mandatory student assignment plan since 1990 (Raffel 2002).

The legal environment for court-ordered desegregation changed radically with the 1991 *Board of Education of Oklahoma City v. Dowell* ruling (498 U.S. 237). This decision defines the requirements for a school district to be declared unitary – a term indicating a district is no longer operating an illegal, racially dual school system – and stipulates that once a district achieves unitary status it must be permanently released from court control. Even immediate and complete resegregation is acceptable, as long as the school district does not state its attendance policies are aimed at achieving racial segregation. Prior to the decision, it had been widely presumed that districts released from court control had an obligation to maintain a desegregated district (Orfield 2001;

Lindseth 2002).

The *Freeman v. Pitts* decision (503 U.S. 467), issued in 1992, eases the burden placed on defendant school districts in desegregation suits. Finally, *Missouri v. Jenkins* (515 U.S. 70, 1995) limits enforcement options available to federal courts and states that restoration of school control to locally elected officials should be the primary goal of all desegregation cases.

These decisions collectively express the opinion that the courts have "done enough" in the area of school desegregation and that long-running desegregation cases should be moved to closure (Tushnet 1996). A large number of school districts have been released from their desegregation plans as a result of the above decisions and there is an apparent acceleration in the rate of dismissals. Most observers have concluded that the era of court-ordered desegregation is drawing to a close (Frankenburg, Lee and Orfield 2003, pg.20; Lindseth 2002, pg. 42). See Appendix A for additional information on court-ordered desegregation.

2.2 The Dismissal Process

The causal impact of desegregation plan dismissal on racial segregation and other outcome variables is identified in this paper from both whether a district is dismissed and when it is dismissed. It is therefore important to examine the process of dismissal in detail.

The process of dismissal, once initiated in the courts, typically takes several years. Once initiated, virtually all districts are subsequently dismissed from court supervision. Every contested motion for unitary status post-1990 has resulted in a dismissal.[2]

A dismissal can be initiated by any one of a number of agents, including defendant school districts, plaintiffs, federal district court judges and third parties such as parents of students in affected districts and non-school governmental bodies. The variety and idiosyncrasy of who initiates the dismissal process makes it unlikely that dismissal is a function of school district or community characteristics and preferences.

A few examples illustrate this point. Pinellas County, Florida, which serves St. Petersburg, had operated under a successful desegregation plan (success being defined as achieving high, long-term levels of black-white exposure). The defendant school board moved for dismissal (NAACP 2000). Cleveland, Ohio, which had one of the least successful court-ordered desegregation plans, is another example of a defendant school board moving for dismissal (179 F.3d 453, 6th Cir, 1999).

Charlotte, North Carolina is often cited as an example of successful court-ordered desegregation. The dismissal process in Charlotte began when a white parent filed suit against the district's race-

[2]NAACP 2000. Note that although Hillsborough County, Florida is cited as an exception to this trend, its desegregation plan was dismissed after the publication of NAACP 2000.

based magnet school admission policy. A district court judge consolidated the magnet school case with the much older desegregation case. The district's desegregation plan was ultimately dismissed as a result (57 F.Supp.2d 228). Prince George's County, Maryland, a district where "white flight" undermined the ability of its desegregation plan to achieve stable integration, is another example of a third party initiating a dismissal. Over the objection of the school board, the county government, which was a major funding source for the school district, moved that the desegregation order be terminated (Lindseth 2002).

Finally, in many cases, district judges have chosen to clear their dockets of desegregation cases at their own initiative. For example, the judges in the Middle District of Alabama chose to begin active proceedings for all desegregation cases on their dockets (Parker 2000) – a decision which led to seven districts being dismissed in 2002 alone.

Once the process of dismissal begins, there is an element of randomness in the length of time it takes for a district to be dismissed. Decisions are often appealed, adding further randomness to the date of actual dismissal. A particularly striking example of the idiosyncratic nature of the timing involves Cleveland. The judge who had overseen the desegregation suit since its inception in 1973 passed away. His successor rapidly moved the case to termination.

A final relevant piece of legal background involves desegregation plans operated by districts not under court-order. Recent federal and Supreme Court rulings have made it more difficult to legally operate voluntary, non-court-ordered plans.[3] Numerous school districts have terminated voluntary desegregation efforts as a result. Boston is a prominent example.

The trend toward the elimination of voluntary plans has two implications for this paper. First, school districts released from court-ordered plans have limited ability to maintain desegregation efforts (Lindseth 2002). Most dismissed districts have returned to some form of neighborhood schooling. In some cases, though, portions of the court-ordered desegregation plan have been maintained. Magnet school programs, in particular, are often retained after dismissal (Orfield and Lee 2004). Second, the trend away from voluntary desegregation plans potentially complicates the econometric identification of the effect of court-ordered desegregation plan dismissal (this point is discussed in greater detail in section 4).

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[3]Among the more significant decisions are the following: *Tuttle v. Arlington County School Bd*, 195 F.3d 698 (4th Cir. 1999); *Wessman v. Gittens*, 160 F.3d 790 (1st Cir.); *Adarand Constructors v. Pena*, 515 U.S. 200; *City of Richmond V. J.A. Croson Co.*, 488 U.S. 469.

3 Data

This paper analyzes a nationally representative sample of school districts. The primary source of school district data is the Common Core of Data (CCD) produced by the National Center for Education Statistics. It contains basic descriptive data for the universe of public schools in the U.S. from 1987 to 2002. The School District Databook (SDDB), a school district-level tabulation of the U.S. Census, complements the CCD. It provides detailed demographic and housing data for the geographic areas served by school districts, but is only available for 1990 and 2000.

No accurate national statistics are available concerning the number of court-ordered desegregation plans in place or the number of dismissals of such plans. Multiple sources are therefore used to generate two variables related to court-ordered desegregation – the presence of a court-ordered plan in 1991 and the dates of dismissal of these plans.

The primary source for the presence of a court-ordered plan is a 1991 nationally representative survey of school districts conducted by Christine Rossell and David Armor (Steel, Levine, Rossell and Armor 1993; Steel and Levine 1994). The survey contains detailed information on school desegregation programs. Both the content of the survey and its timing are ideally suited for the estimation strategy pursued in this paper.

The primary source of information on dismissal of desegregation orders is an unpublished table produced by the Harvard Civil Rights Project (Ma 2002). To supplement both this table, which does not claim to be comprehensive, and the Rossell and Armor survey data, I use several other sources. These include electronic searches on the legal search engines *Courtlink* and *Pacer*[4], an unpublished list of school districts subject to desegregation suits to which the U.S. is a party maintained by the Civil Rights Division of the Justice Department, published and unpublished legal opinions obtained via *LexisNexis* and *Westlaw*, appendix C of Welch and Light (1987), a variety of media and internet sources (in particular the electronic archives of *Education Week*), school district documents such as budgets and minutes of school board meetings and, finally, private communications with school district officials.

Two panel datasets, organized at the school district-year level, are constructed from the above sources.[5] The first panel spans the 1987 – 2002 period and uses outcome variables constructed from the CCD. The second panel contains two periods, 1990 and 2000, and uses outcome variables

[4] Courtlink allows for electronic searches of Federal District Court dockets and Pacer provides electronic retrieval of these dockets. I thank Harvard Law School Professor Margo Schlanger for suggesting the methodology used for the Courtlink and Pacer searches. See Appendix B for more detailed information.

[5] The *Milliken v. Bradley* decision, 418 U.S. 717 (1974), limits virtually all court-ordered desegregation plans to a single school district. The school district is therefore the appropriate level at which to organize the data.

generated from the SDDB. See Appendix B for detailed information on the data sources and construction of these datasets.

4 Segregation, Public School Enrollment and School District Finance Results

4.1 Outcome Variables

A primary aim of court-ordered desegregation is increasing the extent of contact between white and black students. The extent of contact between the races can be changed via one of two primary mechanisms. First, holding the racial composition of the district fixed, students may be re-sorted among the schools which comprise a district. Court-ordered desegregation achieves racial integration by this type of re-sorting. For example, magnet school programs and busing produce integration by re-sorting students among schools with a district.

The sorting of students within a district is measured using the dissimilarity index, defined as

$$D_t = \frac{1}{2} * \sum_{t=1}^{n} |\frac{b_{it}}{B_t} - \frac{w_{it}}{W_t}| \qquad (1).$$

where b_{it} and w_{it} refer to the number of black and white students, respectively, at school i at time t and B_t and W_t refer to the total number of black and white students, respectively, in the school district.[6]

The dissimilarity index ranges from 0 to 1, with 0 denoting perfect integration and 1 denoting complete segregation. It is interpretable as the percent of black students who would need to be reassigned to a different school for perfect integration to be achieved given the district's overall racial composition. An increase in segregation is reflected by an increase in the dissimilarity index.

The second mechanism by which a dismissal may affect the extent of contact between blacks and whites is by altering the district wide demographic composition . It is well documented that whites responded to desegregation by moving to alternative public school districts or placing their children in private schools. This response, often termed "white flight", increased the level of segregation in many districts.

[6]Most of the segregation indices used in this paper measure the sorting of black and white students. The use of black-white indices reflects the fact that court-ordered desegregation primarily focused on integrating black and white students. These indices are calculated omitting students of other races. Alternative nonwhite-white indices, calculated using the entire student population of a district, are also used. As shown below, the results of this paper do not change substantively when the nonwhite-white indices are used in place of the black-white indices.

The racial sorting equilibrium across public school districts and private schools in metropolitan areas therefore reflects the presence of a court-ordered desegregation plan. The termination of a desegregation plan may break this equilibrium and affect segregation levels by changing the racial composition of a school district. A particularly interesting aspect of this potential change is the response of whites. Dismissal of a desegregation plan may cause whites to re-enter a district – a hypothesized phenomenon which I term "reverse white flight". In addition, black enrollment may change if the dismissal alters the value of the educational services provided by the district to black students. District level demographic changes are examined using data on district enrollment by race. Specifically, the log of B_t and the log of W_t are used as outcome variables.

The extent of interracial contact within a school district is measured directly by the exposure index

$$E_t = \frac{1}{B_t} \sum_{t=1}^{n} b_{it} * \frac{w_{it}}{t_{it}} \qquad (2)$$

where t_{it} is the total number of students in school i. It is interpretable as the percent of white students in the average black student's school. For a given district, it ranges from 0 to the percent of white students in the district as a whole. It can be viewed as a measure of the extent of contact between the two races. An increase in segregation is reflected by a decrease in the exposure index.

The dissimilarity index and enrollment by race at the district level can be viewed as directly measuring behavioral responses to the end of court-ordered desegregation. The dissimilarity index will primarily capture the response of policy makers. As policies which promote integration, such as busing, are phased out, the dissimilarity index may increase. Changes in enrollment by race at the district level will primarily reflect the response of parents and students. Policy makers have very limited ability to influence the racial composition of a school district.

The dissimilarity index and enrollment by race are therefore the appropriate measures to use in assessing how policy makers and parents, respectively, respond to the end of court-ordered desegregation. The exposure index remains of interest because it summarizes the extent of contact between whites and blacks – a primary goal of court-ordered desegregation.[7]

[7] Echenique and Fryer (2005) note that segregation indices such as the dissimilarity and exposure indices suffer from two undesirable properties. First, they depend upon the way in which the larger unit being examined is partioned into smaller units. This is not a significant problem, however, when measuring school segregation because schools provide a natural partion of students (see their footnote #5). Second, the outcomes do not allow for measuring segregation at the individual level. The authors propose an alternative segregation measure, the spectral index, which can be calculated at the level of the individual. The data required for calculating an index of this type is not available for the sample of districts under a court-ordered desegregation plan used in this paper.

4.2 Summary Statistics

There are 571 school districts in the Rossell and Armor survey data, 125 of which were under court-ordered desegregation plans in 1991. Of these 125 districts, 44, or approximately $\frac{1}{3}$, have been dismissed in the post-1990 period. Figure 1 graphs the timing of these dismissals. There were few dismissals prior to 1996 and there is an apparent acceleration in the number of dismissals over time.

Figure 2 maps the geographic distribution of the districts under court-order in 1991 and the dismissal of these districts occurring between 1991 and 2002. While the sample and the dismissals within the sample are spread throughout the country, there is a concentration in the South census region. Southern school districts make up 65 percent of the dismissals, reflecting the fact that a majority of court-ordered desegregation plans were in the South. Appendix Table 1 lists the districts in the sample and dates of dismissal.

Table 1 presents summary statistics for three sets of school districts – those districts under court-ordered desegregation plans in 1991 and subsequently dismissed within the sample range (i.e. in 2002 or before), those under a plan in 1991 and not dismissed within the sample range and those not under court-order in 1991. These groups will be referred to as the "dismissed", "not dismissed" and "not under court-order" groups, respectively.

Comparing the groups' 1990 characteristics is instructive because it indicates how comparable the groups were in the pre-dismissal period. In general, the dismissed and not dismissed districts are quite similar along observable dimensions. Segregation levels, dropout rates, regional composition, racial composition and measures of district affluence such as median household income suggest the two groups are quite comparable. Exceptions to this comparability are 33 percent lower average enrollment for the not dismissed group and a slightly lower probability of a not dismissed district serving a central city.

The districts which lacked a court-ordered plan in 1991 differ in many ways from the districts which had a plan – they have smaller enrollment, a lower percentage of black students, are less likely to be located in the South and are more affluent. There is clear non-random selection into having a court-ordered plan in 1991. Consequently, the subsequent analysis will focus on a comparison of the dismissed and not dismissed districts. The dismissed districts form the treatment group and the districts which remain under court-order will form the control group.[8] The not under court-order group is dropped from the sample.

[8] The difference in the treatment and control group in terms of enrollment and probability of serving a central city is explicitly addressed in the empirical work presented below.

In addition to being justified based on observables, the sample restriction avoids potential bias arising from the legal trend making voluntary desegregation plans less viable for those districts not under court-order. Districts under court-order are not affected by the legal standing of voluntary desegregation plans. If districts operating voluntary desegregation plans are experiencing changes in the outcome variable, such as the level of segregation, as a result of the changing legal status of voluntary plans, they will not form a valid control group for the set of dismissed districts.

Figure 3 plots the trends of the outcome variables. Tentative conclusions about the impact of the end of court-ordered desegregation can be drawn from the figure. Panel A plots the trend of the mean dissimilarity index for the three groups. The not dismissed and dismissed groups have similar trends through the early the 1990s. By the mid 1990s, the dismissed group is experiencing a more rapid increase.

As shown in the figure, the relative increase in the dissimilarity index of the dismissed group appears associated with the cumulative number of dismissals. The figure provides suggestive evidence that the end of court-ordered desegregation is producing a re-sorting of students which increases segregation.

Panel B plots the percent of enrollment that is white. All three groups trend downward throughout the entire sample period, reflecting national demographic trends. The similar trends of the dismissed and not dismissed groups suggest that dismissal of plans does not alter the demographic composition of school districts. There is no indication of "reverse white flight".

Panel C plots the black-white exposure index. The black-white exposure indices trend downward in a similar fashion for all three groups. The similarity of the trends suggests that the decrease in black-white exposure over this period is primarily the product of the demographic trends apparent in Panel B, not the end of court-ordered desegregation.

Panel C also plots the white-white exposure index for the entire sample. The white-white exposure index is interpretable as the percent of white students in the average white student's school. The index has a trend similar to that of the black-white exposure indices, indicating whites are experiencing a decrease in contact with whites similar to the decrease being experienced by blacks. This strengthens the claim that the downward trend in black-white exposure is primarily a product of demographic changes.

The increase in the dismissed group's dissimilarity index apparent in Panel A mechanically decreases black-white exposure. Panel C suggests that this decrease is inconsequential compared to the decrease in exposure resulting from demographic changes.

The formal econometric analysis presented below supports the conclusions drawn from Figure 3. The end of court-ordered desegregation produces a significant re-sorting of students which increases

segregation as measured by the dissimilarity index. Nevertheless, dismissals have only a limited impact on black-white exposure and no impact on school district demographic composition.

4.3 Empirical Model

The empirical model is

$$y_{it} = \alpha + \sum_{g=-4}^{6} \beta_g D_{g,it} + \delta_i + \theta_{jt} + \epsilon_{it} \tag{3}$$

where y_{it} is the outcome variable for district i at time t, δ_i is a vector of district fixed-effects, θ_{jt} is a vector of Census region j - year t fixed-effects, $D_{g,it}$ is a dummy variable equaling one if district i at time t was released from its desegregation order g years ago ($g = 0$ denotes the year of dismissal). $D_{6,it}$ equals one for all years t in which it has been 6 or more years since district i was released from its desegregation order. The β vector is the parameter of interest.

The β vector traces out the adjustment path from the under court-ordered desegregation plan equilibrium to the new post plan equilibrium. There are several reasons why it is likely that dismissal of a court-ordered plan will result in more complex dynamics than a simple discrete shift in the outcome variable (as would be implied by a model which replaced the $Dg_{,it}$ vector with a single indicator variable for dismissal).

Many of the dismissals explicitly stipulate a gradual elimination of the desegregation plan. An extreme example is Indianapolis, where the court-ordered plan is being phased out one grade at a time over a thirteen year period. There are also reasons to believe that frictions may prevent immediate adjustment. Parents may wish their children to continue to attend the school in which they were enrolled before the dismissal. Shifts in attendance patterns resulting from changes in choice of residential location will evolve slowly. The empirical estimates strongly support the hypothesis that dismissals result in a gradual, incremental, adjustment in segregation rather than a discrete shift.

The district fixed-effects control for time-invariant district characteristics such as community preference for racial integration. The Census region-year fixed-effects control for shocks common to districts at the region-year level such as demographic shifts. Time-variant variables such as demographic information may be endogenous to the dismissals and therefore do not enter the model.

The identifying assumption of the model is that, absent dismissal, the dismissed districts would have experienced outcomes similar to the control districts, conditional on the district and region-year fixed-effects. District-specific trends in the outcome variable are the most likely violation of

the identification assumption. Specifically, if treated and untreated districts are systematically trending differently, the identifying assumption may be violated.

In order to control for such trends, the following specification is estimated

$$y_{it} = \alpha + \sum_{g=-4}^{6} \beta_g D_{g,it} + \delta_i + \theta_{jt} + \lambda_t * X_i + \epsilon_{it} \quad (4)$$

where X_i is a vector of district-specific characteristics as of the first year the district appears in the sample and λ_t is a vector of time-varying coefficients. The specification controls for district-specific trends using the base period characteristics of the districts. For example, districts with higher than average levels of poverty may experience more rapid loss of white enrollment. Such a situation would induce a negative trend in the exposure index in high poverty districts. A measure of the poverty rate from the pre-dismissal period, entered into the model with a time-varying coefficient, controls for the presence of such a trend.

The typical approach to estimating a panel data model like the one above would be to estimate via deviation from the mean. The estimates presented here, however, are estimated via first-differencing the data to remove the district fixed-effect. The first-difference estimator is used in response to severe serial correlation in the model's error term. Estimation by the first-difference estimator yields considerable efficiency gains relative to estimation by deviation from the mean (Wooldridge 2002). Standard errors are clustered at the school district level in all results reported below (Betrand, Duflo and Mullainathan 2004).

4.4 Segregation Results

Estimation of the empirical model provides strong evidence that segregation increases in response to the dismissal of a desegregation plan. Table 2 presents the results for the dissimilarity index. Each column corresponds to a different specification and presents the full vector of pre and post dismissal coefficients. Pre(-4) denotes the coefficient on the indicator variable for four years prior to dismissal, while Post(0) refers to the year of dismissal.

Column (1) includes school district fixed-effects and region-year effects. Column (2) adds a vector of base period school district characteristics interacted with a full set of year indicator variables (see equation (4)). The base period characteristics are location in a central city, percent of students who are white, percent of students who are hispanic, number of enrolled students and the number of enrolled students squared.[9] Student enrollment is a crucial control given the difference

[9] Numerous other district characteristics, such as median household income, were used in unreported specifications.

in enrollment between the treatment and control groups.

Figure 4, Panel A graphs the results of column (2) and reveals that dismissal results in a resorting of students which increases segregation. Dismissal of a court-ordered plan has no effect on segregation in the pre-dismissal period and produces a gradual, linear increase in the post-dismissal period. The point estimates for the pre-vector are small in magnitude and estimated imprecisely. The post-vector coefficients increase with the time from dismissal. The sharp trend break around the time of dismissal suggests the estimates reflect the causal impact of dismissal.

The estimated impact of the dismissal of a court-ordered desegregation plan on the dissimilarity index grows from .008 in the year of dismissal to .075 four years after dismissal. While the post(0) coefficient is statistically insignificant, the post(1) is significant at the 15 percent level and the remaining coefficients are significant at the 5 percent level or better.

The magnitude of the effect can be interpreted in several ways. The change in the dissimilarity index four years after dismissal is equal to 21 percent of the index sample mean and to 42 percent of the 1991 cross-sectional standard deviation of the index.

Another interpretation involves comparison to the change in the dissimilarity index resulting from the implementation of desegregation plans in the 1960s, 70s and 80s. Unreported results which replicate the specification estimated in Reber (2002) on the sample of school districts used here suggest that the long-run effect of the implementation of a desegregation order on the dissimilarity index is approximately -.15 (this result is very similar to the balanced panel results presented in Reber). Using this result as a metric, the dismissal of a desegregation plan reverses approximately $\frac{1}{2}$ of the long-run effect of the plans implementation. It is important to note that the estimates of this paper represent the short-run effect of dismissal. The long-run effect may be larger.

The remaining columns on Table 2 display five robustness checks. The first, displayed in column (3), addresses the difference between the treatment and control groups in mean enrollment and probability of serving a central city. The sample is restricted to the set of districts with enrollment exceeding 10,000 in 1991. The restriction eliminates a number of small districts, primarily from the control group, and provides the treatment and control groups with a common support in regards to enrollment. With the restriction the dismissed districts have an average enrollment of 63,690 and 63 percent serve a central city. For the not dismissed districts, the figures are 56,152 and 64 percent.

The second robustness check, displayed in column (4), weights the data by student enrollment. The third, displayed in column (5), includes a full set of district-specific linear trend terms to assess

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The results are not sensitive to the exact set of characteristics chosen.

if district-specific trends in the outcome variable are biasing the estimates.

The fourth, displayed in column (6), uses a balanced panel of districts and includes dismissed districts only if they contribute to the identification of the entire dismissal vector. In the standard specification, the individual coefficients of the dismissal vector are not all identified by the same set of districts. For example, districts dismissed in 2000 do not contribute to the identification of the 2 through 4 years post-dismissal coefficients. It is possible that the increase in the treatment effect with time from dismissal is a spurious result of the differing set of districts identifying the parameters. The final robustness check, displayed in column (7), replicates column (2) using the nonwhite-white dissimilarity index in place of the black-white dissimilarity index.

The results are robust to all of the above specifications.[10] The balanced panel specification, in column (6), is a relatively important robustness check. These coefficient estimates are plotted in Figure 4, Panel B. The figure displays a sharp trend break at the time of dismissal, again suggesting dismissal results in a causal increase in segregation.

The changes in the dissimilarity index can be viewed as primarily reflecting the response of school district policy makers to the dismissal of a desegregation plan (e.g. ending busing plans). In contrast, there is no evidence of a response by black, non-white or white parents and students. Table 3 presents the results of estimating the empirical model with the log of enrollment by race as the dependent variable. The point estimates are uniformly imprecise. The school enrollment equilibrium, heavily influenced by the imposition of desegregation plans in many metropolitan areas, is not broken by the dismissal of the plans in the short run. There is no evidence of "reverse white flight".

The exposure index measures the extent of contact between the races. It can be viewed as incorporating the net effect of changes in the sorting of students across schools and changes in the school district wide demographic composition. Table 4 presents results for the exposure index with specifications otherwise identical to those on Table 2.

Figure 5, Panel A graphs the results of column (2). Unlike the dissimilarity index estimates, there is some indication of a downward trend in the pre-dismissal period, although the estimates in the pre-dismissal period cannot be distinguished from zero and there does appear to be a trend break around the time of dismissal.

Six years after the termination of a desegregation plan, the exposure index has decreased by

[10]The results are also robust to replacing the census region year interactions with either census division year interactions or Federal Circuit Court year interactions. The thirteen Federal Circuit Courts of Appeal, which have historically issued numerous decisions on desegregation cases, often hold differing legal opinions. A school district's Circuit may influence how its court-ordered desegregation plan functions. The Federal Circuits are therefore a reasonable alternative definition of region.

.034, indicating the average black student in a dismissed district is attending a school with $3\frac{1}{2}$ percent fewer white students – a rather limited increase in segregation. The point estimates for one through six years after dismissal are all significant at the 5 percent level. The effect six years post-dismissal is equal to approximately 9 percent of the sample mean of the exposure index and approximately 15 percent of the 1990 cross-sectional standard deviation of the index.

The estimated long-run effect of desegregation order implementation on the exposure index is .06 (again based on replication of the specifications used in Reber (2002)). Dismissal therefore reverses approximately $\frac{1}{2}$ of the long-run effect of desegregation as measured by the exposure index.

The results for the exposure index are generally robust, although there is a significant loss of precision when the sample is restricted to districts with enrollment greater than 10,000 and when district-specific linear time trends are included.

Figure 5, Panel B plots the coefficients from the balanced panel specification. The figure displays a much sharper trend break at the time of dismissal than Panel A, which plots the results from the full sample. The sharp break suggests that dismissal results in a causal decrease in the exposure of blacks to whites.

The above estimates implicitly assume that the three Supreme Court decisions do not effect the enforcement of desegregation plans while districts remain under court-order. This is consistent with a literal reading of the decisions. It is possible, however, that the decisions altered the level and/or effectiveness of enforcement. Both plaintiffs and those defendant school districts interested in maintaining their desegregations plans may be reluctant to engage in aggressive enforcement measures for fear that it would lead to dismissal. Judges may be less willing to aggressively enforce plans given the altered legal environment.

Under this scenario, there are two treatment effects. The first is the direct effect of dismissal. The second is the reduced efficacy of the plans which remain in place. Both the treatment and control group receive this second treatment. The estimates above do not reflect this second treatment effect and therefore potentially represent lower bound estimates of the effect of the end of court-ordered desegregation. Figure 3, Panel A reveals an upward trend in the dissimilarity index of the not dismissed group after 1991. The trend raises the possibility that the Supreme Court decisions reduced the efficacy of enforcement as hypothesized.

A formal method to assess the effectiveness of court-ordered desegregation is to estimate

$$y_{it} = \alpha + \sum_{g=1991}^{2002} \kappa_g U_{ig} + \delta_i + \theta_t + \epsilon_{it} \tag{5}$$

where U_{ig} is a vector of indicator variables equaling one in year g if district i was under a court-

ordered desegregation plan in 1991, θ_t is a vector of year indicators, and y_{it} is the dissimilarity index. The sample is restricted to the set of districts *not* under court-order in 1991 and those districts under court-order and not dismissed between 1991 and 2002. The κ_g vector measures the effectiveness of court-ordered desegregation plans utilizing the not dismissed districts as the treatment group and the not under court-order group as the control group. If the κ_g vector increases over time, it suggests desegregation plans are becoming less effective in the post 1990 period.

Table 5 presents the results of estimating equation (5). The κ_g vector in column (1) increases with time and is precisely estimated from 1997 forward. Inclusion of region-year effects in column (2), however, greatly attenuates the size of the coefficients and only the 2002 coefficient is estimated precisely. Column (3) includes a vector of base period demographic characteristics interacted with a set of year indicators. The κ_g vector coefficients are small and uniformly imprecise.

The results in column (1) suggest that the reduced efficacy of enforcement effect is .04 in 2002 (see the final coefficient in column (1)). The upper-bound effect of the end of court-ordered desegregation on the dissimilarity index, for the year 2002, is calculated by adding .04 to the coefficients on Table 2. For column (2) of Table 2, the upper-bound effect is approximately .12 for a district six or more years from dismissal. This upper-bound estimate incorporates both the direct effect of dismissal as well as the reduced efficacy of enforcement effect.

Note, however, that column (2) of Table 5 suggests the reduced efficacy of enforcement effect is approximately .025, not .04, and that column (3) suggests that there is no reduced efficacy.[11] Regardless, the results on Tables 2 and 4 can be viewed as lower bound estimates of the effect of the end of court-ordered desegregation.

Numerous unreported specifications assess whether the effect of dismissal on the outcome variables considered above differs by region, central city, size of enrollment, segregation levels in the pre-1991 period and numerous other district characteristics. There is no evidence that the effect of dismissal varies by any observable characteristic. Particularly notable is a lack of heterogeneity between southern and non-southern school districts – see Appendix Table 2. The lack of heterogeneity by geographic region is important in interpreting the dropout rate and private school attendance results presented in Section 5.

Viewed jointly, the dissimilarity and exposure index results suggest that court-ordered desegregation fails to significantly increase black-white exposure in the post-1990 period, even as it succeeds in enforcing desegregation as measured by the dissimilarity index. The failure to achieve increased

[11] As suggested by Figure 3, Panels B and C, the κ_g vector coefficients are small and imprecise when the exposure index or log enrollment by race are used as the outcome variable.

exposure is explained by 'white flight' and the declining percentage of white students nationally.

It is interesting to note that federal judges often explicitly use measures such as the dissimilarity index, which measure segregation given the racial composition of the district, to assess the efficacy of desegregation plans. Measures such as the exposure index are typically not used because desegregation plans cannot influence district-level racial composition and hence have only limited ability to influence segregation defined in this manner.

Several limitations of the above estimates should be noted. The post-vector coefficients trace out the transition from the under court-order equilibrium to the new, post desegregation plan equilibrium. If the transition to the new equilibrium takes longer than six years after dismissal, the results underestimate the full, long-run effect. Until additional data become available, this uncertainty cannot be resolved. Note, however, that the results do not indicate any deceleration in the rate of increase in segregation six years after dismissal.

Finally, the segregation index estimates assess the effect of dismissal on segregation between schools. Segregation may also occur within a school. The estimates cannot assess if the court dismissals have had an effect on within school segregation.[12]

5 Dropout Rate and Private School Enrollment

The above results suggest that the end of court-ordered desegregation has only a limited impact on the exposure of blacks to whites. There is therefore an expectation that any effect of dismissals on black outcomes operating through peer effects will be limited. This does not mean, however, that the overall impact of dismissals on blacks will be limited.

The dismissal of a court-ordered desegregation plan may alter the quality of the educational inputs received by black students. The re-sorting of black students apparent in the dissimilarity index may, on average, place black students in lower quality schools than they attended while their school district was under court-order.

In addition, as time passed from the *Brown* decision, desegregation cases began to focus on more than racial integration. The adequacy of financial funding for minority students and minority student achievement became explicit goals. The 1977 *Milliken II* decision allows courts to mandate spending on compensatory educational programs for minority students (Orfield and Eaton 1996). The *Freeman* decision explicitly allows courts to consider the "quality of education" in deciding

[12] Court-ordered desegregation focuses heavily on segregation between schools. As a result, it seems likely that the court-order dismissals will have little impact on within school segregation. Alternatively, Clotfelter, Ladd, Vigdor (2003) present evidence that between and within school segregation are substitutes. After a dismissal, school district officials, no longer able to implement between school desegregation, may attempt to reduce within school segregation.

whether or not to release districts from their desegregation plans (Lindseth 2002; Parker 2000).

When a district is released from its plan, it no longer has an independent body, the courts, constantly monitoring its performance in regards to the educational outcomes of minority students. This may reduce the effort and resources expended on minority students. The end of court-ordered desegregation may therefore have a significant impact on black student outcomes even in the absence of a significant change in the exposure of blacks to whites.

5.1 Outcome Variables

A two-period panel, utilizing the 1990 and 2000 Census data, is used to examine the effects of court dismissal on dropout rates by race and private school attendance by race. The status dropout rate is defined as

$$S_{dt} = \frac{Drop_{dt}}{Tot_{dt}} \tag{6}$$

where $Drop_{dt}$ is the number of civilian 16 – 19 year olds living at time t in the area served by district d who are not enrolled in high school and do not hold a high school degree and Tot_{dt} is the total number of 16 – 19 year old civilians. The status dropout rate is a measure of the *stock* of dropouts residing in a given school district.

The SDDB is a unique source of information on private school attendance because it tabulates private school attendance by the public school district in which a student *resides*, not where the student attends school. The private school attendance rate is defined as the percent of total enrolled students residing in a district who are enrolled in private school and therefore summarizes the percent of potential students each public school district has enrolled in private school.

5.2 Summary Statistics

Table 6 presents 1990 summary statistics for black students in districts under court-order in 1991. Means are presented for two groups, those districts dismissed between 1991 and 1999 and those not dismissed in this time frame. The first group forms the treatment group and the second group forms the control group. These are slightly different treatment and control groups than those used in section 4 and displayed on Table 1[13].

The table displays the statistics for both the full sample and the set of districts outside the south census region. The regional breakdown is motivated by the results, presented below, that dismissal

[13]The 2000 Census data was collected in the spring of 2000 – during the 1999 - 2000 school year. Districts dismissed in 2000, 2001 and 2002, which are part of the treatment group in the CCD 1987-2002 panel used in section 4, are part of the control group for the SDDB 1990 and 2000 panel used in this section.

has an impact on black dropout rates and rates of private school attendance only outside the south. The table reinforces the conclusions drawn from Table 1 – the dismissed and non-dismissed districts are remarkably similar along observable dimensions in the 1990 pre-dismissal period.

Figure 6, Panel A, plots the trends in the black status dropout rate for four groups: the south dismissed and not dismissed groups and the non-south dismissed and not dismissed groups. The south dismissed and not dismissed groups and the non-south not dismissed group all trend downward with a similar slope and have similar values, between .11 and .13, in 2000. Nationally, the black status dropout rate held constant at approximately 12.5 percent over the course of the 1990s (NCES 2001). The three groups appear to be converging with the national black dropout rate during the 1990s. The non-south dismissed group, in contrast, is flat over the period. This difference in trends is suggestive evidence that dismissal of a court-ordered desegregation plan increases black dropout rates outside the south.

5.3 Empirical Model

The ideal two-period panel model would utilize the micro long form census data and estimate at the level of individual students

$$y_{kit} = \alpha + \beta L_{it} + \delta_i + \theta_{jt} + \rho X_{it} + \eta M_{kit} + \varepsilon_{kit} \tag{7}$$

where y_{kit} is the outcome (e.g. dropout rates) of student k, in district i at time t, X_{it} is a vector of district level covariates and M_{kit} is a vector of student level covariates. L_{it} is equal to the years since dismissal, relative to 2000, interacted with an indicator variable for the year 2000. For instance, a district dismissed in 1996 has $L_{it} = 4$ when t=2000. β is the coefficient of interest.

Unfortunately the micro census data does not contain a school district identifier.[14] The SDDB, however, allows for estimating the pooled regression which follows from equation (7)

$$\bar{y}_{it} = \alpha + \beta L_{it} + \delta_i + \theta_{jt} + \rho X_{it} + \eta \bar{M}_{it} + \bar{\varepsilon}_{it} \tag{8}$$

$\bar{y}_{it}$ and $\bar{M}_{it}$ are district level means of the student level variables y_{kit} and M_{kit}.[15]

[14] The micro census data could be matched to school districts in a procedure similar to that used in Guryan (2004). Unlike the sample used in Guryan (2004), the sample used here contains medium and small sized districts. The matching procedure, when performed with the public use micro data, would produce significant measurement error for these districts.

[15] Due to a quirk in the construction of the SDDB and differences between the 1990 and 2000 versions of the data, the average status dropout rate for district i is measured for 16 to 19 year olds, while the covariate averages, $\bar{M}_{it}$, are measured for all children. See Appendix B for a more through discussion of this and related data issues.

The identifying assumption of the model is that, absent dismissal, the dismissed districts would have experienced dropout rates similar to that of the non-dismissed districts, conditional on the covariates. The most likely violation of this assumption is district-specific trends in the outcome variable correlated with dismissal.

To assess this threat to the causal interpretation of the empirical estimates it would be preferable to examine the trends in the black dropout rate for the treatment and control groups in the period before the dismissals began. The 1980 school district tabulation of the Census does not permit calculating dropout rates by race. It does permit calculating dropout rates for all races.

Figure 6, Panel B, plots the trend in dropout rates for all races from 1980 to 2000. The plot reveals that from 1980 to 1990, the pre-dismissal period, the treatment and control groups in the south and non-south trend in a very similar fashion. The similarity in the pre-trends provides supportive, although not conclusive, evidence in favor of the identifying assumption.

The empirical model is quite similar to that employed in section 4. Two differences, however, bear mention. First, because the model uses pooled data, the observations are weighted by cell size. Weighting may improve the efficiency of the estimates.[16] In addition, weighting more closely mimics the motivating micro-level regression, equation (7).[17]

Second, the model includes time-varying covariates. The interpretation of the results differs depending on whether time-varying covariates are included. If they are not included, the estimated effect is the net effect of dismissal on the outcome variable. If they are included, the estimated effect is the effect of dismissal holding student characteristics constant (i.e. controlling for demographic shifts). Results of the model with and without time-varying covariates are presented.

5.4 Black Dropout Rate Results

Estimation of the empirical model provides clear evidence of an increase in black dropout rates in dismissed districts. Table 7 presents these results. The four panels display different versions of the empirical model. The columns display results with different controls included. Column (1) contains only the district fixed effects and a year fixed effect. Column (2) adds a vector of census region-year interactions and a central city-year interaction. Column (3) adds a vector of

[16] Under the assumption that the errors in the motivating micro regression, equation (7), are i.i.d., weighting leads to efficiency gains by reducing the heteroscedasticity in the error term produced by pooling the data. Weighting the estimates appearing on Table 9 has little impact on the β point estimates, but generally doubles the size of the t-statitic, providing support for the above assumption.

[17] The district level data used in the 1987 – 2001 CCD panel model are not individual level data pooled to the district level. The segregation and other outcome measures are intrinsically district level measures. There is no rationale for weighting these models on efficiency grounds and they are therefore not weighted. Note that, as displayed on Tables 2 and 4, columns (4), the segregation estimates are insensitive to weighting.

1990 school district characteristic-year interactions. These interaction terms control for trends in the outcome variable associated with the given characteristic. The specification is analogous to equation (4), from section 4.

Column (4) adds a vector of time-varying student level covariates. These covariates control for demographic shifts. Several of the covariates, such as the percent of parents foreign born and percent of children born out of state, explicitly attempt to control for migration. Additional student level covariates include mother's education, indicator for being beneath the poverty line and household income and household income squared.

Panel A displays the results of estimating the primary model, equation (8). Column (3) indicates that dismissal increases the dropout rate by .0036 for each year since dismissal, although the estimate is only marginally significant at the 10 percent level. To interpret this result consider a district which was dismissed in 1996. Such a district, which is four years post dismissal (the average years since dismissal in the sample, conditional on being dismissed, is 3.5), will experience a black dropout rate approximately .015 higher than if it had not been dismissed. The mean dropout rate for dismissed districts in 1990 is .15, implying that dropout rates increase by approximately 10 percent. Virtually all of the dismissed districts were dismissed in 1994 or after, suggesting that the results should not be extrapolated beyond 6 years since dismissal.

Panel B allows the effect of dismissal to vary by region. The results are striking. All of the increase in dropout rates associated with dismissal is generated by districts located outside the South Census region. A non-southern district experiences an increase of .01 for each year post dismissal. The estimate is quite precise. This suggests that a non-southern district four years post dismissal will have experienced an increase of .04 in the rate of blacks dropping out, an increase of approximately 25 percent from the 1990 mean.

Southern districts do not experience a change in the black dropout rate as a result of being dismissed. The estimates for the south are small and cannot be distinguished from zero. The estimates are precise enough, however, to rule out any sizeable increase in the dropout rate. The 95 percent confidence interval for southern districts, using the estimates in column (3), is {-.005, .001}. The upper bound effect, four years post dismissal, is therefore less than $\frac{1}{2}$ of a point increase in the black status dropout rate.

It is unlikely that dismissal causes a single discrete change in dropout rates. Desegregation plans are often phased out over time and any change in the school environment likely occurs gradually. Panel C tests this hypothesis by estimating specifications which include both the years since dismissal variable of equation (8) and an indicator variable equal to one if the district has been dismissed. These specifications allow the data to determine if an intercept shift model or a

linear, years since dismissal parameterization is correct.

The intercept shift model is decisively rejected in favor of the years since dismissal parameterization. In all specifications, the linear dismissal coefficients are statistically significant, typically at the 1 percent level, while the indicator dismissal coefficients are imprecisely estimated. The increase in the dropout rate is a function of time since dismissal.

Panel D reports the results of a falsification test. The effect of dismissal is parameterized as an intercept shift. In addition to the dismissed indicator, the specifications include a placebo indicator equal to one if the district was dismissed after 1999. If the increase in the dropout rate documented in Panel B is the causal result of being dismissed, the districts dismissed outside the date range of the data should not display an increase in the dropout rate.

The falsification test has two significant limitations. First, it must be estimated using the intercept shift parameterization. The data reject this parameterization in favor of the linear parameterization. Second, there are only five districts in the non-southern placebo group. The falsification test may lack statistical power.

The true non-south indicator coefficient is equal to .04 and is estimated precisely. This result is very similar to that produced by the linear dismissal parameterization for a district four years post dismissal in Panel B. The non-south placebo coefficient is between fifty and forty percent as large as the true dismissal coefficient and is imprecisely estimated. The falsification test supports the conclusion that dismissal results in a causal increase in segregation.

The results are robust to a number of alternative estimation strategies. Estimating without weighting the data, using a lagged dependent variable model, as opposed to the fixed effect specification[18], and estimating the model with the sample restricted to only non-southern districts generates results consistent with those appearing on Table 7.[19]

5.5 Black Private School Attendance Results

The empirical model provides evidence that dismissal increases the rate of private school attendance for black students in the non-south, but not in the south. These results are presented on Table 8. Using the estimates in column (3) of panel B, the typical non-southern district four years since dismissal experiences an increase of .01 in the rate of private school attendance. Given the

[18] Guryan (2001) demonstrates that if treatment is a function of either time-invariant characteristics or a lagged dependent variable, then a fixed effect model and a lagged dependent variable model will provide an upper and lower bound of the true treatment effect.

[19] An exception is the point estimates for the non-south placebo variable in Panel D. In some unweighted specifications, the placebo coefficient is similar in magnitude to the true dismissed coefficient. Across a wide range of unweighted specifications, however, the placebo coefficient never obtains statistical significance.

1990 mean of .07, this implies an increase of approximately 15 percent.

The estimates are precise enough to rule out any sizeable increase in the rate of black private school attendance in the south. The 95 percent confidence interval for southern districts is {-.0014, .0025}. The upper bound effect is therefore a 1 point increase in the rate of black private school attendance for a southern district four years post dismissal.

The results for private school attendance are somewhat less robust than those for the dropout rate. The indicator treatment parameterization, presented in Panel C, produces no indication of an effect of dismissal. The results are also less robust to estimation without weights.

5.6 White Dropout and Private School Attendance Rate Results

There is no evidence that dismissal of a desegregation plan has an effect on white children's school attendance patterns.[20] These results are presented on Table 9. Most interesting are the results for private school attendance. The public school enrollment results, presented in section 4, similarly fail to find any evidence of a change in white school attendance patterns, suggesting dismissal of court-ordered desegregation plans does not reverse the "white flight" sparked by their implementation.

5.7 Endogenous Migration

The presence of migration endogenous to dismissal would alter the interpretation of the results presented in this section. Table 10, Panel A, assess the extent of black student migration. The empirical model is the same as that used above. Columns (1) and (2) examine the effect of dismissal on the log of 16 - 19 year olds residing in the district. Column (1) suggests that each year of dismissal causes an increase of approximately 1.5 percent in the population of black 16 - 19 year olds residing in non-southern districts. Column (2) reveals that the results are not robust to controlling for trends associated with 1990 district characteristics. The point estimate is small and imprecise.[21]

The absence of a change in the quantity of 16 - 19 years does not rule out the possibility of migration. The remaining columns examine the possibility that dismissal induces a change

[20] Allowing for heterogeneity by region produces results suggesting dismissal *increases* white private school attendance in the non-south – see Panel D, columns (1) and (2). The result, however, is not robust to controlling for trends associated with 1990 demographic characteristics or controlling for time-varying covariates – see columns (3) and (4).

[21] The estimates in column (1) and (2) differ from those on Table 4 because they focus on 16 - 19 years residing in the district, while Table 4 focuses on students of all ages enrolled in the public school system. The Table 4 results capture the net effect of migration, changes in the dropout rate and changes in the private school attendance rate. The results here focus only on migration.

in the average demographic characteristics of a district. The point estimates suggest that black mothers are more educated, household incomes are higher and the probability of a black child being beneath the poverty line decreases after a dismissal. These estimates, however, are generally small in magnitude and are uniformly imprecise.

The in-migration evident in column (1) will effect the dropout rate of a dismissed district if the migrants have a different dropout propensity than the students residing in the district prior to dismissal. There are two reasons for believing that the dropout rate estimates are not the result of endogenous migration. First, there is no evidence of in-migration conditional on controlling for trends associated with 1990 district characteristics. The dropout rate estimates are insensitive to these controls, suggesting that migration is not driving the result. Second, the point estimates suggest that any migration *increased* the maternal education level and affluence of dismissed districts. It is unlikely that such a change would produce increased dropout rate propensities.

Panel B explores the effect of dismissal on the migration of white students. There is no evidence of a change in the quantity of white 16 - 19 year olds. This is consistent with the evidence from section 4 which found no evidence of "reverse white flight".

The remaining columns, however, suggest that the end of court-ordered desegregation may have altered the demographic composition of whites residing in dismissed districts. The probability of a white mother having a college degree increases by approximately 2 percent for a non-southern district 4 years post dismissal and there is an approximately 1.5 percent decrease in the probability of a white child being beneath the poverty line in such a district. This improvement in the demographic profile of white families in dismissed districts is interpretable as a form of "reverse white flight" – the only evidence for the hypothesized return of white families to dismissed districts found in this paper.[22]

5.8 Property Values

The exit of black students from dismissed districts, both via dropping out and moving to private schools, suggests that the value of the education provided by a district to black students is reduced by dismissal. The evidence therefore suggests that dismissal of a desegregation plan reduces the welfare of black students and families.

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[22]Both the private school attendance results and the migration results are sensitive to the exclusion of Cincinnati from the sample. Cincinnati is an outlier among the non-southern dismissed districts in that its desegregation plan was dismissed in 1991, much earlier than other non-southern districts (see Appendix Table 1). While the point estimates are generally robust to the exclusion, there is typically a significant loss of precision, likely reflecting the small number of the non-southern dismissed districts. The dropout rate results are robust to excluding Cincinnati.

A method for estimating the precise welfare consequences of the end of court-ordered desegregation is to examine the impact of dismissal on property values. The termination of a mandatory desegregation plan potentially alters the value of the bundle of non-market goods provided by a school district. This alteration will capitalize into residential housing values (Hamilton 1976). Changes in housing prices therefore provide a summary measure of the welfare impact of the end of a court-ordered desegregation.

This approach is appealing because it produces a market based estimate of the *net* change in welfare resulting from dismissal. The total market value of changes in the school district, such as reduced funding from other government agencies and a resulting change in local taxation or changes in the quality of education being provided, will be captured by the change in housing prices. Because the empirical results of this paper suggest the impact of the end of court-ordered desegregation is confined to black students and families, it would be useful to examine the change in property values by race. Unfortunately the SDDB does not permit this. Nevertheless, I explore the effect of dismissal on property values without stratification by race.

Extensive unreported estimation, utilizing the empirical framework of this section, produces extremely imprecise estimates of the effect of dismissal on property values (of all races). Property values therefore provide no evidence of a net change in welfare resulting from a dismissal. The lack of evidence may be the result of the inability to analyze the property value data by race. These results are available from the author upon request.

6 Interpretation

The results of this paper suggest that dismissal of a court-ordered desegregation plan produces a gradual increase in racial segregation as measured by the dissimilarity and exposure indices. The increase is moderate – approximately $\frac{1}{2}$ of the decrease in racial segregation achieved by the plans implementation is undone.

Dismissal also increases the exit of black students from public schools in non-southern districts, both via dropping out and via entering private school. For both sets of students, dismissal changes the net value of attendance such that the cost exceeds the benefit for students at the margin.

It is likely that the set of students on the margin for dropping out face different relevant outside opportunities than the set on the margin for exiting to private school. For instance, the relevant outside opportunities for those on the dropout margin may be employment while for the second set of students the relevant outside opportunity may be private school attendance. The fact that both sets of students exit at an increased rate makes it less likely that the results are driven

by a change in the opportunity cost of attendance – for instance increased wages at employment outside of school. It is therefore reasonable to jointly interpret the private school and dropout rate results as indicating that the value of the educational services provided to black students in non-southern districts is reduced by dismissal. This reduction in value constitutes a welfare loss for black students.

No evidence is found of an effect on white student dropout rates or private school attendance rates. There is evidence, however, that dismissal produces a demographic shift among whites in non-southern districts. The education level of mothers increases and children are less likely to be beneath the poverty line. This shift can be seen as a form of "reverse white flight" – dismissal causes more affluent white families to return to dismissed districts.

A limitation of the dropout and private school results is their reduced form nature – they cannot establish the mechanism or channel via which the dismissals are impacting educational outcomes. Despite this limitation, a discussion of possible channels is warranted. Two primary channels exist through which dismissal may negatively impact black student outcomes – peer effects and the quality of educational inputs provided to black students. There are several reasons for believing that peer effects are not the primary channel causing an increase in dropout rates.

First, the estimated decrease in exposure between whites and blacks is small. The typical black student in a dismissed school district experiences only a three and a half percent drop in the percent of white students in his school. In comparison, the initial implementation of desegregation plans increased the exposure of nonwhites to whites by ten to thirteen percent (Reber 2002).

Second, there is no heterogeneity in the response of black-white exposure levels by southern vs. non-southern districts. Districts in the south experience a similar decrease in the exposure of black students to white students, but do not experience a similar increase in black dropout rates.

The conclusion that the decrease in black-white exposure does not explain the increased black dropout rates and private school attendance rates is consistent with recent research. Echenique and Fryer (2005) document that the within school inter-racial contact of black students is non-linear. Once blacks comprise more than twenty-five percent of the population of a school, they experience near complete within school segregation. In schools with more than twenty-five percent black enrollment, like the majority of the schools in the sample used in this paper, changes in district level segregation may not effect the peer group actually experienced by black students. Card and Rothstein (2005) find no evidence that relative exposure to black students impacts black student performance.

The second channel through which termination of a desegregation plan can impact black student outcomes is a change in the quality and quantity of education inputs. The documented re-sorting

of students across schools in a district may result in blacks, on average, attending schools of a lower quality.

Dismissal may also impact the quality and quantity of educational inputs received by blacks independent of re-sorting across schools. While a district is under court-order, it has an independent body, the courts, constantly monitoring its performance in regards to the educational outcomes of minority students. The removal of court oversight may lead school district officials to reduce both the level of financial resources expended on black students and the level of effort expended on maintaining minority student performance.

An open question raised by the results of this paper is: why do dismissals outside the south result in negative black student outcomes, whereas there is no effect of dismissal in the south? The available data fail to resolve this puzzle. Both regions experienced similar changes in racial segregation. The most promising data source on the non-racial integration aspects of court-ordered desegregation is the school district finance data released annually by the Census Bureau. Extensive unreported estimation, utilizing the empirical framework of section 4 and available from the author upon request, fails to find any evidence of a shift in overall district finances in response to dismissal in the south or non-south. It is still possible, however, that dismissal of a desegregation plan leads to a substitution of expenditures and effort away from minority students (in a manner which leaves overall district finances unchanged). If the extent of this substitution differs by region, it would explain the divergent experiences of the south and non-south in the post dismissal period.

Under this hypothesis, court-ordered desegregation in the 1990s imposed a constraint on the effort and resources targeted at black students in the non-south, but not in the south. There are two possible interpretations. First, it is possible that enforcement of court-mandated plans, in regards to the non-integration aspects such as financial resources, was more rigorous in the non-south. Dismissal therefore has more of an impact in the non-south.

Second, it is possible that the aims of court-ordered desegregation had been internalized by school district administrators in the south, whereas they had not been internalized outside of the south. Under this scenario, school district officials in the south may have continued to provide the effort and financial resources mandated by the desegregation plan after the plan's dismissal. For example, anecdotal evidence suggests school districts often engage in capital investment in minority neighborhoods after the dismissal of a desegregation plan. The Nashville, Tennessee school district pledged to spend $206 million on new school construction when it was released from its desegregation plan (Goldring and Smrekar 2002). The Lafayette Parish, Louisiana School Board promised to replace inadequate inner city schools after its desegregation plan ended (NAACP 2000). This type of effort, if it is confined to the south, may explain the divergent regional response to the

end of court-ordered desegregation.[23]

The data cannot substantiate, or refute, the above hypotheses. The reason for the divergent experiences of the south and non-south will remain speculative until more detailed data becomes available.

Finally, it is important to note that the results of this paper represent the short run response to dismissal. The long run response may differ from the short run response documented here. As more data becomes available, it will become possible to estimate the long run effects of the end of court-ordered desegregation.

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[23]The school district finance data provides no evidence that dismissed districts increase their capital expenditures in the south or non-south. Capital expenditures in minority neighborhoods, however, could represent substitution away from other capital expenditures, such as building new schools in non-minority neighborhoods.

7 Appendix A: Brief History of Desegregation Law

- Plessy v. Ferguson, 163 U.S. 537 (1896). Racial segregation does not constitute discrimination under the 14th Amendment. The "separate but equal" doctrine is established.
- Brown v. Board of Education of Topeka, 347 U.S. 483 (1954). State-imposed segregated schools are "inherently unequal". The "separate but equal" doctrine is struck down.
- Brown II, 349 U.S. 294 (1955). School desegregation shall occur via plans developed by the federal judiciary. No time table for desegregation was set and the meaning of the term desegregation was left ambiguous.
- Civil Rights Act (1964). Discrimination banned in any school receiving federal aid. The Johnson Administration enforced this ban and had the Justice Department initiate numerous desegregation lawsuits.
- Green v. County School Board of New Kent County, 391 U.S. 430 (1968). Racially dual school systems must be "dismantled root and branch." Defined the areas subject to desegregation – facilities, staff, faculty, extracurricular activities and transportation. These areas became referred to as the "Green factors."
- Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. I (1971). Busing is allowed as a means of achieving desegregation.
- Keyes v School District No.1, Denver, Colorado, 413 U.S. 189 (1973). Requirements established for declaring school systems which lacked legally mandated segregation as having a dual system. Desegregation cases became viable in the north and west where segregation had not been legally mandated.
- Milliken v. Bradley, 418 U.S. 717 (1974). Inter-district desegregation orders are ruled illegal unless discrimination can be proven to have occurred across district boundaries.
- Mid-1970s to 1991. The Supreme Court left desegregation law essentially unchanged between the mid-1970s and 1991. The number of federal court desegregation orders, which peaked in the early 1970s, declined in the late 1970s and early 1980s. The last desegregation order for a large district was San Jose in 1986.
- Board of Education of Oklahoma City v. Dowell, 498 U.S. 237 (1991). The requirements for a district being declared unitary (meaning the district was no longer operating an illegal, racially dual school system) were established. Prior to the ruling, the term had no clear legal meaning. Once a district is declared unitary, it must be released from court control and is no longer legally obligated to maintain a desegregated school district. Even immediate and complete resegregation is acceptable, as long as the district does not state its attendance policies are explicitly aimed at achieving racial segregation. Prior to the decision, it has been widely presumed that districts released from court control had an obligation to maintain a desegregated district (Orfield (2001) pg. 5; Lindseth 2002 pg. 57).
- Freeman v. Pitts, 503 U.S. 467 (1992). Districts may be declared partially unitary by achieving one or more, but not all, of the Green factors. Factors for which the district has achieved unitary status no longer fall under court control.

- Missouri v. Jenkins, 515 U.S. 70 (1995). Limited enforcement options available to the district courts (for example, efforts to voluntarily induce white students from outside the district to attend district schools are not permissible). The restoration of local school control should be a primary goal of all federal desegregation cases.

8 Appendix B: Data Appendix

8.1 Rossell and Armor Survey Data

The sample of school districts used in this paper is restricted to the set of districts identified in the Rossell and Armor survey data. I am indebted to Christine Rossell and David Armor for providing me with their data. The original research was funded by the U.S. Department of Education from 1990 to 1993 with Christine Rossell and David Armor as co-principal investigators and Roger Levine and Lauri Steele, American Institutes for Research, as contract managers. Published works using this data file are Rossell (2003), Rossell (2002), Armor and Rossell (2002), Rossell and Armor (1996) and Steel, Levine, Rossell and Armor (1993). The sampling frame for the survey data was the set of U.S. school districts in which two or more schools offer at least one grade level (K-12) in common. 6,392 of the 16,986 districts in the 1989/1990 CCD meet this criterion. Districts with enrollment of 27,750 or greater were sampled with certainty, as were districts which were MSAP (a federal magnet school program) grantee districts. Remaining districts were sampled based on stratum for size and racial composition. Larger districts and districts with diverse racial compositions were oversampled. See Appendix A of Steel and Levine (1994) for details. The original survey sample contained 602 districts. The sample used in this paper contains 571 districts. The discrepancy arises from the fact that several districts included in the original sample do not map into the CCD. For example, the subdistricts of New York City were considered separate districts in the survey sample, but constitute a single district in the CCD. Two districts closed over the time period of the data. These districts remain in the sample until the year of closure. Districts-year observations with insufficient race data were omitted from the estimation sample. Insufficient race data is defined as having the sum of enrollment by race equal to less than 90 percent of total enrollment. The results reported in the paper, however, are unchanged when these observations are included. All observations for Tennessee in 1997 are dropped due to clear error in the racial variables for the entire state. Tennessee ceased to report racial data in 1999 and all Tennessee districts therefore drop out of the sample from 1999 on.

8.2 Legal Variables

I construct two district level variables based on the legal status of the school district in relation to court-ordered desegregation plans. The first variable indicates the year the district was dismissed from its desegregation order if it was dismissed in 1991 or after. Many of the dismissals are unitary status declarations. Others are terminations of judicial involvement in the school district without a formal unitary status declaration. In some cases unitary declarations are made and court supervision continues for a limited period of time. The dates of dismissal attempt to reflect the date court supervision of the school district ended. Some rulings involve school districts agreeing to take a certain course of action, for instance making capital investments in minority neighborhoods, over the course of several years. These type of stipulations are not considered court supervision. The second variable indicates whether or not the district was under a court-ordered desegregation plan in 1991, the year of the first of the three early 1990s Supreme Court decisions relating to desegregation.

I use multiple sources to generate these variables :

1. Ma (2003), a spreadsheet produced by the Harvard Civil Rights Project titled "List of School Districts Previously Under Desegregation Orders Dismissed between 1990 – 2002", is the primary source of the year of dismissal variable. A conversation with Jacinta Ma, the author of the spreadsheet, suggests it is accurate for very large districts, but may not be complete for smaller ones. As a result, I supplement the data in Ma (2002) with information from other sources.

2. The Rossell and Armor data contains a variable indicating if the school district has a desegregation plan as of Oct. 1, 1991. Another variable indicates the source of the plan, in particular whether or not it was a court-ordered plan. The Rossell and Armor data is the primary source of the under plan as of 1991 variable.

3. Appendix C of Welch and Light contains a bibliography of legal sources for each of the districts in the Welch and Light sample. For some of these districts, a date of court-order dismissal is given.

4. The Civil Rights Division of the United States Justice Department maintains a list of all school desegregation cases currently active to which the United States is a party. The list also contains the names of all school districts involved in each case. The Civil Right Division provided the author with a copy of the list current as of March 8, 2003. Historically, the Justice Department was one of the most active litigants in school desegregation cases. The list almost certainly contains a non-trivial percentage of desegregation cases still active in the federal courts.

5. Legal opinions, both published and unpublished, issued by Federal District and Appeals Courts, and available via Lexis-Nexis and Westlaw, often contain extensive information on desegregation cases.

6. The Federal District Court dockets for desegregation cases typically contain information about the status of the case and the date of dismissal if applicable. The docket numbers, required to obtain the dockets, were obtained in two ways. First, docket numbers appear on opinions issued by Federal District Courts (see above). Second, Courtlink, a service provided by Lexis-Nexis, allows for complex electronic searches of Federal District Court dockets. The dockets are available on Courtlink at varying dates for the different District Courts. Typically the dockets are available from the late 1980s or very early 1990s forward. A search using the following parameters was performed: nature of suit = "440" (denoting the case as civil rights, other), keywords = "school~AND segregat~OR desegregat~OR unitary" (where the ~is a root expander). The search provided a list of docket numbers, for both active and closed cases, meeting the above criterion. The search is the most sophisticated currently possible. However, there are several potential sources of error in the search. First, cases with no activity in the date range of the database will be missed. Second, the dockets must contain the specified keywords. A very sparse docket from a desegregation case could potential lack the keywords used in the search. Second, while all Federal District Court dockets from the relevant dates appear in the database, they are not updated unless a user specifically requests, and pays, for the update. As a result, a docket concerning a desegregation case that contains the keywords in an entry dated after the docket was initially downloaded into Courtlink and which has not been subsequently updated, will be missed by the search. As a result of these potential sources of error, the search, while the best possible, cannot be

viewed as generating a comprehensive list of desegregation case dockets. The actual dockets were obtained from PACER, an electronic service maintained by the federal court system. T he methodology of jointly employing Courtlink and PACER was suggested to me by Margo Schlanger, a professor at Harvard Law School and an expert on this type of empirical legal research. Professor Schlanger laid out the precise methodology employed.

7. A variety of published sources, including books, journal articles, newspaper articles, magazine articles, minutes of school board meetings, school budgets, etc. were utilized. In particular, the electronic archives of Education Week, the national publication with the greatest commitment to covering school desegregation issues, was used.

8. Personal communication with school district officials were used in cases when all of the above sources failed to provide sufficient information.

8.3 School District Data Book

The School District Data Book (SDDB) is a public school district level tabulation of the U.S. Census which focuses on children (the 2000 version is referred to as the School District Tabulation – STP2). A child is included in a districts tabulation if he/she lives within the territory of the district and his/her grade level is offered by the school district. In 2000, a child is defined as a person age 0 to 17 or a person 18 or 19 years of age who has not graduated from high school. In 1990 a child is defined as a person age 3 to 19 who has not graduated from high school. As noted in the text, the status dropout rate is calculated only for 16 to 19 year olds, while the individual level covariates are tabulated from all children. In addition, several of the individual level covariates are tabulated by household or parents of children as opposed to being tabulated by child. If the pooled regression (equation (7) in the text) was being calculated from micro data, the individual level covariates would be averaged over the total number of children in the district. The following covariates from the SDDB, however, are averaged over the set of parents with children : mother's education and parent foreign born. Each parent with a child contributes a single observation to the calculation of the mean, regardless of the number of children the parent has. Ideally, each child would contribute a single observation to the calculation of the mean. Similarly, the household income variables are averaged over the set of households with children, as opposed to being average over all children. In all of the above cases, the calculated means approximate the true mean calculated over the number of children in the district. One important difference between the CCD data, used in section 4, and the SDDB data, used in section 5, bears mention. The CCD maintains hispanic as a separate racial category along with white, black, asian and native American. The SDDB, however, treats hispanic background as an aspect of ethnicity. An individual of a given race, for instance an individual whose racial category is white, can indicate that she is, or is not, ethnically hispanic. For the purposes of section 5, white refers to non-hispanic white children and black refers to hispanic and non-hispanic black children. The 2000 SDDB does not contain information on black children separately tabulated by ethnicity.

9 References

Angrist, Josh and Kevin Lang, "Does School Integration Generate Peer effects? Evidence from Boston's Metco Program," American Economic Review, December 2004.

Armor, David J. and Christine H. Rossell, "Desegregation and Resegregation in the Public Schools," in Abigail Thernstrom and Stephen Thernstrom, Beyond the Color Line, pp. 219-258. Palo Alto, CA: Hoover Institution Press, 2002.

Betrand, Marianne, Esther Duflo and Sendhil Mullainathan, "How Much Should We Trust Differences-in-Differences Estimates?" Quarterly Journal of Economics, Vol. 119 Issue 1, Feb. 2004.

Boger, John, "Education's Perfect Storm? Racial Resegregation, High Stakes Testing & School Inequities : The Case of North Carolina", The Resegregation of Southern Schools? A Crucial Moment in the History (and the Future) of Public Schooling in America Conference Paper, August 2002.

Boozer, Michael A., Alan B. Krueger and Shari Wolkon, "Race and School Quality Since Brown v. Board of Education," Brookings Papers on Economic Activity: Microeconomics, (1992) 269 – 326.

Card, David and Abigail Payne, "School Finance Reform, the Distribution of School Spending and the Distribution of SAT Scores", National Bureau of Economic Research Working Paper No. 6766, October 1998.

Card, David and Jesse Rothstein, "Racial Segregation and the Black-White Test Score Gap", mimeo, March 2005.

Cherminsky, Erwin, "Courts Must Share the Blame for the Failure to Desegregate Public Schools" The Resegregation of Southern Schools? A Crucial Moment in the History (and the Future) of Public Schooling in America Conference Paper, August 2002.

Clotfelter, Charles, Helen Ladd and Jacob Vigdor, "Racial Segregation in Modern-Day Public Schools" mimeo, July 2003.

Clotfelter, Charles, Helen Ladd and Jacob Vigdor, "Federal Oversight, Local Control, and the Specter of "Resegregation" in Southern Schools", NBER Working Paper 11086, January 2005.

Echenique, Federico and Roland Fryer, "On the Measurement of Segregation", mimeo, Harvard, March 2005.

Frankenburg, Erica, Chungmei Lee and Gary Orfield, "A Multiracial Society with Segregated Schools : Are We Losing the Dream?", Harvard Civil Rights Project Report, 2003.

Glaesar, E.L. and J. L. Vigdor, "Racial Segregation: Promising News", in B. Katz and R. Lang eds. Redefining Urban & Suburban America: Evidence from Census 2000, Volume I, , 211-234. Washington : Brookings Institution Press, 2003.

Goldring, Ellen and Claire Smrekar, "Shifting from Court-Ordered to Court-Ended Desegregation in Nashville : Student Assignment and Teacher Resources", The Resegregation of Southern

Schools? A Crucial Moment in the History(and the Future) of Public Schooling in America Conference Paper. August 2002.

Guryan, Jonathan, "Desegregation and Black Dropout Rates", National Bureau of Economic Research Working Paper No. 8345, June 2001.

Guryan, Jonathan, "Desegregation and Black Dropout Rates", American Economic Review, Vol. 94 No. 4, September 2004.

Hamilton, Bruce, "Capitalization of Interjurisdictional Differences in Local Tax Prices", American Economic Review, Vol. 66, No.5, pg. 743 – 753, 1976.

Hoxby, Caroline, "Peer Effects in the Classroom: Learning from Gender and Race Variation," National Bureau of Economic Research Working Paper No. 7867, August 2000.

Hoxby, Caroline, "All School Finance Equalizations are Not Created Equal," Quarterly Journal of Economics (November 2001), 1231 - 1189.

Hanushek, Eric, John Kain and Steven Rivkin, "New Evidence About Brown V. Board of Education: The Complex Effects of School Racial Composition on Achievement,", National Bureau of Economic Research Working Paper No. 8741, January 2002.

Lindseth, "Legal Issues Relating to School Funding/Desegregation" in Rossell, Armor, and Walberg, (eds.), School Desegregation in the 21st Century, pp. 41-66. Westport, Ct.: Praeger Publishers, 2002.

Ma, Jacinta, "List of School Districts Previously Under Desegregation Orders Dismissed between 1990 – 2002" Harvard Civil Rights Project, unpublished draft, 2003.

Merelman, Richard, "Dis-Integrating American Public School," Education Week, Feburary 6, 2002.

Murray, Sheila, William Evans and Robert Schwab, "Education-Finance Reform and the Distribution of Education Resources", American Economic Review, Vol. 88, No. 4, Sept. 1998.

NAACP Legal Defense and Education Fund, Inc. 2000 Annual Report, 99 Hudson St., Suite 1600, New York, NY 10013.

National Center for Education Statistics, "Dropout Rates in the United States: 1999," U.S. Department of Education, Office of Educational Research and Improvement, 2001.

New York Times, "Fighting School Resegregation", Editorial Page, January 27, 2003.

Orfield, Gary, "Schools More Separate: Consequences of A Decade of Resegregation?," Harvard Civil Rights Project Report, 2001.

Orfield, Gary and Susan Eaton. Dismantling Desegregation: the Quiet Reversal of Brown v. Board of Education. New York: New Press: Distributed by W.N. Norton & Company, 1996.

Orfield, Gary and Chungmei Lee, "Brown at 50: King's Dream or Plessy's Nightmare?," Harvard Civil Rights Project Report, 2004.

Parker, Wendy, "The Future of School Desegregation," Northwestern University Law Review, vol. 94, no. 4 (summer 2000), 1157 – 1227.

Raffel, "History of School Desegregation" in Rossell, Armor, and Walberg, (eds.), School Desegregation in the 21st Century, pp. 17-40. Westport, Ct.: Praeger Publishers, 2002.

Reber, Sarah, "Court-Ordered Desegregation: Successes and Failures in Integrating American Schools Since Brown," mimeo, March 2002.

Rossell, Christine H., "The Desegregation Efficiency of Magnet Schools," Urban Affairs Review (formerly Urban Affairs Quarterly), vol. 38, May 2003: 697-725.

Rossell, Christine H, "The Effectiveness of Desegregation Plans," in Rossell, Armor, and Walberg, (eds.), School Desegregation in the 21st Century, pp. 67-118. Westport, Ct.: Praeger Publishers, 2002.

Rossell, Christine H and David Armor, "The Effectiveness of School Desegregation Plans, 1968-1991," American Politics Quarterly, July 1996, 24 (3): 267-302.

Schlanger, Margo, "Inmate Litigation," Harvard Law Review, vol. 116 (Apr. 2003).

Steel, Laurie and Roger Levine, "Educational Innovations in Multiracial Contexts: The Growth of Magnet Schools in American Education, " Report by American Institutes for Research in Behavioral Sciences, Palo Alto, California, 1994.

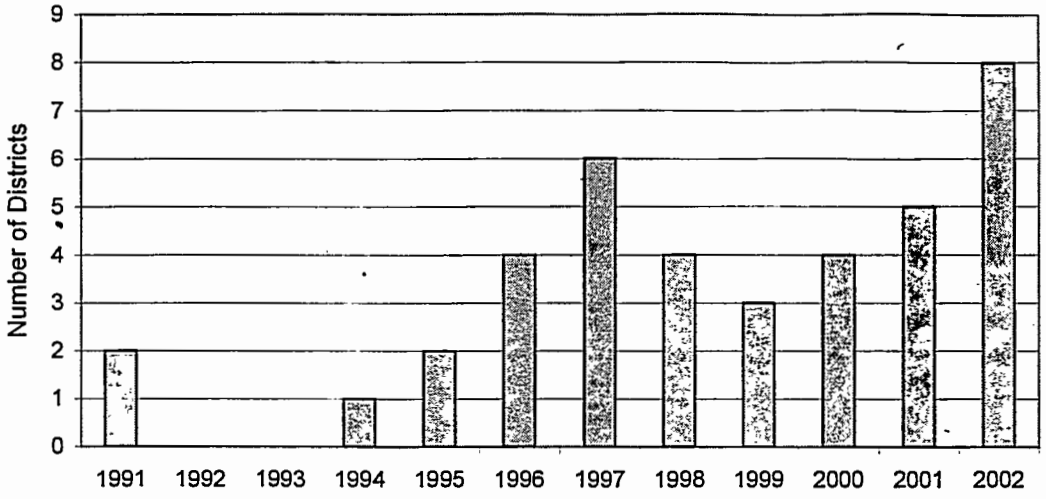
Steel, Laurie, Roger Levine, Christine Rossell, and David Armor, "Magnet Schools and Issues of Desegregation, Quality and Choice, Phase I: the National Survey and In-Depth Study of Selected Districts," a report to the Department of Education, 1993.

Tushnet, Mark, "'We've Done Enough' Theory of School Desegregation," Howard Law Review, vol. 39 (1996).

Welch, Finis and Audrey Light, "New Evidence on School Desegregation." Unicon Research Corporation and United States Commission on Civil Rights. Washington D.C.: United States Commission on Civil Rights, 1987.

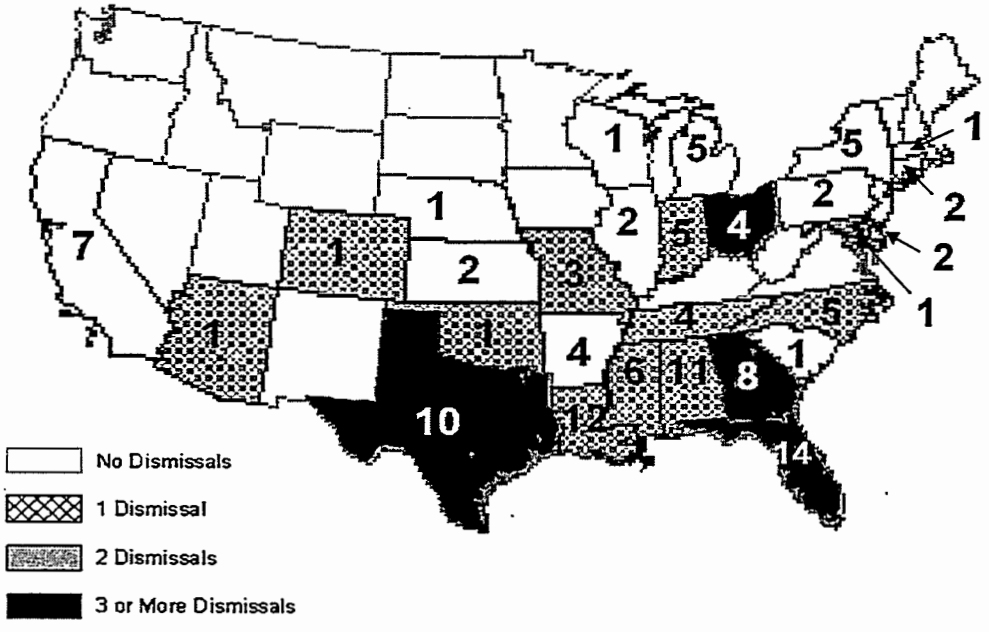
Wooldridge, Jeffrey M., Econometric Analysis of Cross Section and Panel Data, MIT Press, Cambridge, Massachusetts, 2002.

Figure 1: Desegregation Order Dismissals Post 1990



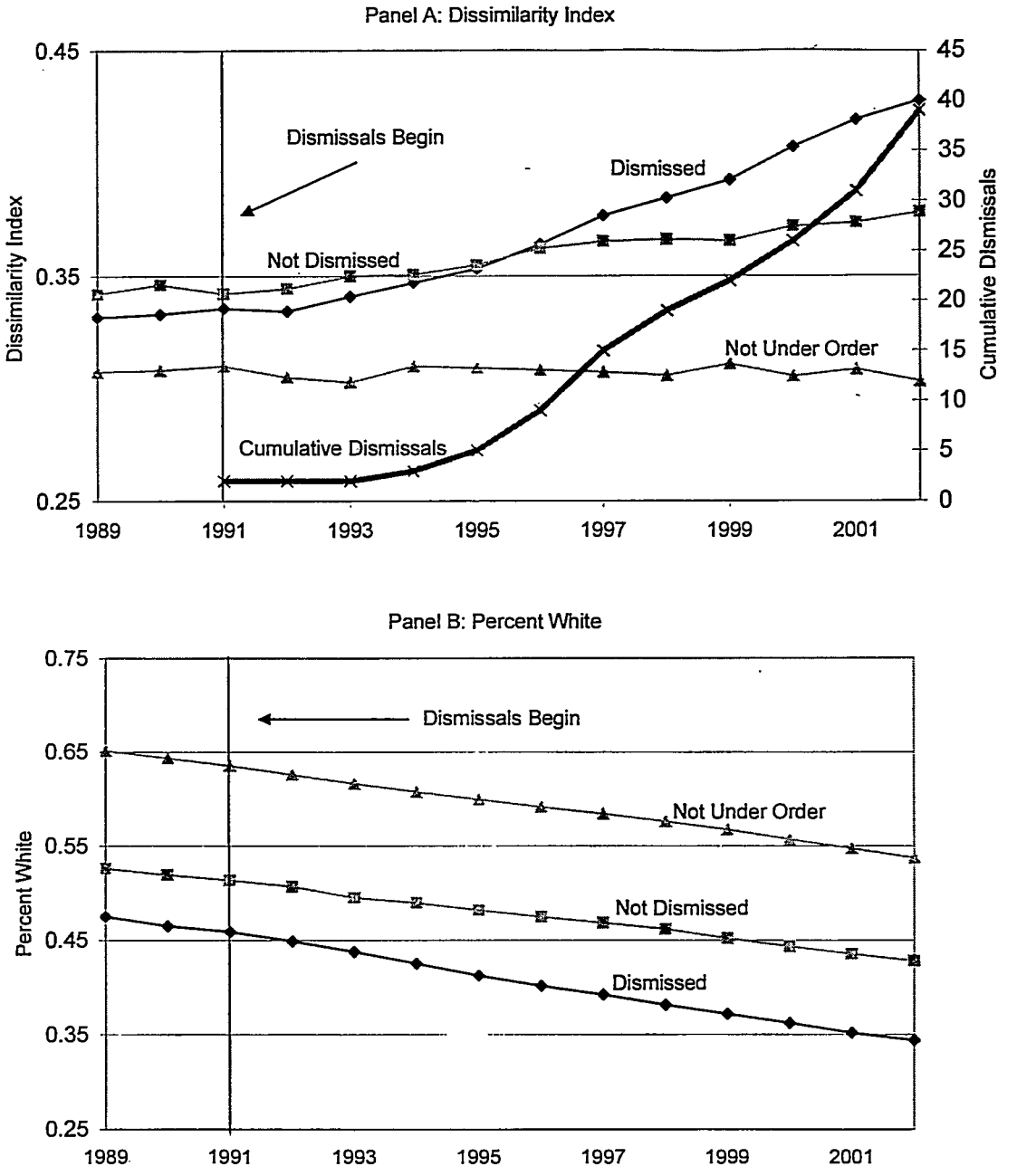
Note. The figure displays the number of dismissals of desegregation plans occurring among the set of school districts in the Rossell and Armor sample which were under a court-ordered desegregation plan at the start of 1991.

Figure 2: Geographic Distribution of Sample and Dismissals



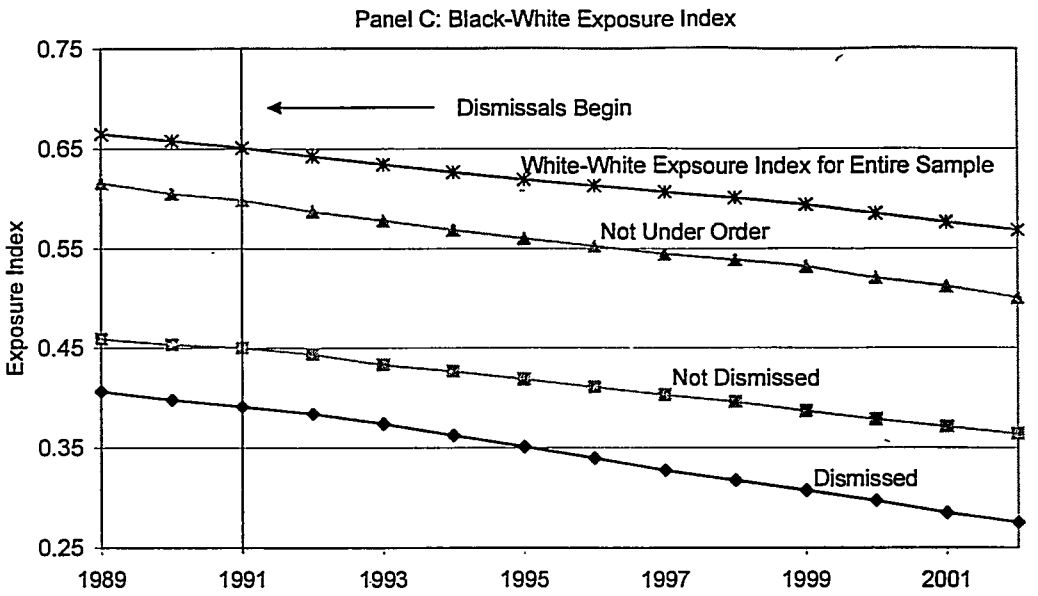
Note. The figure displays the number of dismissals of court-ordered desegregation plans by state from 1991 to 2002. The numbers within the states are the number of school districts in the state that appear in the estimation sample - i.e. that appear in the Rossell and Armor survey data and were under a court-ordered desegregation plan in 1991.

Figure 3: Segregation Trends



Note. The plots are means for the relevant groups. Dismissed refers to those districts under court-order in 1991 and dismissed from their desegregation plan between 1991 and 2002. Not dismissed refers to those districts under court-order in 1991 and not dismissed from their plans between 1991 and 2002. Not under order refers to those districts not under court order in 1991. The sample of districts is restricted to those in the Rossell and Armor sample which form a balanced panel from 1989 to 2002.

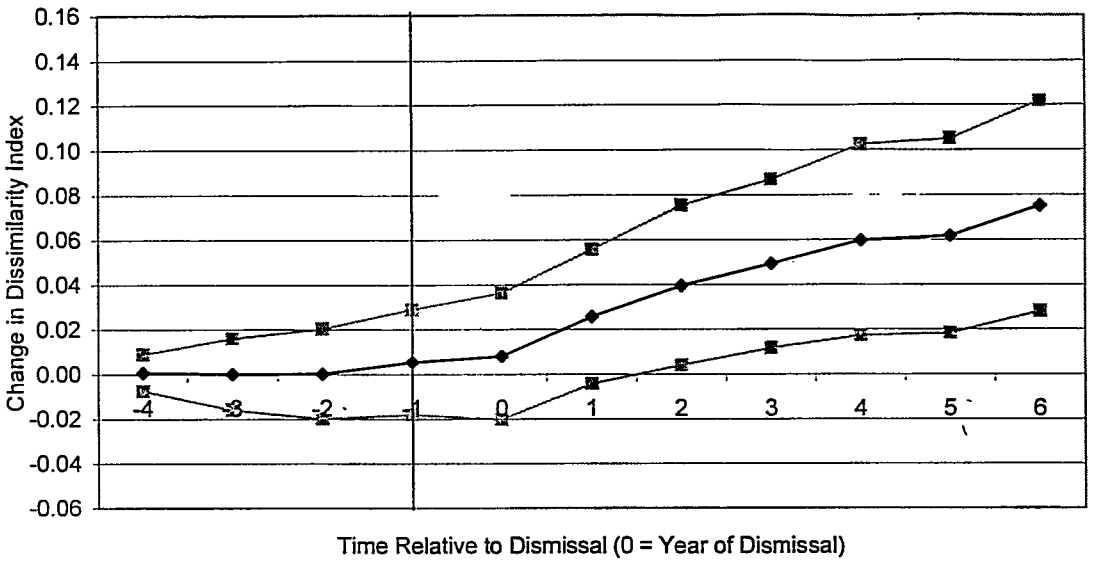
Figure 3: Segregation Trends



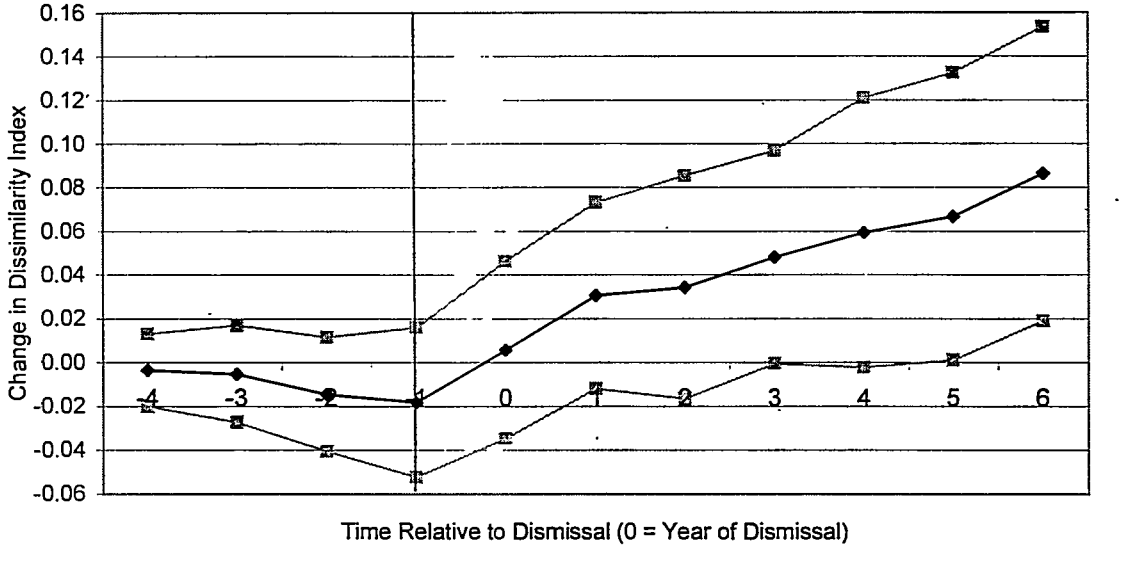
Note. The plots are means for the relevant groups. The dismissed, not dismissed and not under order group plots refer to the black-white exposure index. Dismissed refers to those districts under court-order in 1991 and dismissed from their desegregation plan between 1991 and 2002. Not dismissed refers to those districts under court-order in 1991 and not dismissed from their plans between 1991 and 2002. Not under order refers to those districts not under court order ir 1991. The sample of districts is restricted to those in the Rossell and Armor sample which form a balanced panel from 1989 to 2002.

Figure 4: Effect of Dismissal on Dissimilarity Index

Panel A: Full Sample



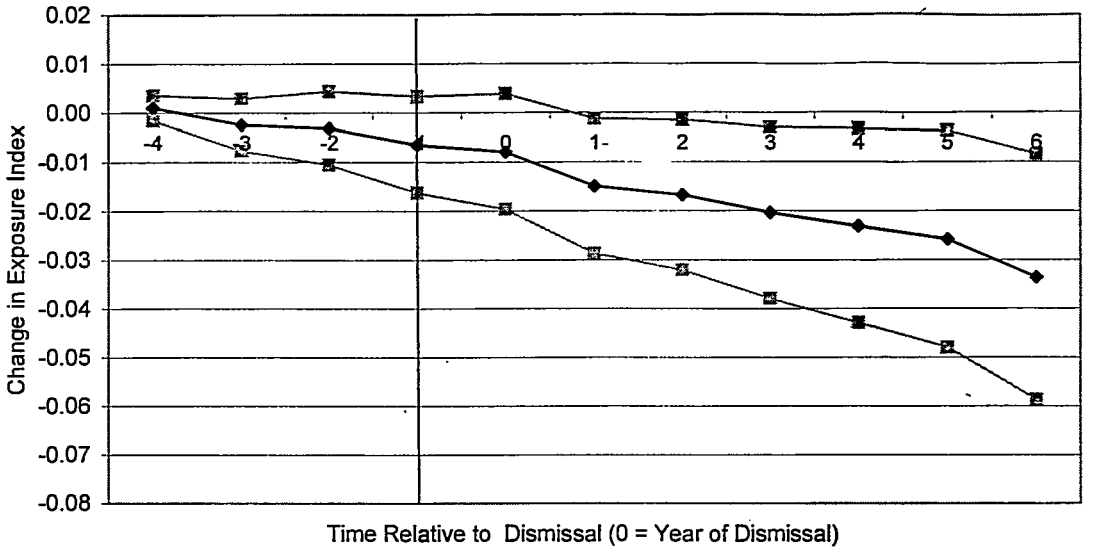
Panel B: Balanced Panel



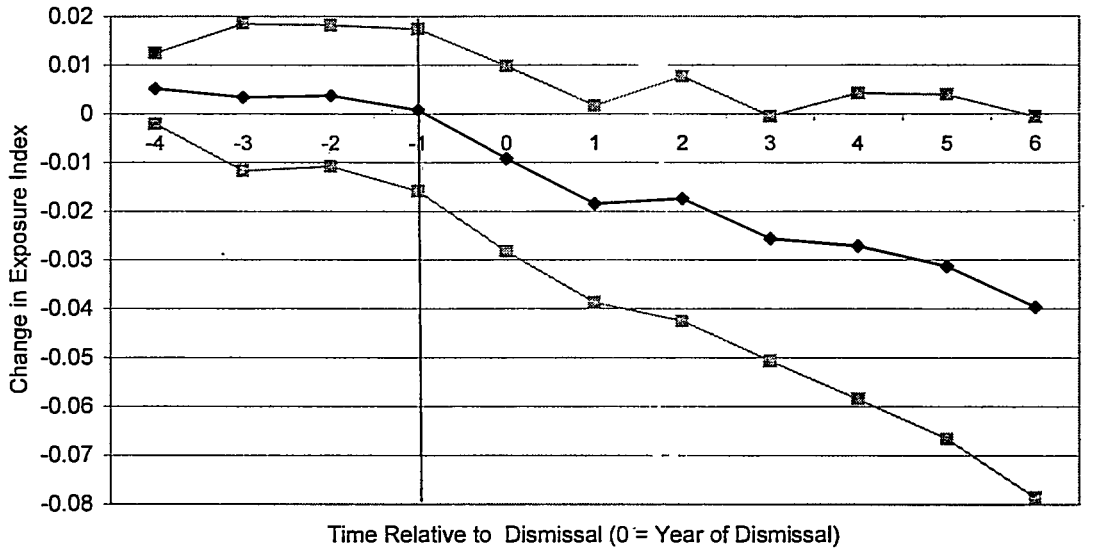
Note. Panel A plots the coefficients and their 95 percent confidence intervals from the specification presented in Column (2) of Table 2. Panel B plots the coefficients and their 95 percent confidence intervals from the specification presented in Column (6) of Table 2.

Figure 5: Effect of Dismissal on Exposure Index

Panel A : Full Sample



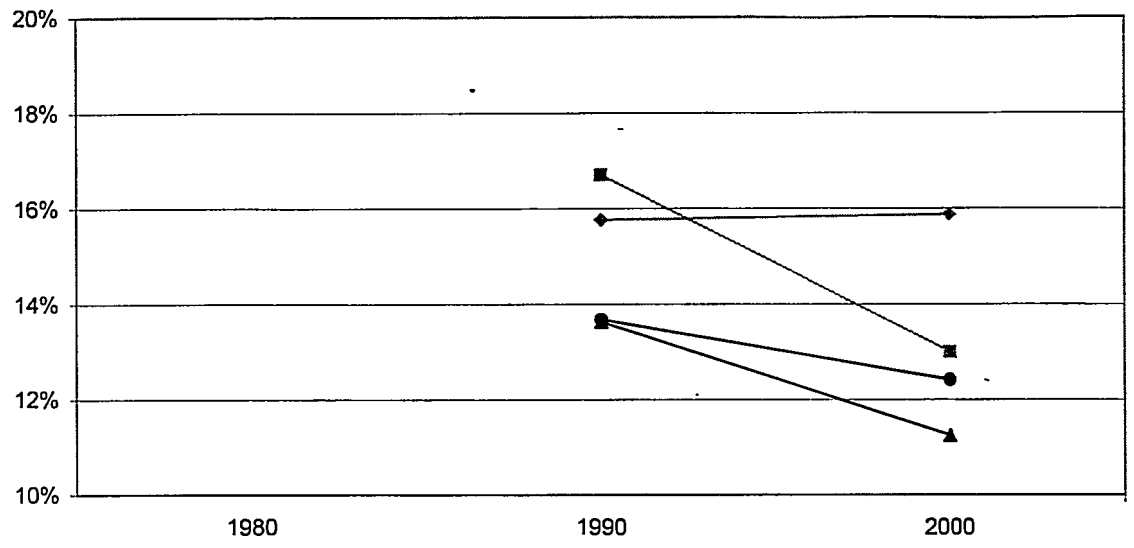
Panel B : Balanced Panel



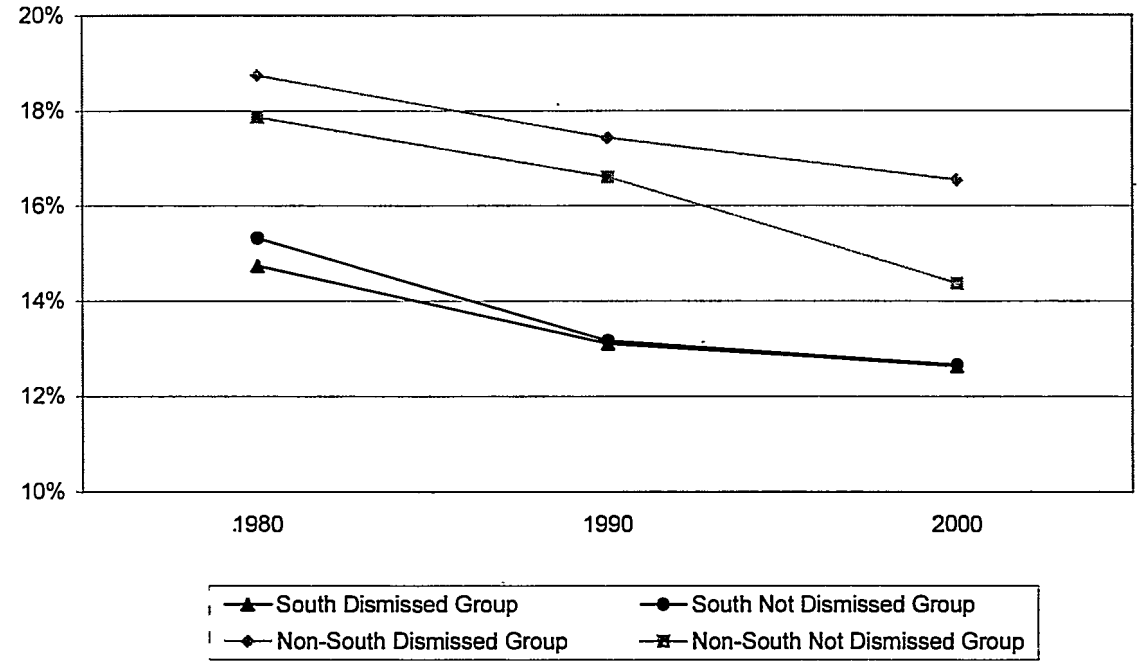
Note. Panel A plots the coefficients and their 95 percent confidence intervals from the specification presented in Column (2) of Table 4. Panel B plots the coefficients and their 95 percent confidence intervals from the specification presented in Column (6) of Table 4.

Figure 6: Trends in Status Dropout Rate

Panel A: Black Status Dropout Rate



Panel B: Status Dropout Rate for All Races



Note. The chart displays the mean school district status dropout rate by non-south treatment and control group and south treatment and control group. The variables are obtained from school district tabulations of the U.S. Census. The treatment group is the set of districts dismissed from 1991 - 1999. The control group is the set of districts not dismissed in this period. The sample is restricted to the set of districts for which non-missing observations exist for all three years displayed on the chart. The means are weighted by the number of 16 - 19 blacks residing in the district. These are the weights used in the regressions appearing on Table 9. The black status dropout rate, displayed in Panel A, is not available for 1980.

Table 1
1990 School District Characteristics

	Under Court-Order as of 1991		Not Under Court-Order as of 1991
	Dismissed 1991 - 2002	Not Dismissed as of 2002	
A. School District Characteristics			
Dissimilarity Index	0.33	0.34	0.32
	(0.14)	(0.19)	(0.17)
Exposure Index	0.40	0.45	0.60
	(0.16)	(0.22)	(0.29)
Enrollment	58811	39641	20790
	(56235)	(85291)	(51776)
% black	0.39	0.36	0.16
	(0.20)	(0.22)	(0.21)
% white	0.47	0.52	0.64
	(0.17)	(0.23)	(0.29)
South Region	0.63	0.65	0.29
	(0.49)	(0.48)	(0.45)
Serves a Central City	0.63	0.48	0.30
	(0.49)	(0.50)	(0.46)
B. School District Community Characteristics			
Black Status Dropout Rate	0.15	0.14	0.11
	(0.04)	(0.05)	(0.12)
Median Household Income*	40976	40960	48839
	(11037)	(11845)	(16941)
% Households Below Poverty Line	0.21	0.21	0.16
	(0.10)	(0.10)	(0.11)
Number of Observations**	35	79	403

Note. The cells are 1999 school district means. Standard deviations are in parentheses. Household refers to households with children. * Median household income is expressed in 1999 dollars. ** The sample is restricted to districts with non-missing values for the dissimilarity and exposure indices in 1990.

Table 2
Effect of Desegregation Order Dismissal on Dissimilarity Index

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
			Pre-Dismissal				
pre(-4)	0.002	0.001	0.001	0.002	0.001	-0.004	0.000
	(0.004)	(0.004)	(0.005)	(0.004)	(0.004)	(0.009)	(0.004)
pre(-3)	0.002	0.000	0.002	0.007	0.000	-0.005	-0.001
	(0.007)	(0.008)	(0.009)	(0.009)	(0.009)	(0.011)	(0.007)
pre(-2)	0.004	0.000	0.003	0.008	0.001	-0.015	-0.001
	(0.009)	(0.010)	(0.011)	(0.011)	(0.011)	(0.013)	(0.009)
pre(-1)	0.010	0.006	0.009	0.015	0.006	-0.018	0.004
	(0.011)	(0.012)	(0.012)	(0.012)	(0.014)	(0.017)	(0.011)
			Post-Dismissal				
post(0)	0.013	0.008	0.013	0.021	0.009	0.006	0.006
	(0.013)	(0.014)	(0.015)	(0.014)	(0.017)	(0.021)	(0.014)
post(1)	0.030	0.026	0.032	0.038	0.029	0.031	0.019
	(0.014)	(0.015)	(0.016)	(0.015)	(0.019)	(0.022)	(0.015)
post(2)	0.042	0.040	0.038	0.045	0.045	0.034	0.034
	(0.016)	(0.018)	(0.017)	(0.017)	(0.023)	(0.026)	(0.018)
post(3)	0.053	0.049	0.049	0.052	0.057	0.048	0.042
	(0.017)	(0.019)	(0.018)	(0.018)	(0.025)	(0.025)	(0.018)
post(4)	0.064	0.060	0.056	0.059	0.068	0.059	0.051
	(0.019)	(0.022)	0.020	0.020	0.028	0.031	0.021
post(5)	0.067	0.062	0.061	0.063	0.072	0.067	0.053
	(0.020)	(0.022)	(0.022)	(0.021)	(0.030)	(0.034)	(0.021)
post(>=6)	0.080	0.075	0.074	0.075	0.084	0.086	0.063
	(0.022)	(0.024)	(0.023)	(0.024)	(0.034)	(0.034)	(0.023)
Number of Observations	1712	1712	1296	1712	1712	710	1712
Dep. Var. Mean	0.363	0.363	0.392	0.363	0.363	0.338	0.328
Dep. Var. S.D.	0.180	0.180	0.169	0.180	0.180	0.178	0.164
Dep Var. 1991 Cross-Section S.D.	0.179	0.179	0.165	0.179	0.179	0.183	0.165
Index Components	Black-White	Black-White	Black-White	Black-White	Black-White	Black-White	Nonwhite-White
School District Effects	X	X	X	X	X	X	X
Year * Census Region	X	X	X	X	X	X	X
Year * Base Demographics*		X	X	X	X	X	X
Base Enrollment >= 10,000			X				
Weighted by Base Enrollment				X			
District Specific Trends					X		
Balanced Panel						X	

Note. Standard errors, clustered by district, are presented in parentheses. The sample is restricted to those districts under court-order in 1991.
*Base period demographic characteristics include a central city indicator variable, number of students enrolled, number of students enrolled squared, percent of students who are white and percent of students who are hispanic.

Table 3
Effect of Desegregation Order Dismissal on Enrollment by Race

	Log Enrollment		
	Black	Non-White	White
	(1)	(2)	(3)
	Pre-Dismissal		
pre(-4)	0.002	0.005	0.008
	(0.007)	(0.007)	(0.012)
pre(-3)	0.005	0.009	-0.012
	(0.009)	(0.010)	(0.015)
pre(-2)	0.006	0.016	-0.014
	(0.011)	(0.013)	(0.020)
pre(-1)	0.004	0.016	-0.026
	(0.013)	(0.016)	(0.025)
	Post-Dismissal		
post(0)	0.005	0.017	-0.023
	(0.016)	(0.019)	(0.029)
post(1)	0.007	0.017	-0.030
	(0.018)	(0.021)	(0.036)
post(2)	0.015	0.027	-0.016
	(0.022)	(0.025)	(0.039)
post(3)	0.015	0.028	-0.015
	(0.024)	(0.027)	(0.044)
post(4)	0.008	0.021	-0.017
	(0.027)	(0.031)	(0.051)
post(5)	0.009	0.028	-0.010
	(0.029)	(0.034)	(0.055)
post(>=6)	0.011	0.032	-0.015
	(0.034)	(0.036)	(0.059)
N	1712	1712	1712
Dep. Var. Mean	8.948	9.382	9.131
Dep. Var. S.D.	1.314	1.327	1.288
Dep Var. 1991 Cross Section S.D.	1.321	1.316	1.282

Note. Standard errors, clustered by district, are presented in parentheses. The sample is restricted to those districts under court-order in 1991. The dependent variable is the log of enrollment for the given race . The specification, similar to that in column (2) of Table 2, includes district fixed effects, year-census region effects and base period characteristics interacted with year indicator variables. Base period demographic characteristics include a central city indicator variable, number of students enrolled and number of students enrolled squared.

Table 4
Effect of Desegregation Order Dismissal on Exposure Index

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
			Pre-Dismissal				
pre(-4)	0.000	0.001	0.002	0.001	0.002	0.005	0.001
	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)	(0.004)	(0.001)
pre(-3)	-0.003	-0.002	-0.001	-0.003	-0.001	0.003	-0.003
	(0.003)	(0.003)	(0.003)	(0.002)	(0.003)	(0.008)	(0.002)
pre(-2)	-0.004	-0.003	0.000	-0.003	-0.001	0.004	-0.003
	(0.004)	(0.004)	(0.004)	(0.003)	(0.004)	(0.007)	(0.004)
pre(-1)	-0.008	-0.007	-0.002	-0.006	-0.003	0.001	-0.006
	(0.005)	(0.005)	(0.005)	(0.004)	(0.005)	(0.009)	(0.005)
			Post-Dismissal				
post(0)	-0.009	-0.008	-0.003	-0.008	-0.004	-0.009	-0.007
	(0.006)	(0.006)	(0.006)	(0.005)	(0.006)	(0.010)	(0.006)
post(1)	-0.017	-0.015	-0.008	-0.013	-0.011	-0.019	-0.012
	(0.007)	(0.007)	(0.007)	(0.006)	(0.007)	(0.010)	(0.007)
post(2)	-0.019	-0.017	-0.009	-0.015	-0.013	-0.017	-0.014
	(0.007)	(0.008)	(0.008)	(0.007)	(0.008)	(0.013)	(0.008)
post(3)	-0.022	-0.020	-0.012	-0.017	-0.016	-0.026	-0.016
	(0.009)	(0.009)	(0.008)	(0.008)	(0.010)	(0.013)	(0.009)
post(4)	-0.026	-0.023	-0.013	-0.019	-0.018	-0.027	-0.018
	(0.010)	(0.010)	(0.010)	(0.009)	(0.011)	(0.016)	(0.010)
post(5)	-0.028	-0.026	-0.015	-0.020	-0.020	-0.031	-0.021
	(0.011)	(0.011)	(0.011)	(0.010)	(0.012)	(0.018)	(0.011)
post(>=6)	-0.036	-0.034	-0.021	-0.024	-0.026	-0.040	-0.028
	(0.012)	(0.013)	(0.012)	(0.011)	(0.014)	(0.020)	(0.012)
Number of Observations	1712	1712	1296	1712	1712	710	1712
Dep. Var. Mean	0.391	0.391	0.381	0.391	0.391	0.397	0.399
Dep. Var. S.D.	0.215	0.215	0.208	0.215	0.215	0.211	0.215
Dep Var. 1991 Cross-Section S.D.	0.210	0.210	0.204	0.210	0.210	0.211	0.209
Index Components	Black-White	Black-White	Black-White	Black-White	Black-White	Black-White	Nonwhite-White
School District Effects	X	X	X	X	X	X	X
Year * Census Region	X	X	X	X	X	X	X
Year * Base Demographics*		X	X	X	X	X	X
Base Enrollment >= 10,000			X				
Weighted by Base Enrollment				X			
District Specific Trends					X		
Balanced Panel						X	

Note. Standard errors, clustered by district, are presented in parentheses. The sample is restricted to those districts under court-order in 1991.
*Base period demographic characteristics include a central city indicator variable, number of students enrolled, number of students enrolled squared, percent of students who are white and percent of students who are hispanic.

Table 5
Effectivness of Court-Ordered Desegregation : Dissimilarity Index

	(1)	(2)	(3)
1991 * Under Court Order in 1991	-0.006	-0.008	-0.010
	(0.006)	(0.006)	(0.005)
1992 * Under Court Order in 1991	0.000	-0.007	-0.011
	(0.007)	(0.008)	(0.006)
1993 * Under Court Order in 1991	0.007	-0.003	-0.009
	(0.007)	(0.008)	(0.007)
1994 * Under Court Order in 1991	0.003	-0.008	-0.010
	(0.008)	(0.009)	(0.007)
1995 * Under Court Order in 1991	0.009	-0.005	-0.009
	(0.008)	(0.010)	(0.008)
1996 * Under Court Order in 1991	0.016	0.002	-0.004
	0.010	0.011	0.009
1997 * Under Court Order in 1991	0.022	0.006	-0.004
	(0.010)	(0.011)	(0.009)
1998 * Under Court Order in 1991	0.028	0.017	0.004
	(0.010)	(0.011)	(0.011)
1999 * Under Court Order in 1991	0.021	0.010	-0.001
	(0.011)	(0.012)	(0.012)
2000 * Under Court Order in 1991	0.031	0.019	0.004
	(0.011)	(0.012)	(0.012)
2001 * Under Court Order in 1991	0.030	0.019	0.004
	(0.011)	(0.012)	(0.012)
2002 * Under Court Order in 1991	0.040	0.026	0.009
	(0.012)	(0.012)	(0.013)
Number of Observations	7304	7304	7300
Dep. Var. Mean	0.316	0.316	0.316
Dep. Var. S.D.	0.175	0.175	0.175
Dep Var. 1991 Cross Section S.D.	0.180	0.180	0.180
School District Effects	X	X	X
Year Effects	X		
Year * Census Region Effects		X	X
Year * Base Period Demographics**			X

* Note. The dependent variable is the black-white dissimilarity index. Standard errors, clustered by district, are presented in parentheses. The sample is restricted to districts not under court-order in 1991 and districts under court-order in 1991 and not dismissed in the 1991 - 2002 period. ** Base period demographic characteristics include a central city indicator variable, number of students enrolled, number of students enrolled squared, percent of students who are white and percent of students who are hispanic.

Table 6
1990 School District Community Characteristics of Black Students

	Full Sample		Non-Southern Districts	
	Dismissed 1991 - 1999	Not Dismissed*	Dismissed 1991 - 1999	Not Dismissed*
		A. Outcome Variables		
Black Status Dropout Rate	0.15	0.15	0.16	0.17
	(0.03)	(0.03)	(0.04)	(0.02)
Black Private School Atten.	0.07	0.08	0.07	0.11
	(0.02)	(0.04)	(0.01)	(0.03)
		B. Selected Control Variables		
South	0.49	0.54	*	*
	(0.51)	(0.50)	*	*
% Total HHs in Poverty**	0.11	0.11	0.15	0.14
	(0.06)	(0.05)	(0.05)	(0.03)
HHs Unemploy. Rate**	0.07	0.08	0.08	0.09
	(0.02)	(0.02)	(0.02)	(0.02)
Mother Not High Sch. Grad.	0.27	0.27	0.28	0.27
	(0.09)	(0.07)	(0.08)	(0.05)
Mother College Grad.	0.12	0.12	0.09	0.12
	(0.05)	(0.04)	(0.04)	(0.04)
Black Household Income***	33305	35925	30334	36419
	(7349)	(8694)	(4194)	(5728)
Number of Observations	22	99	10	33

Note. The cells are means weighted by the number of 16 - 19 year old blacks residing in the district (the same weights used on Table 9). Standard deviations are in parentheses. The sample is restricted to districts under court-order in 1991. The construction of the variables is described in the text and Data Appendix. * Includes districts dismissed after 1999. ** Denotes a district level veriable - i.e. it does not vary by race. *** Household income is expressed in 2001 dollars and refers to household with children.

Table 7
Effect of Desegregation Order Dismissal on Black Status Dropout Rate

	(1)	(2)	(3)	(4)
A. All Districts; Linear Dismissal Parameterization				
Years Since Dismissal * 2000	0.0038	0.0035	0.0036	0.0038
	(0.0024)	(0.0026)	(0.0022)	(0.0023)
B. Heterogeneity by Region; Linear Dismissal Parameterization				
Years Since Dismissal * 2000 * Non-South	0.011	0.010	0.011	0.011
	(0.002)	(0.002)	(0.002)	(0.002)
Years Since Dismissal * 2000 * South	-0.003	-0.003	-0.002	-0.002
	(0.002)	(0.002)	(0.002)	(0.002)
C. Heterogeneity by Region; Linear and Indicator Parameterizations				
Linear Dismissed * 2000 * Non-South	0.009	0.010	0.010	0.009
	(0.003)	(0.003)	(0.004)	(0.004)
Linear Dismissed * 2000 * South	-0.001	-0.001	-0.002	-0.002
	(0.003)	(0.003)	(0.003)	(0.004)
Indicator Dismissed * 2000 * Non-South	0.010	0.003	0.008	0.015
	(0.023)	(0.021)	(0.023)	(0.024)
Indicator Dismissed * 2000 * South	-0.006	-0.006	-0.001	0.002
	(0.016)	(0.017)	(0.017)	(0.023)
D. Heterogeneity by Region; Indicator Dismissal Parameterization				
Dismissed * 2000 * Non-South	0.040	0.036	0.042	0.049
	(0.018)	(0.016)	(0.018)	(0.017)
Dismissed * 2000 * South	-0.019	-0.019	-0.011	-0.009
	(0.012)	(0.012)	(0.010)	(0.011)
Placebo Dismissed * 2000 * Non-South	0.023	0.018	0.017	0.024
	(0.016)	(0.016)	(0.019)	(0.018)
Placebo Dismissed * 2000 * South	-0.014	-0.013	-0.008	-0.008
	(0.009)	(0.009)	(0.011)	(0.011)
Observations	242	242	242	242
(Region, Cent. City) * 2000		X	X	X
1990 Covariates[B] * 2000			X	X
Time-Varying Covariates[C]				X

Note. Standard errors clustered by district in parentheses. All columns are weighted by cell size. The dependent variable is the school district mean black status dropout rate for 16 - 19 year old. South refers to the South Census region. Column (1) includes an indicator for the south census region interacted with an indicator for the year 2000 in panels B, C and D. [B] 1990 covariates include both student and district level variables. The district level covariates, which are measured for all races, are percent receiving public assistance income, the unemployment rate, percent of households which do not speak English at home, percent of all children who are hispanic, percent of all children who are white and a quadratic in the total number of children residing in the district. The student level covariates, i.e. means calculated over the population of black children, include percent of mother's with a high school degree, percent of mothers with a four-year college degree, percent of children with a parent who is foreign born, percent of children below the poverty line, percent of children born out of state, and a quadratic in the household income of households with children. [C] time-varying covariates are the same as the student-level covariates listed above. Coefficient estimates for the complete set of covariates available from the author upon request.

Table 8
Effect of Desegregation Order Dismissal on Black Private School Attendance Rate

	(1)	(2)	(3)	(4)
A. All Districts; Linear Dismissal Parameterization				
Years Since Dismissal * 2000	0.0019	0.0017	0.0014	0.0012
	(0.0009)	(0.0007)	(0.0008)	(0.0008)
B. Heterogeneity by Region; Linear Dismissal Parameterization				
Years Since Dismissal * 2000 * Non-South	0.0037	0.0034	0.0026	0.0022
	(0.0011)	(0.0007)	(0.0012)	(0.0011)
Years Since Dismissal * 2000 * South	0.0002	0.0002	0.0005	0.0004
	(0.001)	(0.0008)	(0.0010)	(0.0011)
C. Heterogeneity by Region; Indicator Dismissal Parameterization				
Dismissed * 2000 * Non-South	0.0120	0.0075	-0.0017	-0.0028
	(0.0094)	(0.0087)	(0.0086)	(0.0078)
Dismissed * 2000 * South	0.0007	0.0000	-0.0004	-0.0013
	(0.0052)	(0.0040)	(0.0047)	(0.0041)
Placebo Dismissed * 2000 * Non-South	0.0026	-0.0070	-0.0163	-0.0171
	(0.0121)	(0.0124)	(0.0162)	(0.0140)
Placebo Dismissed * 2000 * South	0.0025	0.0009	0.0003	0.0030
	(0.0057)	(0.0054)	(0.0051)	(0.0050)
Observations	242	242	242	242
(Region, Cent. City) * 2000		X	X	X
1990 Covariates[B] * 2000			X	X
Time-Varying Covariates[C]				X

Note. Standard errors clustered by district in parentheses. All columns are weighted by cell size. The dependent variable is the school district mean black private school attendance rate. South refers to the South Census region. Column (1) includes an indicator for the south census region interacted with an indicator for the year 2000 in panels B and C. [B] 1990 covariates include both student and district level variables. The district level covariates, which are measured for all races, are percent receiving public assistance income, the unemployment rate, percent of households which do not speak English at home, percent of all children who are hispanic, percent of all children who are white and a quadratic in the total number of children residing in the district. The student level covariates, i.e. means calculated over the population of black children, include percent of mother's with a high school degree, percent of mothers with a four-year college degree, percent of children with a parent who is foreign born, percent of children below the poverty line, percent of children born out of state, and a quadratic in the household income of households with children. [C] time-varying covariates are the same as the student-level covariates listed above. Coefficient estimates for the complete set of covariates available from the author upon request.

Table 9
Effect of Desegregation Order Dismissal on White Dropout Rate and Private School Attendance

	(1)	(2)	(3)	(4)
A. White Status Dropout Rate				
Years Since Dismissal * 2000	-0.0009	-0.0009	-0.0006	-0.0002
	(0.0014)	(0.0014)	(0.0013)	(0.0013)
B. White Status Dropout Rate - Heterogeniety by Region				
Years Since Dismissal * 2000 * Non-South	0.0011	0.0010	0.0011	0.0013
	(0.0013)	(0.0013)	(0.0015)	(0.0013)
Years Since Dismissal * 2000 * South	-0.0024	-0.0024	-0.0018	-0.0011
	(0.0016)	(0.0017)	(0.0014)	(0.0015)
C. White Private School Attendance				
Years Since Dismissal * 2000	0.0017	0.0016	-0.0014	-0.0023
	(0.0022)	(0.0026)	(0.0023)	(0.0019)
D. White Private School Attendance - Heterogeniety by Region				
Years Since Dismissal * 2000 * Non-South	0.0068	0.0065	0.0027	0.0001
	(0.0018)	(0.0016)	(0.0025)	(0.0024)
Years Since Dismissal * 2000 * South	-0.0010	-0.0016	-0.0038	-0.0035
	(0.0030)	(0.0031)	(0.0027)	(0.0025)
Observations	242	242	242	242
(Region, Cent. City) * 2000		X	X	X
1990 Covariates[B] * 2000			X	
Time-Varying Covariates[C]				X

Note. Standard errors clustered by district in parentheses. All columns are weighted by cell size. The dependent variable is as labeled in the panel headings. South refers to the South Census region. Column (1) includes an indicator for the south census region interacted with an indicator for the year 2000 in panels B and D. [B] 1990 covariates include both student and district level variables. The district level covariates, which are measured for all races, are percent receiving public assistance income, the unemployment rate, percent of households which do not speak English at home, percent of all children who are hispanic, percent of all children who are white and a quadratic in the total number of children residing in the district. The student level covariates, i.e. means calculated over the population of white children, include percent of mother's with a high school degree, percent of mothers with a four-year college degree, percent of children with a parent who is foreign born, percent of children below the poverty line, percent of children born out of state, and a quadratic in the household income of households with children. [C] time-varying covariates are the same as the student-level covariates listed above. Coefficient estimates for the complete set of covariates available from the author upon request.

Table 10
Effect of Desegregation Order Dismissal on Migration

	log 16-19 year olds		Mean Household Income		Mother High School		Mother College		Percent in Poverty	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
A. Black										
Non-South Linear Dis.	0.0169	0.0046	185.7	81.8	0.0006	0.0018	0.0012	0.0004	-0.0060	-0.0033
	(0.006)	(0.0058)	(195.2)	(142.1)	(0.0023)	(0.0024)	(0.0021)	(0.0011)	(0.0042)	(0.0039)
South Linear Dis.	0.0323	0.0277	100.2	52.0	0.0009	0.0008	0.0001	-0.0008	0.0016	0.0010
	(0.024)	(0.0161)	(203.1)	(195.1)	(0.0023)	(0.0024)	(0.0021)	(0.0011)	(0.0042)	(0.0039)
B. White										
Non-South Linear Dis.	-0.0037	-0.0057	475.9	519.5	-0.0001	-0.0005	0.0065	0.0053	-0.0035	-0.0032
	(0.0070)	(0.0090)	(496.7)	(345.0)	(0.0021)	(0.0014)	(0.0018)	(0.0014)	(0.0018)	(0.0011)
South Linear Dis.	-0.0109	-0.0045	-380.3	-624.9	0.0013	0.0014	0.0024	0.0002	0.0017	0.0012
	(0.0128)	(0.0094)	(349.7)	(421.9)	(0.0015)	(0.0015)	(0.0028)	(0.0023)	(0.0010)	(0.0009)
Observations	242	242	242	242	242	242	242	242	242	242
(Region, Cent. City) * 2000		X		X		X		X		X
1990 Covariates[B] * 2000		X		X		X		X		X

Note. Standard errors clustered by district in parentheses. All columns are weighted by the number of 16 - 19 year olds of the relevant race (see panel headings). The dependent variable is as labeled in the column header. Mean household income refers to households with children of the relevant race (see panel heading). Mother high school and mother college refer to the percent of children with mothers who have a high school degree (but not a college degree) and the percent which have a college degree. Columns (1), (3), (5), (7) and (9) include an indicator for the south census region interacted with an indicator for the year 2000. [B] 1990 covariates include only district level variables. The district level covariates, which are measured for all races, are percent receiving public assistance income, the unemployment rate, percent of households which do not speak English at home, percent of all children who are hispanic, percent of all children who are white and a quadratic in the total number of children residing in the district.

Appendix Table 1			
Districts in Rossell and Armor Sample and Under a Court-Ordered Desegregation Plan in 1991			
District Name	State	Dissmissal Date	Base Period Enrollment
AUTAUGA COUNTY SCH DIST	AL		6920
BIBB COUNTY SCH DIST	AL		3571
CALHOUN COUNTY SCH DIST	AL		11105
DOTHAN CITY SCH DIST	AL		10028
HUNTSVILLE CITY SCH DIST	AL		24987
JACKSON COUNTY SCH DIST	AL		6720
JEFFERSON COUNTY SCH DIST	AL		41143
MOBILE COUNTY SCH DIST	AL	97	67841
MONTGOMERY COUNTY SCH DIST	AL		36010
SAINT CLAIR COUNTY SCH DIST	AL		5638
WILCOX COUNTY SCH DIST	AL		2939
PHOENIX UNION HIGH SCHOOL DISTRICT	AZ		21117
FORREST CITY	AR		5621
LITTLE ROCK	AR	102	26854
N LITTLE ROCK	AR		9725
PULASKI CO SPECIAL	AR		22280
LOS ANGELES UNIFIED	CA		589311
OAKLAND UNIFIED	CA		51298
SAN BERNARDINO CITY UNIFIED	CA		35033
SAN DIEGO CITY UNIFIED	CA	98	116557
SAN FRANCISCO UNIFIED	CA		63881
SAN JOSE UNIFIED	CA	98	29333
STOCKTON CITY UNIFIED	CA		31051
DENVER COUNTY 1	CO	95	59439
BRIDGEPORT SCHOOL DISTRICT	CT		19416
WATERBURY SCHOOL DISTRICT	CT		13298
CHRISTINA SCHOOL DISTRICT	DE	96	16438
RED CLAY CONSOLIDATED SCHOOL DISTRICT	DE	96	14189
BAY COUNTY SCHOOL DISTRICT	FL		21541
BROWARD COUNTY SCHOOL DISTRICT	FL	96	137366
DADE COUNTY SCHOOL DISTRICT	FL	101	253323
DUVAL COUNTY SCHOOL DISTRICT	FL	101	105049
ESCAMBIA COUNTY SCHOOL DISTRICT	FL		42066
HILLSBOROUGH COUNTY SCHOOL DISTRICT	FL	101	118031
JACKSON COUNTY SCHOOL DISTRICT	FL		7565
LEE COUNTY SCHOOL DISTRICT	FL	103	37708
MARION COUNTY SCHOOL DISTRICT	FL		26433
ORANGE COUNTY SCHOOL DISTRICT	FL		88878
PINELLAS COUNTY SCHOOL DISTRICT	FL	101	88866
POLK COUNTY SCHOOL DISTRICT	FL	100	61244
SEMINOLE COUNTY SCHOOL DISTRICT	FL		43511
ST LUCIE COUNTY SCHOOL DISTRICT	FL	97	18260
BIBB COUNTY	GA		25158
CHATHAM COUNTY	GA	94	35358
DECATUR COUNTY	GA		5810
DEKALB COUNTY	GA	96	81468
DOUGHERTY COUNTY	GA		18760
FULTON COUNTY	GA	103	50190
LOWNDES COUNTY	GA		7982
MUSCOGEE COUNTY	GA	97	31984
CITY OF CHICAGO SCHOOL DIST 299	IL		419537
JOLIET PUBLIC SCH DIST 86	IL		8823
FORT WAYNE COMMUNITY SCHOOLS	IN		32405
INDIANAPOLIS PUBLIC SCHOOLS	IN	98	50496

M S D DECATUR TOWNSHIP	IN		5146
M S D WAYNE TOWNSHIP	IN		12066
SCHOOL CITY OF HAMMOND	IN		13737
KANSAS CITY	KS	97	22897
TOPEKA PUBLIC SCHOOLS	KS	99	14783
FAYETTE CO	KY		31191
JEFFERSON CO	KY	100	93198
CADDO PARISH SCHOOL BOARD	LA		52309
CITY OF MONROE SCHOOL BOARD	LA		10922
EAST BATON ROUGE PARISH SCHOOL BOARD	LA	102	60279
EVANGELINE PARISH SCHOOL BOARD	LA		6907
JEFFERSON PARISH SCHOOL BOARD	LA		57663
LAFAYETTE PARISH SCHOOL BOARD	LA		28392
OUACHITA PARISH SCHOOL BOARD	LA		17523
POINTE COUPEE PARISH SCHOOL BOARD	LA		3868
RAPIDES PARISH SCHOOL BOARD	LA	102	24404
SAINT LANDRY PARISH SCHOOL BOARD	LA		17379
SAINT TAMMANY PARISH SCHOOL BOARD	LA		28055
WEST FELICIANA PARISH SCHOOL BOARD	LA		2050
PRINCE GEORGES COUNTY PUB SCHS	MD	102	104661
HOLYOKE	MA		6732
BENTON HARBOR AREA SCHOOLS	MI	102	7129
FLINT CITY SCHOOL DISTRICT	MI	102	30202
GRAND RAPIDS PUBLIC SCHOOLS	MI		25225
KALAMAZOO PUBLIC SCHOOL DISTRICT	MI		12810
LANSING PUBLIC SCHOOL DISTRICT	MI		22477
CARROLL COUNTY SCHOOL DIST	MS		1218
CLEVELAND SCHOOL DIST	MS		4726
HATTIESBURG PUBLIC SCHOOL DIST	MS	97	5789
NATCHEZ-ADAMS SCHOOL DIST	MS		6841
RANKIN CO SCHOOL DIST	MS		12126
VICKSBURG WARREN SCHOOL DIST	MS		10380
KANSAS CITY 33	MO	103	35227
ROCKWOOD R-VI	MO		16484
ST LOUIS CITY	MO	99	42088
OMAHA PUBLIC SCHOOLS	NE		41416
MONTCLAIR TOWN	NJ		5141
UNION TWP	NJ		5971
BUFFALO CITY SD	NY	95	46251
NEW ROCHELLE CITY SD	NY		7633
SYRACUSE CITY SD	NY		20972
UTICA CITY SD	NY		8317
YONKERS CITY SD	NY	102	17744
HIGH POINT CITY	NC		8160
CHARLOTTE-MECKLENBURG SCHOOLS	NC	101	74149
FORSYTH COUNTY SCHOOLS	NC		38311
HALIFAX COUNTY SCHOOLS	NC		6608
VANCE COUNTY SCHOOLS	NC		7561
CINCINNATI CITY SD	OH	91	51819
CLEVELAND MUNICIPAL SD	OH	99	71743
DAYTON CITY SD	OH	102	28768
LORAIN CITY SD	OH		12212
OKLAHOMA CITY	OK	91	39149
ERIE CITY SD	PA		12485
PHILADELPHIA CITY SD	PA		194698
SUMTER COUNTY SCHOOL DISTRICT 02	SC		8661
CHATTANOOGA CITY SCHOOLS	TN		22872
MEMPHIS CITY SCHOOL DISTRICT	TN		105856

NASHVILLE-DAVIDSON COUNTY SD	TN	98	66973
SHELBY COUNTY SCHOOL DISTRICT	TN		33683
ALDINE ISD	TX	102	37657
CORPUS CHRISTI ISD	TX	97	41850
CROSBY ISD	TX		3246
DALLAS ISD	TX	103	130885
ECTOR COUNTY ISD	TX		25770
GALENA PARK ISD	TX		13938
GARLAND ISD	TX		34603
RICHARDSON ISD	TX		32080
TEMPLE ISD	TX	100	8110
WICHITA FALLS ISD	TX	100	15055
MILWAUKEE	WI		91648
Note. Base period enrollment is total student enrollment in the first year the district appears in the sample. See Appendix B.			

Appendix Table 2
Effect of Desegregation Order Dismissal on Segregation Indices; Heterogeneity by Region

	Dissimilarity Index		Exposure Index	
	Main Effect	Main Effect * Non-South	Main Effect	Main Effect * Non-South
	(1)	(2)	(3)	(4)
Pre-Dismissal				
pre(-4)	-0.002	0.007	0.001	0.000
	(0.003)	(0.011)	(0.002)	(0.003)
pre(-3)	-0.002	0.006	-0.002	0.000
	(0.006)	(0.022)	(0.003)	(0.006)
pre(-2)	-0.003	0.008	-0.004	0.002
	(0.008)	(0.026)	(0.005)	(0.009)
pre(-1)	0.002	0.011	-0.008	0.005
	(0.011)	(0.029)	(0.007)	(0.011)
Post-Dismissal				
post(0)	0.003	0.015	-0.010	0.005
	(0.012)	(0.035)	(0.009)	(0.013)
post(1)	0.023	0.006	-0.019	0.010
	(0.014)	(0.036)	(0.010)	(0.014)
post(2)	0.037	0.007	-0.020	0.008
	(0.020)	(0.040)	(0.011)	(0.016)
post(3)	0.051	-0.002	-0.025	0.011
	(0.022)	(0.040)	(0.013)	(0.018)
post(4)	0.061	-0.001	-0.028	0.012
	(0.026)	(0.043)	(0.015)	(0.020)
post(5)	0.062	0.002	-0.031	0.012
	(0.026)	(0.044)	(0.017)	(0.022)
post(6)	0.076	-0.002	-0.042	0.022
	(0.028)	(0.045)	(0.018)	(0.025)
Number of Observations	1712		1712	
Dep. Var. Mean	0.363		0.391	
Dep. Var. S.D.	0.180		0.215	
Dep Var. 1991 Cross Section S.D.*	0.179		0.210	

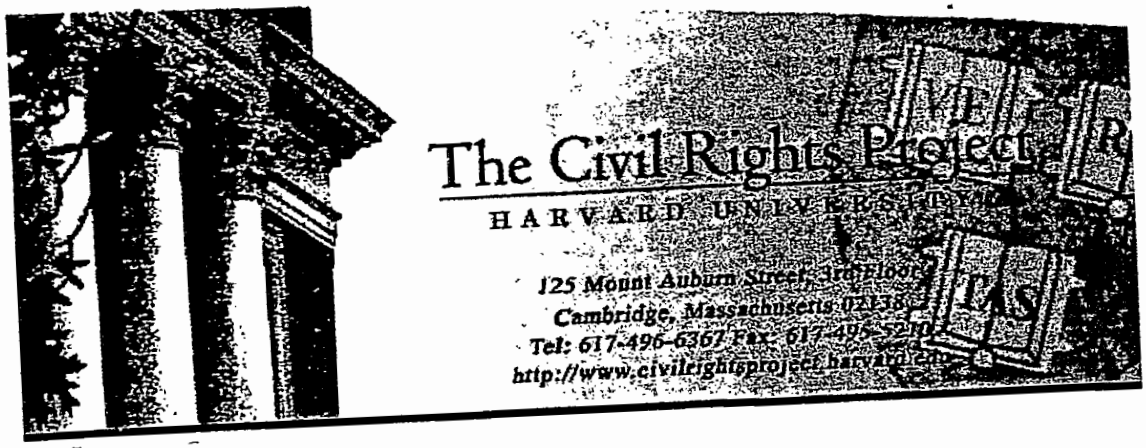
Note. Standard errors, clustered by district, are presented in parentheses. The sample is restricted to those districts under court-order in 1991. Column (1) and (2) display the results of a single regression. Columns (3) and (4) display the results of a single regression. Columns (1) and (3) display the main effect coefficients. Columns (2) and (4) display the main effect interacted with an indicator for being outside the south census region coefficients. The specification, similar to column (2) on tables 2 and 4, includes a district fixed effect, vector of year, census regions interactions and a vector of base period demographic characteristics interacted with year indicators. Base period demographic characteristics include a central city indicator variable, number of students enrolled, number of students enrolled squared, percent of students who are white and percent of students who are hispanic.

LEANAME	UNIT STATUS	US EDUCATION	USDOJ	INDEPENDENT RESEARCH
Albertville City				
Alexander City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Andalusia City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Anniston City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Arab City				
Athens City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Attalla City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Auburn City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Autauga County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Baldwin County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Barbour County	NO	ibid DOJ	Franklin and U.S. v. (*)of Ed	n/a
Bessemer City	NO	ibid DOJ	U.S. & Brown v. Bd of Ed of (*)	n/a
Bibb County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Birmingham City	YES (83)	Armstrong v. Bd of Ed *		Armstrong v. Bd of Ed *
Blount County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Boaz City				
Brewton City	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Bullock County		Harris v. * Bd of Ed		Harris v. * Bd of Ed
Butler County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Calhoun County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Chambers County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Cherokee County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Chilton County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Choctaw County	NO	ibid DOJ	U.S. v. (*)	n/a
Clarke County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Clay County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Cleburne County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Coffee County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Colbert County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Conecuh County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Coosa County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Covington County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Crenshaw County	NO	ibid DOJ	U.S. & Harris v. (*)	n/a
Cullman City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Cullman County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a

Dale County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Daleville City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Dallas County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Decatur City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
DeKalb County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Demopolis City	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Dothan City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Elba City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Elmore County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Enterprise City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Escambia County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Etowah County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Eufaula City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Fairfield City	NO	ibid DOJ	U.S. & Boykins v. (*)	n/a
Fayette County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Florence City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Fort Payne City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Franklin County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Gadsden City	NO	ibid DOJ	U.S. & Miller v. (*)	n/a
Geneva City				U.S. v. Wallace (63)
Geneva County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Greene County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Guntersville City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Hale County	YES	U.S. v. Hale Bd of Ed	U.S. v. Hale Bd of Ed	
Haleyville City				U.S. v. Wallace (63)
Hartselle City				U.S. v. Wallace (63)
Henry County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Homewood City	NO	ibid DOJ	U.S. & Stout v. (*)	n/a
Hoover City	NO		U.S. & Stout v. (*)	n/a
Houston County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Huntsville City	NO	ibid DOJ	U.S. & Hereford v. (*)	n/a
Jackson County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Jacksonville City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Jasper City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Jefferson County	NO	ibid DOJ	U.S. & Stout v. (*)	n/a
Lamar County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Lanett City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a

Lauderdale County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Lawrence County	NO	ibid DOJ	U.S. & Horton v. (*)	n/a
Lee County	NO*	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Leeds City	NO		U.S. & Stout v. (*)	n/a
Limestone County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Linden City	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Lowndes County				Al State Tchrs Assn v. Lowndes (68)
Macon County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Madison City	NO		Bennett & U.S. v. (*) BOE	
Madison County	unlisted	ibid DOJ	U.S. & Bennett v. (*)	n/a
Marengo County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Marion County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Marshall County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Midfield City	NO	ibid DOJ	U.S. & Stout v. (*)	n/a
Mobile County		Davis v. * Bd of Ed		Davis v. * Bd of Ed (63)
Monroe County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Montgomery County		Carr v. Jefferson Cty Bd		
Morgan County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Mountain Brook City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Muscle Shoals City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Oneonta City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Opelika City	YES (02)	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Opp City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Oxford City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Ozark City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Pell City	NO		U.S. & Lee v. Macon (*)	n/a
Perry County	YES	U.S. v. Perry Bd of Ed		U.S. v. Perry Bd of Ed
Phenix City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Pickens County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Piedmont City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Pike County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Randolph County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Roanoke City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Russell County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Russellville City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Saint Clair County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Scottsboro City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a

Selma City	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Sheffield City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Shelby County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Sumter County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Sylacauga City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Talladega City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Talladega County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Tallapoosa County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Tallassee City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Tarrant City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Thomasville City	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Troy City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Trussville City				
Tuscaloosa City	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Tuscaloosa County	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Tuscumbia City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Vestavia Hills City	NO	ibid DOJ	U.S. & Stout v. (*)	n/a
Walker County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Washington County	YES	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Wilcox County	YES	U.S. v. Wilcox (65)		U.S. v. Wilcox (65)
Winfield City	NO	ibid DOJ	U.S. & Lee v. Macon (*)	n/a
Winston County	unlisted	ibid DOJ	U.S. & Lee v. Macon (*)	n/a



Racial Transformation and the Changing Nature of Segregation

By

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RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION

When Martin Luther King made his first speech at the Lincoln memorial in 1957 three years after the *Brown* decision, desegregation was about a battle to give black students access to schools previously established for whites only, mostly in the seventeen states that had practiced segregation by state law. King called for action to enforce the desegregation decision. The nation's schools were overwhelmingly white, and when King marched against segregation eight years later in Chicago in 1965, it was still about a black-white conflict. Forty years later, however, the nation's schools have changed almost beyond recognition; the white majority is continuously shrinking, and the segregation has taken on a multiracial character. Unfortunately, though generations of students have been born and graduated, segregation is not gone. In fact, in communities that were desegregated in the Southern and Border regions, segregation is increasing; and in regions that were never substantially desegregated, including many metropolitan areas in the Northeast, Midwest, and West, segregation is growing in degree and complexity as the nation becomes increasingly multiracial. The resegregation of blacks is greatest in the Southern and Border states and appears to be clearly related to the Supreme Court decisions in the 1990s permitting return to segregated neighborhood schools. These changes, and the continuing strong relationship between segregation and many forms of educational inequality, compound the already existing disadvantage of historically excluded groups. The rapid growth of these excluded populations in conditions of intensifying segregation make urgent the development of plans and policies to transform diversity into an asset for all children and society, rather than continuing to separate children in a way that harms both those excluded from better schools and white students in those schools who are not being prepared for success in multiracial communities and workplaces of the future.

School segregation is often perceived as an old and obsolete issue. Reactions include claims that it was solved long ago, that, on the contrary, experience shows it cannot be solved, or that we have learned to make separate schools genuinely equal. None of these perceptions is true. Past research showed that, after a period of desegregation in the late 1960s, black students became increasingly resegregated in the South and Border states. Latino students, who have been excluded from serious desegregation efforts, are becoming even more segregated than black students in Southern and Western regions. Yet, despite recent trends in resegregation, the South and Border states remain among the least segregated for black students, suggesting that desegregation orders in the past have been effective, and that segregation is not an intractable issue. Further, the strong relationship between poverty, race and educational achievement and graduation rates shows that, but for a few exceptional cases under extraordinary circumstances, schools that are separate are still unquestionably unequal. Segregation is an old issue but one that is deeply rooted and difficult to resolve and extremely dangerous to ignore.

If segregation were just about race or ethnicity, it might be of only academic interest. However, segregation is rarely only by race or ethnicity. It is almost always double or triple segregation, involving concentrated poverty and, increasingly, linguistic segregation, and this multiple segregation is almost always related to many forms of tangible inequality in educational opportunity on multiple dimensions. When the Supreme Court decided the *Brown* decision that began the desegregation revolution, it emphasized the psychological harms of segregation and said nothing specific about the educational gains connected with desegregation. The decision

was largely about giving students the right to attend the normal public schools where they would presumably receive more equal education and not face the stigma of apartheid and overt racial exclusion. Not much could be known about segregation outside the South because many schools and state governments did not even collect racial statistics that would permit people to know how much segregation there was, much less what it was related to.

Further, though urban desegregation was resisted, it has been viewed as a positive experience by both white and minority parents whose children experienced it as well as teachers and students. In a 2004 poll held by *Education Week*, Americans expressed their belief in the importance of racially integrated education.[1] Our project surveyed African Americans and Latinos in metro Boston in 2005, in the city that saw what was probably the most bitter conflict in any American city over school desegregation back in the 1970s.[2] We found that even there, where minority families feel unwelcome in many settings, a large majority wants more done to integrate the schools. An earlier study of black Boston parents who sent their children on long bus rides to suburban schools showed that their motivation was overwhelmingly to obtain better school opportunities for their children, and they found both the opportunities and the interracial experiences strongly positive.[3] Surveys we have conducted among high school juniors in cities across the country show very positive responses to interracial educational experiences among all groups of students, who feel well prepared to live and work in a multiracial society.[4] In a survey conducted in 2003, more than half (57%) of adults surveyed believed that racially integrated schools are better for kids, and only seven percent believed the opposite.[5] The fact that desegregation is not being discussed by political and most educational leaders does not mean that it is not highly important or that it failed or that there are no viable alternatives, only that it is controversial.

Lastly, there has not been a serious discussion of the costs of segregation or the advantages of integration for our most segregated population, white students. The lack of discussion of this issue in public schools stands in sharp contrast to the intense national discussion of the question in colleges during the long struggle that led up to the Supreme Court's 2003 decision upholding affirmative action in college admissions. In that decision, the Court concluded that there was compelling evidence of tangible benefits of college integration for white and all other groups of students, and that the nation's major institutions and the democracy itself needed to have students trained in interracial settings who were prepared for adult lives in the kind of society we are becoming. Research that The Civil Rights Project and others conducted in colleges clearly showed such benefits for white students, whose previous schooling had been the most segregated, and this research was recognized by the Supreme Court in upholding affirmative action.[6] A recent national poll in 2004 found that close to two-thirds of Americans surveyed

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[1] Reid, K. (2004). Survey Probes Views on Race. Washington, DC: Education Week.

[2] Louie, J. (2005). "We Don't Feel Welcome Here: African Americans and Hispanics in Metro Boston." Cambridge, MA: The Civil Rights Project at Harvard University.

[3] Eaton, S. (2001). *The other Boston busing story: What's won and lost across the boundary line.* New Haven, CT: Yale University Press.

[4] Kurlaender, M. and Yun, J. (2001). Is diversity a compelling educational interest? Evidence from Louisville in Gary Orfield and Michal Kurlaender, eds. *Diversity challenged: Evidence on the impact of affirmative action.* Cambridge, MA: Harvard Education Publishing Group.

[5] Pew Hispanic Center/Kaiser Family Foundation. National survey of Latinos: Education, January 2004.

[6] Gurin, P., Dey, E., Hurtado, S. and Gurin, G. (2002). "Diversity and Higher Education: Theory and Impact on Educational Outcomes." *Harvard Educational Review*. 72 (3); Orfield, G. and Whitla, D. "Diversity and Legal

believe it is "very important" that colleges and universities prepare students to participate in a diverse society.[7] Further, more than 70 percent of those surveyed believed that students acquiring a diverse educational experience on college and university campuses would bring society together.

This report is about the changing patterns of segregation in American public schools through the 2003-2004 school year. We begin by examining the transformation of racial composition in the nation's schools, the dynamic patterns of segregation and desegregation of all racial groups in regions, states, and districts by using data from 1968 until 2003-4.[8] We examine both the changes over the last decade (1991-2003) as well as those over a much longer period (1954-2003). Unless otherwise specified data from this report are computed from the Common Core of Data of the National Center for Education Statistics of the U.S. Department of Education for the years 1991 and 2003. Where data for a given year is missing, such as the racial statistics from Georgia and Virginia for 1991, it is noted in the tables and the nearest year is substituted and noted.[9] We then explore the relationship between racial and economic segregation, document the growing presence of multiracial schools, as well as discuss the implications of the lifting of desegregation orders on districts and the possible policy alternatives. The report ends with a brief discussion of what could be done to increase integration in schools.

We rely on two kinds of measures to examine the dimensions of segregation.[10] The exposure index measures the share of a particular group in the school of the average student of another racial group. We also examine the distribution of students in schools with different racial compositions: majority minority (defined as 50-100% minority), majority white (defined as 50-100% white), and intensely segregated minority schools (defined as schools with more than 90% minority). In some tables we include calculations of the number and percent of students in "apartheid schools" that is, schools with zero to one percent white students.

Demographic Transformation of American Public Schools

Since the 2000 Census a great deal has been written about the demographic transformation under way in many American communities as the U.S. moves toward the day when citizens of European background will no longer be the majority, but the changes are much more rapid and dramatic in the school age population. In the 2003-2004 school year the national totals showed Latinos are the largest minority group at 19 percent, followed by 17 percent black students, four percent Asian students and one percent American Indian students (Table 1). All of the minority

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Education: Student Experiences in Leading Law Schools." In Gary Orfield and Michal Kurlaender, eds., *Diversity Challenged: Evidence on the Impact of Affirmative Action. Cambridge, MA: Harvard Education Publishing Group.*

[7] National Poll on Campus Diversity (1998).Conducted by DYG, Inc, survey commissioned by Ford Foundation.

[8] Unless otherwise noted, data before 1987 is collected by the Office for Civil Rights of the Education Department and from the Race Relations Reporting Service and the U.S. Civil Rights Commission, with high coverage for the South and other areas with significant minority enrollments, and samples that could be used to project state totals for states across the country. The federal government has officially issued desegregation statistics only twice since the early 1970s.

[9] Due to the lack of enrollment data disaggregated by race for Tennessee in 2003-04, we used data as reported by the Tennessee Department of Education for its 2000-01 school year.

[10] For an explanation of the exposure index, see Massy, D.S. and Denton, N.A. (1988). The dimensions of racial segregation. *Social Forces*, 67:281-315; Orfield, G., Bachmeier, M., James, D., and Eitle, T. (1997). *Deepening segregation in American public schools.* Cambridge, MA: Harvard Project on School Desegregation.

communities are growing much faster than whites, with Latino and Asians increasing most rapidly. The fact that Latinos are the youngest group, have the largest families, and have children at younger ages will result in population growth independent of immigration.[11] For African Americans, on the other hand, child bearing is now similar to the white rates, though the population is younger and thus producing relatively larger numbers of children.

Latinos, now clearly the largest minority in the schools, have the largest presence in the most rapidly growing regions in the Sunbelt[12] and make up 14 percent of students in the Northeast, long the center of immigration from the Caribbean and now drawing Latinos from many regions in spite of its slow growth. Given the upsurge in Latino enrollment and the low white birth rates, the regions of the historic South,[13] stretching from Virginia to Texas, and of the West, from the Rocky Mountains to the Pacific, no longer have a majority of whites. The South, the nation's most populous region, in 2003 had 50 percent white students while the West had 47 percent. While the South has always been home to the majority of U.S. blacks and has by far the highest proportion of black students at 27 percent, it is also a region where Latino enrollment is rising rapidly so that in the 2003-04 school year, one in five of its students is Latino. Even in the South, where the traditional black-white models of U.S. race relations are most deeply rooted, the framework is clearly breaking down.

In the West, where blacks have played a large role in raising civil rights issues and movement, there are now five times as many Latino students as black students, who now constitute only seven percent of the enrollment. The West is the great center of Latino enrollment with 36 percent Latino enrollment, and like the South, also foreshadows the increasingly multiracial nature of U.S. education.

The other major regions of the country still have very substantial majorities of white public school students—69 percent in the Border states[14] stretching from Oklahoma to Delaware, 66 percent in the Northeast, which reaches from Pennsylvania through New England, and 74 percent in the slow growing Midwest, stretching from Ohio to the Rocky mountain states. The Midwest and the Border states, lagging in job creation, have relatively small Latino and Asian numbers though there are growing local concentrations.

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[11] Hispanics are the only racial or ethnic group with reproduction levels above the natural replacement level, averaging 2.3 children for women 40-44, compared to 1.8 for whites and 1.9 for blacks, with especially high rates for foreign-born Latinas.(Jane Lawler Dye, "Fertility of American Women: June 2004," U.S. Census Bureau, Current Population Reports, December 2005 pp. 2-3).

[12] The Sunbelt includes the southern states plus California, Arizona, Colorado, and Nevada.

[13] The South includes the eleven states of the old Confederacy. Our definition of the regions is as follows: **South:** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia; **Border:** Delaware, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia; **Northeast:** Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; **Midwest:** Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; **West:** Arizona, California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Note: Hawaii and Alaska, which have very distinctive populations are treated separately and the District of Columbia is treated as a city rather than a state.

[14] The Border states are the six states and Washington D.C., which were slave States but stayed within the Union during the Civil War. Both the Southern and Border States maintained state-mandated segregation until after the Brown decision.

Viewed in historical perspective, the nation's schools are going though an astonishing transformation since the 1960s, changing from a country where more than four of every five students were white, to one with just 58 percent white enrollment nationwide and changing slightly each year. Within a decade it is likely that there will be fewer than half white students in our public schools, which serve nearly nine in ten U.S. students. This will not be true because of flight to private schools, which serve a much smaller proportion of students than they did in the 1950s and are expected to serve a declining share in the future.[15] It is because of a changing population structure created by differential birth rates and age structures and a largely nonwhite international flow of millions of immigrants. Since whites are older, marry at later ages, have smaller families, and account for a small fraction of immigrants, these changes are almost certain to continue. The end of the white majority will lead to a nation of schools without a majority of any one racial group.

Table 1
Regular Public School Enrollments by Race/Ethnicity and Region, 2003-04

	%White	%Black	%Latino	%Asian	%Native American
West	47	7	36	8	2
Border	69	21	4	2	4
Midwest	74	15	7	3	1
South	50	27	20	2	0
Northeast	66	16	14	5	0
Total	**58**	**17**	**19**	**4**	**1**

Source: Common Core of Data, 2003-04

Given this transformation of the nation's public schools, white students are attending schools with more minority students than before. However, of all racial groups, whites remain the most isolated group: the average white student attends schools where more than three quarters (78%) of his or her peers are also white (Table 2). As a result of this isolation, most nonwhite groups experience less exposure to white students than one would expect given the racial composition of the nation's public schools. The average black student attends a school that is 30 percent white and the average Latino student, 28 percent. Asian and American Indian students attend schools with larger proportions of white students, likely due to the fact that their populations are far smaller and less residentially segregated than either the black and Latino populations.

[15] Reardon, S.F., & Yun, J.T. (2002). *Private School Racial Enrollments and Segregation.* Report for The Civil Rights Project at Harvard University, Cambridge, MA.

Table 2
Racial Composition of Schools Attended by the Average Student of Each Race, 2003-04

	Racial Composition of School Attended by Average:				
Percent Race In Each School	**White Student**	**Black Student**	**Latino Student**	**Asian Student**	**American Indian Student**
% White	78	30	28	45	44
% Black	9	53	12	12	7
% Latino	9	13	55	20	11
% Asian	3	3	5	22	3
% American Indian	1	1	1	1	35
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Source: Common Core of Data, 2003-04

Changing Patterns of Segregation by Region

For the first nineteen years following *Brown* the Supreme Court simply ignored segregation outside the seventeen Southern and Border states and Washington, D.C., those with a history of state-imposed segregation. In the 1960s the Lyndon Johnson Administration forced the schools in those states to comply with court decisions and the 1964 Civil Rights Act. By far the largest changes took place for black students in the Southern and Border states, so they had the most to lose when the Supreme Court supported ending desegregation orders. When the Court finally extended legal obligations to the North, they were actively opposed by the Richard Nixon and Gerald Ford Administrations and limited within a year by the Supreme Court's 1974 *Milliken v. Bradley* decision that made city-suburban desegregation almost impossible even though there was extensive proof of official actions producing segregation and no viable solution within largely nonwhite and poor central city school systems.[16]

Since the Supreme Court authorized a return to segregated neighborhood schools in 1991 (see footnote 20), the percentage of black students attending majority nonwhite schools increased in all regions from 66 percent in 1991 to 73 percent in 2003-4 (Table 3). The most dramatic changes took place in the Southern and Border state regions where the desegregation effort had been concentrated.

Over the twelve-year period, the percent of Southern black students in majority non-white schools rose from 61 percent to 71 percent, and the percent of black students in such schools grew from 59 to 69 percent in the Border States. In spite of these changes, in 2003 these two regions remained by a small margin the least segregated for blacks though they had the highest proportion of black students. They are clearly headed backward, however, even faster than other regions.[17]

Intense segregation for black students increased in all regions: the growth of intense segregation for black students in schools with 0-10 percent whites increased nationally from 34 to 38 percent and was most rapid in the Border states, climbing from 33 to 42 percent in twelve years. In 2003

[16] *Milliken v. Bradley*, 418 U.S. 717 (1974).
[17] For a collection of new research on the changes in the South, see John Boger and Gary Orfield, eds., *School Resegregation: Must the South Turn Back?*, Chapel Hill: University of North Carolina Press, 2005.

the South and the West had the lowest proportions of blacks in intensely segregated schools (32% and 30%) while the Northeast and the Midwest had the highest, 51 and 46 percent respectively, reflecting the high residential segregation in these areas—the nation's worst—and the fragmentation of their metro housing markets into many small school districts. Nationally, the share of black students in intensely segregated schools increased from 34 to 38 percent.

The Midwest, home to such cities as Chicago and Detroit, has the largest concentrations of black students in "apartheid" or extremely segregated (99-100%) minority schools at 26 percent, followed closely by 23 percent of black students in the Northeast. In contrast, the two regions with the lowest proportion of black students in such schools were the South (12%), the region with the largest fraction of blacks, and the West (11%), with the lowest percentage of black students. The national share of black students in these apartheid schools decreased slightly from 19 percent to 17 percent, perhaps reflecting trends such as the destruction of traditional subsidized housing and suburban migrations. Except at this extreme, however, the clear pattern is one of growing isolation.

Table 3
Changes in Black Segregation, 1991-2003, by Region

	%Black in 50-100% Minority Schools		%Black in 90-100% Minority Schools		%Black in 99-100% Minority Schools	
Region	**1991-2**	**2003-4**	**1991-92**	**2003-4**	**1991-92**	**2003-4**
West	70	76	26	30	15	11
Border	59	69	33	42	22	21
Midwest	70	72	40	46	24	26
South	61	71	26	32	12	12
Northeast	76	79	50	51	31	23
Total	**66**	**73**	**34**	**38**	**19**	**17**

Source: Common Core of Data, 1991 and 2003

Latino segregation is higher than black segregation on some measures in the South and West (Table 4). In the West, where Latinos are concentrated, 81 percent of Latinos are in schools with nonwhite majorities, followed by 78 percent in the Northeast and the South. In the West, 39 percent of Latinos attended intensely segregated (90-100%) minority schools (compared to 32 percent for blacks in the South), and 12 percent attended apartheid (99-100%) schools, the same as the black South. These startling figures are even higher in the Northeast where 44 percent were enrolled in intensely segregated schools and 15 percent in apartheid schools. In the South, which includes the substantial Latino enrollment in Texas, 40 percent of the Latino public school enrollment attended intensely segregated minority schools, far higher than the region's black segregation, and 10 percent attended apartheid schools. Segregation increased for Latinos in all regions except the Northeast, where it remains very high even though there is a slight decline on some measures, perhaps reflecting Latino suburbanization trends. The lowest segregation levels for Latinos were in the Border and Midwest states where the Latino enrollments were very small but segregation was growing in both as secondary migration patterns to these regions emerged.

Table 4
Changes in Latino Segregation, 1991-2003, by Region

Region	%Latino in 50-100% minority Schools		%Latino in 90-100% minority Schools		%Latino in 99-100% minority Schools	
	1991-92	**2003-4**	**1991-92**	**2003-4**	**1991-92**	**2003-4**
West	73	81	30	39	10	12
Border	37	56	11	16	5	5
Midwest	53	57	21	25	5	5
South	77	78	39	40	8	10
Northeast	78	78	46	44	19	15
Total	**73**	**77**	**34**	**39**	**10**	**11**

Source: Common Core of Data, 1991 and 2003

Since they are small shares of the total enrollments, Asians and American Indians are less likely to be segregated with their own group except in reservation schools and some areas of low income Asian refugee communities. The pattern for American Indian students is complex (Table 5). Although they account for only one percent of the public school population, significant numbers live on largely segregated reservations and attend schools operating for American Indian students by tribal governments.[18] Due to the historic removal of American Indian tribes from the Southeastern and most Midwestern states, there are very few American Indian students, significantly less than one percent, in the Northeast and the South and just one percent in the Midwest. Numbers excluding schools of the BIA, show that the West had two percent American Indian students, and the Border states have the highest share, four percent of their enrollment. Although a very small minority, 59 percent of American Indians in the West and 48 percent in the South attend school with less than half whites. About a fifth of those in the Northeast and South and 30 percent of those in the West attend intensely segregated (90-100%) minority schools. About a ninth of American Indians in the Northeast and 14 percent of those in the West attend schools with virtually no white students.

Table 5
Changes in American Indian Segregation, 1991-2003, by Region

Region	% American Indian in 50-100% Minority Schools		% American Indian in 90-100% Minority Schools		% American Indian in 99-100% Minority Schools	
	1991-92	**2003-4**	**1991-92**	**2003-04**	**1991-92**	**2003-04**
West	53	59	27	30	7	14
Border	21	35	1	1	0	0
Midwest	28	31	14	16	7	7
South	47	48	22	18	5	1
Northeast	31	37	12	21	6	11
Total	**43**	**52**	**20**	**26**	**7**	**15**

Source: Common Core of Data, 1991 and 2003

At the aggregate level, Asians are the most integrated racial group in American public schools but as their numbers rapidly increase, especially in a few states, they are experiencing less

[18] These numbers do not include the American Indians attending schools under the jurisdiction of the Bureau of Indian Affairs.

contact with whites (Table 6).[19] Asians account for only two to three percent of the enrollment in most regions, except the Northeast and the West where they are five and eight percent of students respectively. In the West, two-thirds (66%) of Asians are in schools with less than half white students, up from 60 percent twelve years earlier. In the Northeast, half of Asians attend such schools. In the South, Midwest, and Border states a substantial majority of Asians attend predominantly white schools, and only five to eight percent are in schools with less than 10 percent white students. In the Northeast and West about a fifth of Asian students attend such intensely segregated schools. In no region are there significant numbers of Asian students in the apartheid schools—even where the numbers are larger, in the Northeast and West, only two percent of Asians experience this degree of extreme isolation. Even when Asians are in predominantly minority schools they are seldom overwhelmingly Asian and, therefore, very unlikely to have the kind of substantial linguistic segregation that significantly affects Latino students.

Table 6
Changes in Asian Segregation, 1991-2003, by Region

Region	%Asian in 50-100% Minority Schools		%Asian in 90-100% Minority Schools		%Asian in 99-100% Minority Schools	
	1991-92	**2003-4**	**1991-92**	**2003-4**	**1991-92**	**2003-4**
West	60	66	13	20	2	2
Border	25	35	3	6	1	1
Midwest	19	25	2	5	0	1
South	34	44	5	8	0	0
Northeast	42	50	12	17	2	2
Total	**53**	**56**	**13**	**15**	**3**	**1**

Source: Common Core of Data, 1991 and 2003

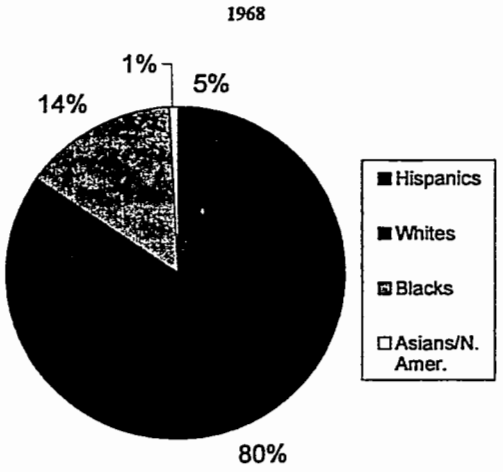
The Historical Context of Segregation for Black and Latino Students

Although there have been continuing increases in segregation for black students since the late 1980s and for Latino students since data were first collected in the late 1960s, these trends are not inevitable and they were very different in some regions in the past.

When statistics on racial composition of schools were first collected nationally in 1968 there were only about a third as many Latinos in the nation's school population as there are now, Asians were not a significant population, and whites accounted for more than eighty percent of the nation's public school students (Figure 1). The rise of nonwhite proportions and the decline in the fraction of white students means that if nothing else had changed there would be fewer whites and substantially more nonwhites in the average school. This is particularly true for Latino students and in the states with the highest growth of nonwhite enrollment, especially the Western and some of the Southern states.

[19] Aggregate numbers about Asians often obscure the experiences of Southeast Asian subgroups who are often educationally disadvantaged. The subject of educational opportunities for these groups will be addressed in an upcoming book jointly released by SEARAC and The Civil Rights Project.

Figure 1: Percentage of Public School Enrollment by Race/Ethnicity, 1968



Source: Gary Orfield, Rosemary George, and Amy Orfield, "Racial Change in U.S. School Enrollments, 1968-84," paper presented at National Conference on School Desegregation, University of Chicago, 1986. OCR data for 1968 NCES Common Core of Data.

The long-term record, however, shows more than two decades of rising contact between black and white students, particularly in the Southern and Border States and in some states with small black minorities (Figure 2). The rapid growth of integration in the South began with the passage and enforcement of the 1964 Civil Rights Act, which forbade discrimination in all institutions receiving federal funds[20] and ended about the time the Supreme Court began to authorize school districts to return to segregated neighborhood schools in 1991.[21] By far the most dramatic change took place between 1964 and 1970 at the peak of the Civil Rights era, with the Warren Court and the Administration of Lyndon Johnson. During this time, the percent of black students in majority white schools in the South jumped from two percent to 33 percent. Desegregation for black students reached its peak in the late 1980s, when 44 percent of black students attended majority white schools, and the South was by a significant margin the least segregated region for black students throughout this period. This was also a period of rising high school graduation rates and of a major decline in the racial achievement gap between whites and blacks. Students were becoming increasingly desegregated despite the growth of the black population relative to whites. Black and white students during this era went to schools that were, on average, significantly less segregated than their neighborhoods. However, after the early 1990s, when the Supreme Court relaxed desegregation standards and allowed a return to neighborhood schools, resegregation occurred and the schools became more segregated.[22]

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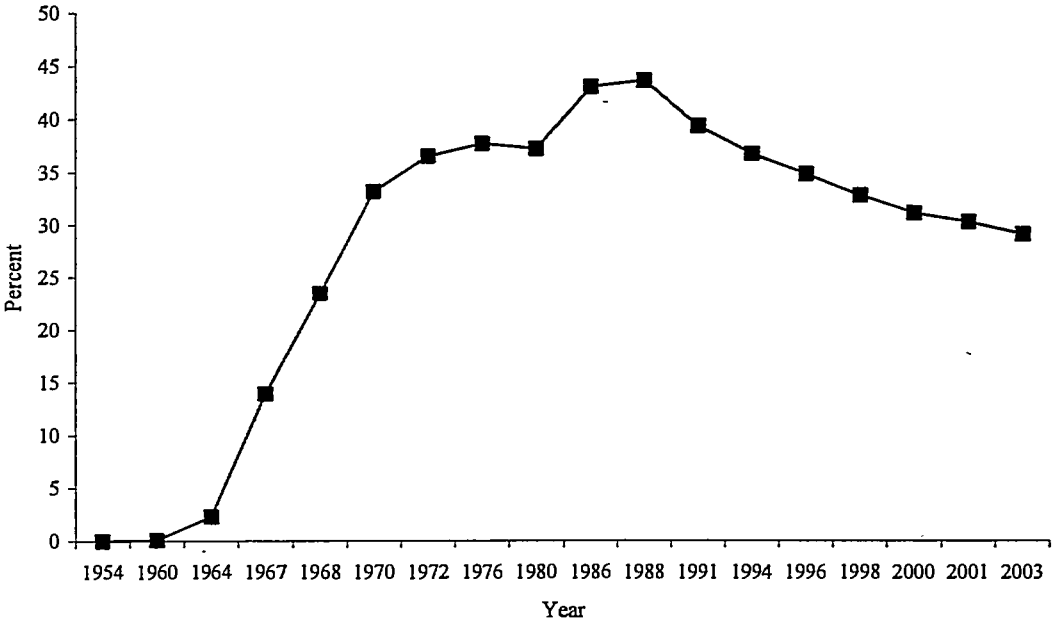
[20] Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act*, New York: John Wiley, 1969.

[21] *Board of Education of Oklahoma v. Dowell*, 498 U.S. 237(1991). The Court followed with two other orders which further relaxed desegregation standards. *Freeman v. Pitts*, 503 U.S. 467 (1992) allowed districts to dismantle desegregation plans even though integration had not been achieved. In *Missouri v. Jenkins*, 115 S. Ct. 2038 (1995), the Supreme Court emphasized local control over desegregation as the primary goal.

[22] See Orfield, G. and Lee, C. (2004). *Brown at 50: King's dream or Plessy's nightmare?* Cambridge, MA: The Civil *Rights* Project at Harvard University.J. Boger and G Orfield, *School Resegegation: Must the South Turn Back?* Chapel Hill: University of North Carolina Press, 2005.

Figure 2: Percent Black in Majority White Schools in the South, 1954-2003



Source: Southern Education Reporting Service in Reed Sarratt, The Ordeal of Desegregation (New York: Harper & Row, 1966); HEW Press Release, May 27, 1968; OCR data tapes; 1992-3, 1994-5, 1996-7, 1998-9, 2000-01, 2001-02, 2003-04 NCES Common Core of Data.

The story was very different for Latinos. The right of Latino students to desegregation was not established by the Supreme Court until 1973 in the *Keyes* (Denver) case and it was never seriously enforced except in a few locations.[23] As the number of Latinos soared and residential segregation increased, the schools in many areas became vastly more segregated and there was no significant initiative to address it. The Office for Civil Rights had been denied enforcement powers by President Nixon. The basic problem targeted by most Latino rights advocates was language, not segregation, and the basic fight was for bilingual education, a movement that enjoyed considerable success in the 1970s, met mounting resistance in the 1980s and sharp reversals in the 1990s.[24] Segregation steadily increased and by some measures and in some regions became substantially higher than black segregation. Many desegregation plans were designed only to desegregate black students, since they were designed before the right of Latinos to desegregation remedies was even established by the Supreme Court and often with no civil rights lawyers representing Latino interests. As Latinos become ever more segregated in inferior schools with extremely low graduation rates and test scores, with many found to be failing under No Child Left Behind Act,[25] federal courts have ended desegregation in their communities and

[23] *Keyes v. Denver School District No.* I, 413 U.S. 189 (1973)

[24] See note supra; for a description of the failure of the federal civil rights officials to enforce Keyes see: G. Orfield, *Must We Bus? Segregated Schools and National Policy*, Washington: Brookings Inst., 1978.

[25] Orfield, G., Losen, D., Wald, J., and Swanson, C. (2004). *Losing Our future: How minority youth are being left behind by the graduation rate crisis*. Cambridge, MA: The Civil Rights Project at Harvard University. Contributors: Urban Institute, Advocates for Children of New York, and The Civil Society Institute.

issued rulings which extinguished the rights of Latinos children without ever considering the issue of Latino segregation.

Multiracial Schools and the Need for a New Paradigm

Growing segregation of black and Latino students from white students is a basic educational trend. But there is another large and more encouraging development—the emergence of multiracial schools on a large scale.[26] Over the past half century there has been a good deal of energy devoted to creating and studying biracial schools, particularly those with black and white students. A good deal has been learned about the policies that produce segregation, desegregation, integration and resegregation, about the typical impact of such policies on educational outcomes and life chances of students, and about practices that make interracial schools more or less successful on various dimensions.[27] But we now see the emergence of thousands of schools that are not biracial but multiracial, often multiracial with two or more historically excluded "minority" groups and relatively few white students. Others may be multiracial, for example, with relatively advantaged groups of whites and Asians and a smaller black or Latino group.

Across the U.S. some 8.6 million students are attending multiracial schools of a sort never thought of when the school desegregation struggle was framed as one of ending the exclusion of a black minority from the much better white schools (Table 7). Whites are by far the students least likely to attend such schools—only about an eighth (12 percent) of whites do. Asian students are by far the most likely to be in such schools; 42 percent attend these multiracial institutions. Twenty-seven percent of Latinos, 23 percent of African Americans and 20 percent of American Indian students are in multiracial schools. Whites in the West and South, where almost a fifth are in multiracial schools are much more likely than whites in the Midwest (5%) and Border states (6%) to experience this cultural diversity. For whites, blacks, and Asians the multiracial experience reaches its highest level in the West. An extraordinary 52 percent of Western blacks and 51 percent of Western Asians attend these diverse schools. For Latinos, however, the multiracial experience is lower in the West (24%) than in all other regions and substantially higher in the Northeast (37 percent). The Northeast also has schools that are second only to the West in the exposure of black and Asian students to multiracial schools. The concentration of such schools in the West and Northeast is likely due in part to the concentration of Asian immigration in these areas as well as the extensive contact between black and Latino students in these areas.

[26] Multiracial schools are schools in which at least a tenth of the students are from each of at least three of the five major racial and ethnic groups.
[27] See note infra.

Table 7
Percentage of Students in Multiracial Schools by Race, 2003-04

Region	%White	%Black	%Latino	%Asian	%American Indian
West	19	52	24	51	23
Border	6	12	40	32	15
Midwest	5	15	25	27	9
South	18	20	28	44	28
Northeast	10	29	37	45	19
Total	**12**	**23**	**27**	**42**	**20**

An important reality about multiracial schools is that the basic multiracial contact may be between two or three minority groups and that they may still be highly segregated from whites. Very little systematic research has been done on the dynamics and effects of multiracial schools in terms of possible benefits or best ways to operate schools where there are substantial numbers of students from two or more disadvantaged groups attending the same school. Since many of the traditional benefits of desegregation result from moving students from high poverty to middle class schools with richer opportunities and networks, it is important to consider likely effects of combining two or more impoverished groups in the same multiracial school. There are large numbers of both blacks and Latinos in such schools in important immigration destinations where there are few whites left in the schools and these groups are inheriting the city. In the West, for example, blacks who are isolated from whites in minority schools are actually, on average, in schools with more Latinos than fellow African Americans.

Changing Patterns of Segregation by State

Distribution of Students in Segregated Schools

The highest levels of black segregation were found in New York, Illinois, California, and Michigan. In these states, the average black student attended schools with less than one quarter white students in 2003-03 (Table 8). The only state where black segregation did not increase in the last decade, Michigan, was already highly segregated in 1970 and showed no change since then. This was the state where most blacks remained segregated as a direct result of the Supreme Court's decision to overturn the decisions of the lower federal courts which had ordered city-suburban desegregation in metropolitan Detroit, concluding that it was the only feasible remedy for the local and state violations of black students' rights. Black students in Nevada experienced the largest decline in exposure to white students after experiencing a period of major desegregation progress from 1970-1980. The difference in segregation levels was even greater for black students in Delaware, which ended its Wilmington desegregation court order in 1995.[28] The share of white students in the school of the average black student in Delaware dropped from 69 percent in 1980 to 49 percent in 2003, to almost its 1970 level of 47 percent. It is worth noting that other states which showed large drops in desegregation from 1991 to 2003 are several

[28] Under the desegregation plan which took effect in 1980, the Wilmington city district was merged with 12 suburban districts. Until it was dissolved, the state had almost no black students in intensely segregated (90-100% minority) schools.

Southern and Border states such as North Carolina, Arkansas, Oklahoma, and Florida where long-standing school desegregation orders were terminated during the 1990s.

Despite these resegregation trends, black students in the South and Border states have amongst the highest levels of exposure to white students. In Kentucky, the average black student attends a school that is almost two-thirds white and in Delaware, 49 percent of the student body in the school of the average black student is white. Louisville, like Wilmington in Delaware, implemented a metropolitan wide desegregation plan which consolidated the city and county school system to create substantial desegregation. These trends suggest that regardless of recent resegregation, desegregation efforts of the past forty years continue to have an impact today.

Table 8: Changes in the Percentage of White Students in Schools Attended by the Average Black Student by State, 1970-2003 [29]

	% White	% White Students in School of Average Black				Change		
	2003	1970	1980	1991	2003	1970-80	1980-1991	1991-2003
Alabama	60	33	38	35	30	5	-3	-5
Arkansas	70	43	47	44	36	4	-3	-8
California	33	26	28	27	22	2	-1	-5
Connecticut	68	44	40	35	32	-4	-5	-3
Delaware	57	47	69	65	49	22	-4	-16
Florida	51	43	51	43	34	8	-8	-9
Georgia*	52	35	38	35	30	3	-3	-5
Illinois	57	15	19	20	19	4	1	-1
Indiana	82	32	39	47	41	7	8	-6
Kansas	76	52	59	58	51	7	-1	-7
Kentucky	87	49	74	72	65	25	-2	-7
Louisiana	48	31	33	32	27	2	-1	-5
Maryland	50	30	35	29	23	5	-6	-6
Massachusetts	75	48	50	45	38	2	-5	-7
Michigan	73	22	23	22	22	1	-1	0
Mississippi	47	30	29	30	26	-1	1	-4
Missouri	78	21	34	40	33	13	6	-7
Nebraska	80	33	66	62	49	33	-4	-13
New Jersey	58	32	26	26	25	-6	0	-1
New York	54	29	23	20	18	-6	-3	-2
Nevada	51	56	68	62	38	12	-6	-24
North Carolina	58	49	54	51	40	5	-3	-11
Ohio	79	28	43	41	32	15	-2	-9
Oklahoma	61	42	58	51	42	16	-7	-9
Pennsylvania	76	28	29	31	30	1	2	-1
South Carolina	54	41	43	42	39	2	-1	-3
Tennessee**	73	29	38	36	32	9	-2	-4
Texas	39	31	35	35	27	4	0	-8
Virginia*	61	42	47	46	41	5	-1	-5
Wisconsin	79	26	45	39	29	19	-6	-10

Source: US Department of Education Data

*These numbers are from 1993-4 school year.

**These numbers are from 2000-2001 school year.

From a historical perspective the increase in Latino segregation since systematic data was first collected is truly shocking (Figure 3). Back in 1970, there was little severe segregation in most

[29] This table includes states that had more than five percent black enrollment in 1970 and 1980.

states and Latinos were far more integrated than blacks. Only in New York, New Jersey, Texas and New Mexico was the average Latino student in a school with less than 40 percent white classmates, and even in the most segregated states in the Southwest about a third of the students were white. In California, which had historically been less segregated than Texas, the other great center of Latino settlement, the typical Latino was in a 54 percent white school, a school that would be considered almost ideally integrated. In Arizona there were an average of 47 percent white classmates and in Nevada 84 percent.

The 1970s brought the first and only Supreme Court decision on the desegregation rights of Latinos in the *Keyes* decision of 1973.[30] There was no significant enforcement of the decision, however, and by 1980 there were sharp increases in segregation in California, Connecticut, Florida and Illinois. The only states with a significant Latino enrollment that showed any decline in segregation during the 1970s was Colorado, the site of the Denver desegregation plan.

During the 1980s as the Reagan Administration pressed for termination of desegregation plans and huge increases in Latino student bodies took place, Latino segregation increased in every state with a significant enrollment except Arizona, which was implementing desegregation in Tucson and part of Phoenix.[31] The sharpest increases in segregation came in California and Nevada, though even after this Nevada Latinos, on average attended schools with almost two-thirds whites.

The story in California was very different. By 1991, the amount of contact with whites had fallen by a half from that of 1970 and the typical Latino student was in a 73 percent non-white school. During the 12 years from 1991-2003, the most dramatic upsurge of segregation occurred in Nevada, likely due to the dismantling of metro Las Vegas' desegregation plan amid massive growth of the district, which enrolled 70 percent of the state's students. Between 1980 and 2003, the level of contact with whites fall by half, and in 2003 the typical Nevada Latino was in a 63 percent nonwhite school. Other major backward movements took place in Arizona, Colorado and California. Texas, which never showed any increase in desegregation during the civil rights era, took a significant step backwards as well. During this entire period there never was any significant change in New York, which was consistently the most segregated state for Latinos, with students attending schools that were about four-fifths non-white on average. The biggest change came in California, which tied New York for the highest segregation level for Latinos. California, home to about a third of the nation's Latino students had led the race backwards, with massive consequences. Texas, with the second largest enrollment had never desegregated and slowly declined over the 33 year period, reaching nearly the same level of isolation as the two most segregated states.

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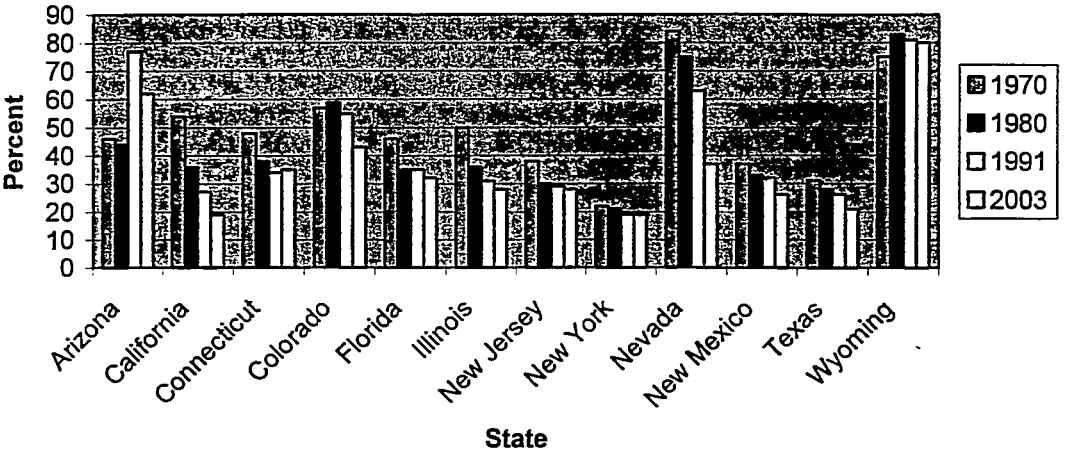
[30] See supra note.

[31] Orfield, G., Monfort, F. and Aaron, M. (1988). Racial Change and Desegregation in Large School Districts—Trends Through 1986-87 School Year. Washington, DC: NSBA Council of Urban Boards of Education.

Figure 3:

Changes in the Percentage of White Students in Schools Attended by the Average Latino Student by State, 1970-2000



Distribution of Students in Multiracial Schools by State

At the state level, whites are most likely to attend multiracial schools in Nevada (43%), California (34%), Texas (31%), and Florida (30%), but in most states the level is much lower, including 21 states where it is three percent or less (Table 9). Blacks are most likely to be in multiracial schools in Nevada (74%), Rhode Island (61%), California (55%), Colorado (54%), and Washington (52%). When we look at the percent of the total enrollment of all races in a state attending multiracial schools we find 52 percent of Nevada students in such schools, 34 percent of all students in California and Florida, and 30 percent of those in Texas. More than a third of states, on the other hand, had five percent or less of their students in such schools. The effect of such schooling experience on preparing students to live and work effectively in the far more multiracial society of the future deserves study and the development of policies to take advantage of the cultural and linguistic diversity and avoid racial polarization and in-school segregation.

Asian students are most likely to attend multiracial schools because they live in the least segregated neighborhoods, they are a relatively small but significant group, and they are concentrated in some of the most multiracial states. Over half of the Asian students in the following states attend multiracial schools: Alaska (67%), California (55%), Nevada (69%), New York (56%) and Texas (55%). Asian students in the Northeast and Midwest tend to be in multiracial predominantly white schools. In the West they tend to be in schools with a substantial share of Latino students, and only in the Southern and Border States do they attend schools with a substantial share of black students. Asian students in Arizona and Texas, for example, are in schools with an average of 27 percent Latino students, and in New Mexico the number is 40 percent. Asian students in Louisiana attend schools with an average of 46 percent black students, in Mississippi and South Carolina, 34 percent, and in North Carolina, 31 percent. In other states Asians are often in schools with less than the state average of black or Latino students. Other research by The Civil Rights Project on metropolitan Boston and forthcoming work on Asian subgroups suggest that the students most likely to be found in the heavily

minority disadvantaged schools are from the relatively poor and poorly educated refugee communities from Vietnam.[32]

As the nation's most integrated group of students and residents of rapidly changing states very heavily influenced by international immigration flows, Asians are a community of particular interest for thinking about school desegregation policy and about the future role and attitudes of a very successful group that is experiencing both higher educational levels than whites and much more contact with nonwhite students in their education and socialization.

Table 9
Percent of Students in Multiracial Schools by Race, 2003-04

State	%White in Multiracial School	%Black in Multiracial School	%Latino in Multiracial School	%Asian in Multiracial School	%American Indian in Multiracial School
Alaska	25	64	54	67	23
Alabama	2	2	13	5	12
Arkansas	2	5	14	14	9
Arizona	11	27	14	17	21
California	34	55	26	55	39
Colorado	11	54	16	26	29
Connecticut	15	49	52	30	27
Dist. of Columbia	45	4	20	44	27
Delaware	16	22	47	21	14
Florida	30	35	41	43	42
Georgia	11	12	44	40	12
Hawaii	16	38	15	4	14
Iowa	3	17	19	16	26
Idaho	1	0	2	1	10
Illinois	10	16	24	35	24
Indiana	3	17	26	9	9
Kansas	7	31	25	25	22
Kentucky	1	5	17	7	3
Louisiana	3	3	24	17	24
Massachusetts	10	48	40	40	22
Maryland	12	13	49	43	16
Maine	0	8	4	5	1
Michigan	4	9	27	16	6
Minnesota	6	42	31	45	13

[32] These findings will be documented in an upcoming publication jointly released by Southeast Asian Action Resource Center (SEARAC) and The Civil Rights Project.

Table 9 (cont.)
Percent of Students in Multiracial Schools by Race, 2003-04

State	%White in Multiracial School	%Black in Multiracial School	%Latino in Multiracial School	%Asian in Multiracial School	%American Indian in Multiracial School
Missouri	2	4	19	14	3
Mississippi	0	1	5	5	0
Montana	1	7	9	2	2
North Carolina	15	22	46	31	33
North Dakota	0	0	0	0	0
Nebraska	4	20	14	11	9
New Hampshire	0	5	7	1	1
New Jersey	16	29	34	38	37
New Mexico	14	20	9	13	26
Nevada	43	74	58	69	33
New York	14	29	35	56	17
Ohio	2	6	37	5	9
Oklahoma	16	40	47	30	16
Oregon	7	37	11	26	13
Pennsylvania	5	19	42	28	12
Rhode Island	10	61	63	44	30
South Carolina	4	4	27	9	13
South Dakota	1	5	6	1	1
Texas	31	47	22	55	34
Utah	2	14	14	21	5
Virginia	13	15	62	47	22
Virgin Islands	0	0	0	0	0
Vermont	0	1	0	1	0
Washington	13	52	20	41	18
Wisconsin	7	26	34	20	10
West Virginia	0	0	1	0	0
Wyoming	0	4	2	1	1

Source: Common Core of Data, 1991 and 2003

While many urban and suburban communities have multiracial schools now and many more are likely in the future, we know very little about the impact of such schools. Part of it has to do with the fact that there is a range of such schools. Multiracial schools might result in one or more groups of disadvantaged students obtaining access to more challenging middle class education often provided to white and Asian students, or it may combine several groups of low income students across race and ethnic and linguistic lines. Another reason why we know so little is that most research on desegregation was carried out before significant numbers of these schools existed. Some preliminary research suggests that the earlier that students experience diverse learning environments, the greater the positive impact on achievement.[33] While desegregated schools seem to have no negative test score effect on white students and produce other important

[33] Hawley, W. (2004). *Designing schools that use student diversity to enhance the learning of all students.* Paper presented at Positive Interracial Outcomes Conference, Cambridge, MA.

gains for them, black and Latino students generally learn more and graduate at higher levels in majority white schools than in segregated schools. More research is needed on the complexity of creating opportunity for one group of historically excluded and disadvantaged students given the presence of other groups with a different set of educational problems. Further research about tracking within schools, curriculum and teacher diversity, effect of such schools on residential segregation must be conducted. If they are managed well, these schools have the potential to offer a kind of cultural richness rarely experienced by today's adults in their childhood schools. As the public school enrollment grows increasingly diverse, getting answers to some of these questions will be increasingly urgent.[34]

The California, Nevada, and Texas Stories

By the early 21st century the most rapid population growth in the U.S. was occurring in the desert Southwest, where the U.S. Census predicted that growth would continue until at least 2030. The Southwest is now at the very moment of transition from a majority of white students to a complex majority of nonwhite students in which Latinos are by far the largest group. Less than 40 percent of the students are white in California and Texas, and whites comprise slightly more than half (51%) in Nevada (Table 10). Furthermore, the largest minority group in each of these states is Latino, comprising at least 30 percent of the public school enrollment. In short, these three states—California, Nevada, and Texas--exemplify the segregation trends, the development of multiracialism, the end of the black-white paradigm, and the relationship between black and Latino students. California and Texas are the nation's two largest states, both are growing rapidly, and they are home to more than half of all Latinos as well as the largest Asian population and large black communities. Nevada is the nation's most rapidly growing state and has been so for almost two decades. Its largest school district, Clark County (metro Las Vegas), is the nation's sixth largest district and is growing explosively. Looking at these three states we can get a sense of the dynamic of racial change and multiracialism in the parts of the country which will become steadily more important in determining the nation's future.

Table 10
Racial Composition of California, Nevada, and Texas, 2003-04

State	Enrollment	%White	%Black	%Latino	%Asian	%American Indian
California	6,212,692	33	8	47	11	1
Nevada	385,401	51	11	30	7	2
Texas	4,329,841	39	14	44	3	0

Source: Common Core of Data, 1991 and 2003

Brief Overview and History of Each State

California is, of course, the nation's largest state, with 33,872,000 residents according to the 2000 Census.[35] The Census Bureau's 2005 projections predict that the state will grow by 12,573,000 by 2030 to a total of 46,449,000, accounting for almost a sixth of the nation's growth (15.3 percent) during those three decades, substantially more than the total growth of the

[34] The Civil Rights Project held a research roundtable on these issues at the Harvard Law School and will be publishing the papers in a new book.
[35] [35]U.S. Bureau of the Census, "Interim State Population Projections, 2005," April 21, 2005.

eighteen states of the Northeast and the Midwest. Both the immensity of the state, and the fact that it has been in the epicenter of the wave of immigration that is remaking the nation, mean that the trends in California are of great national importance.

California back in the civil rights era was far less segregated and far more progressive than the South on matters of school segregation. For Latinos, it was far less segregated than Texas.[36] There had been pioneering decisions, before the Supreme Court's Brown decision, holding that imposed segregation of Mexican Americans was illegal.[37] The California Supreme Court had held that under the State's constitution, segregation was illegal regardless of whether or not it was the result of intentional public action, creating a right that was far more expansive than the federal right. A U.S. Supreme Court decision on a case from San Francisco established the requirement that schools must provide appropriate education for non-English speaking students.[38] Some communities, including Berkeley, were national pioneers in desegregating their schools without court orders.[39] A huge lawsuit was in progress to desegregate the nation's second largest school system, Los Angeles. The state department of education had an Intergroup Relations office working on desegregation issues with districts. After a proposal for metropolitan desegregation for greater Los Angeles was submitted to a trial court in 1978, the voters of California passed a constitutional amendment, Proposition 1, which eliminated the existing right to such an approach under the state constitution. In both Texas and Arizona, the Administration of President Jimmy Carter sued for metropolitan desegregation of the largest cities, but the Reagan Administration dropped the cases.

Nevada is and has been the nation's most rapidly growing state. This has been true for almost two decades and is projected to be true for the period to 2030[40]. Given its large Latino immigration, Nevada is projected to grow faster than any other state.[41] It is also a state that had the only large city-suburban desegregation plan in the West, covering the Las Vegas metropolitan area, which is served by one of the nation's largest and most rapidly growing school systems—Clark County. Under that plan, which lasted from 1972[42] until it was terminated by a federal court in 1993[43], Nevada became the second most integrated state in the nation for Latino students and the fourth most integrated state for black students by 1991, the year the Supreme Court authorized termination of desegregation orders.[44] Although there were many districts in the Southern and Border states that had county-wide school districts incorporating much or all of a metropolitan area, there were none in the Northeast or Midwest and very few in the West. If full and lasting desegregation of the metropolitan areas where more than 80 percent of Americans live was impossible without crossing the line between central city and suburbs, Nevada was the only state in the region where the dominant metropolitan area

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[36] L. Grebler, J. Moore, and R. Guzman, *The Mexican American People*, New York: Free Press: 1970.
[37] *Westminster School District of Orange County v. Mendez*, 161 F.2d 774 (9th Cir., 1947)
[38] *Lau v. Nichols*, 414 US 563 (1974).
[39] Neil V. Sullivan, *Now is the Time: Integration in the Berkeley Schools,* Bloomington: University of Indiana Press, 1970.
[40] U.S. Bureau of the Census, "Nevada Edges Out Arizona as the Fastest Growing State," New Release, December 22, 2005.
[41] U.S. Bureau of the Census, "Interim State Population Projections, 2005," April 21, 2005.
[42] *Kelly v. Guinn*, 456 F.2d 100 (9th Cir. 1972), cert. denied, 413 U.S. 919.
[43] Lisa Kim Bach, "Desegregation 50 Years Later: Then and Now," *Las Vegas Review Journal*, May 16, 2004; L. Steven Demaree, Donna M. Mendoza-Mitchell and Africa A. Sanchez, "Equality by Law: Brown v. Board of Education 50 Years Later," *Communique*, Clark County Bar Association, vol. 25, no. 2 February 2004.
[44] Orfield and Lee, *Brown at 50*, table 15, table 17.

experienced relatively comprehensive desegregation.[45] The metropolitan Las Vegas district, which had the great majority of black and Latino students in the state, is an example both of what might have been and what the impact of dissolving court orders may be.

Texas has the nation's second largest Latino population and historically large concentrations of African Americans, particularly in East Texas and the largest cities. Texas was part of the Confederacy, had the full set of apartheid policies that the rest of the South adopted after Reconstruction, and was the site of many of the most important legal struggles of the civil rights era, including the key higher education case, *Sweatt v. Painter*, that set the stage for the Brown decision.[46] But, unlike the rest of the South, Texas also had a very important Latino population, dating back to the era when Texas declared independence from Mexico. South Texas has long been an overwhelmingly Mexican American community with very strong relationships across the border. Texas historically engaged in many forms of segregation and discrimination against Latino students and was the site of an active movement against segregation led by civil rights groups, including the American G.I. Forum and League of United Latin American Citizens (LULAC).[47] During the civil rights era, Texas had far higher levels of segregation of Latinos than California. There were desegregation orders or plans negotiated with the Office for Civil Rights in many Texas districts and a sweeping order, *U.S. v. Texas*, that covered many smaller districts. There was a major lawsuit filed in Texas' largest city, Houston, by the Carter Administration. Houston is famous as a city which vastly expanded its boundaries as the suburbs grew, becoming one of the nation's largest cities. The Carter Justice Department believed that the fact that the Houston Independent School District stopped expanding its boundaries the same year the Supreme Court declared segregation illegal even as the city grew, produced segregation and was a constitutional violation, but that case was quickly dropped by the Reagan Administration, and Houston remained highly segregated. Latino civil rights groups in Texas gave bilingualism and financial equalization higher priority than desegregation following the *Keyes* and *Lau* decisions. By the late 1990s, many of the major plans in Texas were dissolved, including Austin, Dallas and Ft. Worth.

Segregation Trends in California, Nevada, and Texas

California had become one of the top five most segregated states by 2003-04 for black students by two different measures even though the state had only 7% black students: 87% of the black students attend majority minority schools, and the typical black student attended a school with 22 percent white students (Table 11). While the state has among the highest share of black students in majority minority schools and lowest black exposure to white, it is worthy to note that compared to some Northeastern and Midwestern states such as New York, Illinois, and Michigan, California has a relatively lower percentage of black students (38%) in intensely segregated minority schools. Overall, the record shows that California, which had limited desegregation orders covering a small part of the state's students and a state policy fostering voluntary desegregation plans until the 1980s, never achieved a high level of desegregation for its relatively small proportion of black students. By the late 1990s the major plans in San Diego, San Francisco, San Jose, and elsewhere had either ended or were being phased out.

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[46] *Sweatt v. Painter*. 339 US 629 (1950).

[47] Guadalupe San Martin, *"Let All of them Take Heed": Mexican Americans and the Campaign for Educational Equity in Texas: 1910-198l*, Austin: University of Texas Press, 1987.

Since the Clark County, NV, school district covers nearly 8,000 square miles and contains more than 70 percent of the state's students, the desegregation case had a massive impact on Nevada's racial pattern. After the desegregation order was dismantled in 1993, the share of black students in majority minority schools has increased.[48] In the 2003-04 school year, more than two-thirds (69%) of black students in Nevada attended majority minority schools, and the average black student attends a school that is over a third (38%) white--a very dramatic change.

More than three quarters of black students in Texas attend majority minority schools, and more than a third (38%) attend intensely segregated minority schools. The average black student in Texas attends a school that is a little more a quarter white (27%).

Table 11
Most Segregated States for Black Students, 2003-04

	%Black in		%Black in		Black Exposure to	
Rank	Majority Minority Schools		90-100% Minority Schools		White	
1	California	87	New York	61	New York	18
2	New York	86	Illinois	60	Illinois	19
3	Illinois	82	Michigan	60	Michigan	22
4	Maryland	81	Maryland	53	California	22
5	Michigan	79	New Jersey	49	Maryland	23
6	Texas	78	Pennsylvania	47	New Jersey	25
7	New Jersey	77	Alabama	46	Mississippi	26
8	Louisiana	77	Wisconsin	45	Louisiana	27
9	Mississippi	76	Mississippi	45	Texas	27
10	Georgia	73	Louisiana	41	Wisconsin	29
11	Wisconsin	72	Missouri	41	Pennsylvania	30
12	Connecticut	72	Ohio	38	Georgia	30
13	Pennsylvania	72	California	38	Alabama	30
14	Ohio	71	Texas	38	Hawaii	32
15	Alabama	70	Georgia	37	Ohio	32
16	Arkansas	69	Florida	32	Connecticut	32
17	Nevada	69	Connecticut	31	Missouri	33
18	Massachusetts	67	Massachusetts	26	Florida	34
19	Florida	67	Indiana	23	Arkansas	36
20	Missouri	67	Arkansas	23	Nevada	38

Source: Common Core of Data, 1991 and 2003

California is now a national leader in isolation for both blacks and Latinos. California was one of the top three segregated states for Latino students on three measures of segregation. Close to 90 percent of Latino students in California attend majority minority schools, and almost half (47%) attend intensely segregated (90-100%) minority schools (Table 12). The average Latino student in California attends a school that is 19 percent white. Latinos had moved from schools that had, on average, high levels of integration in 1970 to schools that were among the nation's most segregated by the 1990s. This is probably a result of the facts that the numbers of Latinos

[48] See Orfield and Lee, (2005), Table 15 pg. 30.

soared, segregated Latino residential areas expanded greatly, and most of the limited number of desegregation orders were dissolved by the late 1990s.

Texas has experienced huge growth of Latino population since the 1960s and is destined to become a majority Latino state. Given the combination of little effort to integrate Latinos, dissolution of some of the plans that accomplished the most, such as Austin's, and the huge population growth, it is not surprising that there has been increasing segregation of Latino students. Texas is one of the five most segregated states for Latino students on all three measures: more than four-fifths (85%) of Latino students attend majority minority schools, and half attend intensely segregated (90-100%) minority schools. The average Latino student in Texas attends a school that is 21 percent white.

While still high and very rapidly increasing, the segregation levels for Latino students in Nevada are less intense than for their peers in California and Texas. The average Latino student in Nevada attends a school that is 37 percent white, and about 11 percent attend intensely segregated (90-100%) minority schools. This is likely due to the lingering effects of the desegregation order that was dismantled in 1993.

Table 12
Most Segregated States for Latino Students, 2003-04

Rank	% Latino in Majority Minority Schools		% Latino in 90-100% Minority Schools		Latino/White Exposure	
1	California	89	New York	58	New York	19
2	New York	86	Texas	50	California	19
3	New Mexico	85	California	47	Texas	21
4	Texas	85	Illinois	41	New Mexico	26
5	Rhode Island	79	New Jersey	40	New Jersey	28
6	New Jersey	75	Arizona	31	Illinois	28
7	Maryland	75	Rhode Island	30	Rhode Island	29
8	Illinois	75	Florida	29	Arizona	30
9	Arizona	75	New Mexico	28	Florida	32
10	Florida	72	Maryland	27	Maryland	33
11	Nevada	72	Pennsylvania	27	Connecticut	35
12	Connecticut	70	Connecticut	26	Nevada	37
13	Massachusetts	65	Massachusetts	19	Massachusetts	39
14	Pennsylvania	63	Colorado	18	Pennsylvania	40
15	Colorado	59	Wisconsin	16	Georgia	43
16	Virginia	58	Georgian	16	Colorado	43
17	Georgia	57	Nevada	11	Virginia	47
18	Delaware	56	Michigan	11	Delaware	48
19	Louisiana	56	Indiana	9	Louisiana	48
20	Kansas	52	Mississippi	9	North Carolina	49

Source: Common Core of Data, 1991 and 2003

The desegregation issue is often posed as a choice between integration and cultural solidarity in schools dominated by one's own culture. Because of the massive influx of Latino immigrants into areas where blacks live, black students, however, often end up as a small minority in resegregated neighborhood schools dominated by another disadvantaged group with a quite different culture and, often, language. In each of these three states this kind of pattern is common.

In a state that now has no racial majority and is heading toward a Latino majority in schools if the current trends continue, California has a very interesting pattern of race relations among "minority" groups (Table 13). Black students are highly segregated from whites in very high minority schools, but they are typically a relatively small minority of the minority students in those schools, greatly outnumbered, on average, by Latino students (Table). In California, black exposure to Latinos (43%) is almost twice that of the average black student's exposure to whites (22%) or to fellow blacks (23%).

During the 1991 to 2003 period there has been a substantial drop in the already low percentage of whites in the school of the typical black student in Texas, but Texas black students now attend school, on average, with substantially larger numbers of Latinos. In 2003, the typical black student was in a school with larger shares of Latino students (31%) than with white students (27%). In cities and school districts very little attention has been paid to the issues of successful integration and educational provision of such schools. Race relations research and studies of

stereotypes minority groups have about each other suggest that these issues need attention and the staffs in such schools need training.

Table 13
Black Exposure to Students of Other Racial Groups in California, Texas, and Nevada, 2003-04

	Black/White		Black/Black		Black/Latino		Black/Asian	
State	**1991**	**2003**	**1991**	**2003**	**1991**	**2003**	**1991**	**2003**
California	0.27	0.22	0.28	0.23	0.33	0.43	0.12	0.11
Nevada	0.62	0.38	0.18	0.20	0.15	0.34	0.04	0.07
Texas	0.35	0.27	0.43	0.38	0.20	0.31	0.02	0.03

Source: Common Core of Data, 1991 and 2003

Why Segregation Matters

Racial segregation is not just about race. If race were not linked to other forms of inequality we would be a different society, the society we hope that we can eventually become. There is no evidence that the long struggle of civil rights groups to end school segregation was only motivated by a desire to have minority children sit next to white children; there was a strong belief that predominantly white schools offered better opportunities on many levels—more competition, higher graduation and college going rates, more demanding courses, better facilities and equipment, etc. and that the "separate but equal" principle enunciated by the Supreme Court in its 1896 *Plessy v. Ferguson* decision had never been honored. More than that, the Supreme Court concluded in 1954 that in America's racially polarized society, separate schools were "inherently unequal."

Past research has documented that for the segregation of black and Latino students the great majority of cases is closely related to concentrated poverty.[49] The important fact is that we are not talking simply about racial segregation but about the whole syndrome of inequalities related to the double or triple segregation these schools typically face. For Latino students, in many cases it also involves linguistic isolation in schools with many native Spanish speakers and few fluent native speakers of academic English, which students must acquire to be successful in high school and college.[50] Concentrated poverty is shorthand for a constellation of inequalities that shape schooling. These schools have less qualified, less experienced teachers, lower levels of peer group competition, more limited curricula taught at less challenging levels, more serious health problems, much more turnover of enrollment, and many other factors that seriously affect academic achievement.[51] There may or may not be severe inequalities of school finance, but a

[49] Orfield, G. and Lee, C. (2005). Why Segregation Matters: Poverty and Educational Inequality. Cambridge: The Civil Rights Project at Harvard University.

[50] Lee, C. (2004). *Racial segregation and educational outcomes in metropolitan Boston.* Cambridge: The Civil Rights Project at Harvard University; Horn, C. (2002) *The intersection of race, class and English Learner status.* Working Paper. Prepared for National Research Council.

[51] Schofield, J. W. (1995). "Review of research on school desegregation's impact on elementary and secondary school students," in J.A. Banks & C.A. M. Banks (Eds.) *Handbook of research on multicultural education.* New York, NY: Simon & Schuster Macmillan; Anyon, J. (1997). *Ghetto schooling: A political economy of urban educational reform.* New York, NY: Teachers College Record; Dawkins, M. P. and Braddock J.H. (1994). The continuing significance of desegregation: School racial composition and African American inclusion in American

very basic problem in any case is all the added instructional costs and burdens that are concentrated in these segregated high poverty schools—language training, some forms of special education, constant training and supervision of new teachers because teachers leave much more rapidly, remedial education, social work and counseling for kids from severely troubled families, health emergencies, frequent moves and school transfer in mid-year, and many others.[52] This means that equal dollars cannot produce equal opportunities. This syndrome of inequalities is so profound that there is a very striking relationship between a school's poverty level and its test scores, independent of any other factors.[53] Reformers for the past 40 years have consistently noted and celebrated the exceptions to this pattern, partly because they are so rare, but they have never figured out how to "scale up" those patterns of leadership and extraordinary dedication found in many of those schools or even, in many cases, how to maintain that success in specific schools after their great leader leaves, or faculty teams break up, or resources are withdrawn in a budget crunch.[54]

The data in the following table show that in 2003-4 almost one-seventh of U.S. schools reported that they had 80-100 percent minority students, and three-fourths of those schools reported that 50-100 percent of their students were from families poor enough to qualify for free or reduced price school lunches (Table 14). Given that some schools do not offer the lunch program and that many children in poor high schools either do not eat in the cafeteria or are too ashamed to apply for free lunch by documenting their family's poverty, the rate is doubtless higher.[55] At the other extreme, 52 percent of U.S. schools have 0 to 20% minority students and only one-seventh of those schools are dealing with concentrated poverty, which is related to many negative factors from poor prenatal development, poor childcare and preschool experiences, untreated health problems, instability from frequent involuntary moves, exposure to neighborhood violence, schools with less trained and experienced teachers, and many more sources of inequality.[56]

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society. *Journal of Negro Education.* 63(3):394-405; Natriello, G., McDill, E.L. and Pallas, A.M. (1990). *Schooling disadvantaged children: Racing against catastrophe.* New York, NY: Teachers College Press.

[52] Knapp, M. S. et al. (1995). *Teaching for meaning in high-poverty classrooms.* New York, NY: Teachers College Press; Metz, M. (1990). How social class differences shape teachers' work. In M.W. McLaughlin, J.E. Talbert, and N. Bascia (Eds.), *The contexts of teaching in secondary schools.* New York, NY: Teachers College Press; Puma, M. et al., (1995). Prospectives: Final report on student outcomes. In Knapp et al, *Teaching for meaning in high-poverty classrooms.* New York, NY: Teachers College Press.

[53] Orfield, G. and Lee, C. (2005). *Why Segregation Matters: Poverty and Educational Inequality.* Cambridge: The Civil Rights Project at Harvard University; Rothstein, R. (2004). Class and Schools: Using Social, Economic and Educational Reform to Close the Black-White Achievement Gap. Washington, D.C.: Economic Policy Institute.

[54] Elmore, R. (1996). Getting to scale with good educational practice. *Harvard Educational Review, 66* (1), 1-26.

[55] The statistics on free and reduced lunch are less complete than data for racial composition, though these data are available for the majority of schools.

[56] For a more extensive discussion of these issues, see Orfield, G. and Lee, C. (2005). Why Segregation Matters: Poverty and Educational Inequality. Cambridge: The Civil Rights Project at Harvard University. http://www.civilrightsproject.harvard.edu/research/diversity/diversity_gen.php

Table 14
Relationship between Segregation by Race and Poverty, 2003-04

	Percent Minority Students in Schools									
% Poor in Schools	**0-10%**	**10-20%**	**20-30%**	**30-40%**	**40-50%**	**50-60%**	**60-70%**	**70-80%**	**80-90%**	**90-100%**
0-10%	32	25	15	13	11	9	12	10	13	17
10-25%	23	25	23	14	8	4	3	2	1	1
25-50%	31	33	37	39	34	27	18	10	7	6
50-100%	15	17	25	35	48	60	67	77	78	76
% of Schools (Column Totals)	**40**	**12**	**8**	**6**	**6**	**5**	**4**	**4**	**4**	**10**

Source: Common Core of Data, 1991 and 2003

Court Decisions and Increasing Segregation in the Districts

Under three Supreme Court decisions[57], desegregation can be ended after at time if a parent sues the school district for continuing to follow policies intentionally assigning students by race to integrated schools, even if local officials believe it is educationally and socially beneficial. The courts were also directed to limit court-ordered educational remedies intended to repair the harms of segregation. Since the Supreme Court authorized termination of desegregation plans in a 1991 decision concerning Oklahoma City schools, many school districts have ended their plans and restored neighborhood schools with segregation reflecting or even intensifying the residential segregation. While the termination of the orders might not automatically result in resegregation, and some districts tried to maintain some level of desegregation by keeping old policies in place, or through keeping elements such as magnet schools and controlled choice plans, others simply returned to neighborhood based schools or stopped enforcing the desegregation plans even before the court reached the decisions. In many cases, a return to neighborhood schools intensifies school segregation because schools tend to over-represent neighborhood minority population, and a higher proportion of white than minority children attend private schools.. The spread of charter schools, which are on average even more segregated than regular public schools, further exacerbates the problem.[58]

The belief that a return to neighborhood schools can result in a significant white return to public schools is unsubstantiated. First, the argument is founded on the assumption that desegregation orders are largely responsible for white flight to the suburbs. The white flight argument appears to have been largely a misinterpretation of the changing population, particularly of big city school systems, blaming the decline on school desegregation rather than the basic underlying forces of differential birth rates, immigration, and continuing spread of residential segregation, especially for families with children. In fact, since schools tend to over-represent neighborhood minority population, they can resegregate much faster than neighborhoods. Since the average housing unit changes hands every six years and young families move more often, failure of a

[57] See note supra.

[58] Frankenberg, Erica and Chungmei Lee. 2003. "Charter Schools and Race: A Lost Opportunity for Integrated Education." *Educational Policy Analysis Archives,* vol. 11, no. 32 (2003).

neighborhood and its schools to continue to draw whites can, in a few years, produce a segregated school. Equally worrisome is middle class black and Latino flight--the fact that resegregated schools tend to become predominantly high poverty schools over a relatively short period of time, schools that may cause a neighborhood to lose its middle class black or Latino population as well.

One way to address the close relationship between school and residential segregation is through school districts that encompass broader housing markets. Past reports have shown that the most remarkable levels of long-term school desegregation were achieved though city-suburban desegregation plans.[59] After the Supreme Court rejected desegregation plans crossing school district boundary lines in the 1974 *Milliken v. Bradley* decision, these plans were largely limited to states which had country-wide districts, encompassing much or all of the metropolitan housing market. States with plans involving only central cities that divided metropolitan areas into housing submarkets with heavily minority schools, sometimes including mandatory reassignment of white students, and suburbs with little or no desegregation and few low income students, created the worst possible conditions for maintaining and expanding stable residential integration.

In short, the return to neighborhood schools calls for greatly increased focus on residential integration but that has not occurred. There is important evidence that metropolitan-wide school desegregation produced increases in residential integration by eliminating the racial factor of school composition or fear of resegregation of the local school from the housing choice process.[60] These statistics suggest that if the racially diverse school districts and communities wish to remained multiracial and hold white families, they will probably have to seriously work to stabilize interracial neighborhoods and avoid residential resegregation since there is nothing about neighborhood schools that is automatically stable.

As we examine the changes in the largest school districts (30,000 and over) that terminated desegregation, we see a significant, sometimes a very substantial, decline in the percent of white students in the school of a district's average black student, as shown in Table 15. The decline in share of white enrollment is evident in all the districts, with the greatest changes in Southern and Western metro or suburban districts such as Broward, East Baton Rouge, Clark, and Aldine. During this time the percent of white students in the school of the average black student dropped in all districts and seemingly replaced by Latino classmates. This is especially evident in Western states such as California and Colorado, where the share of Latino students in the school of the average black student increased at least 10 percentage points in San Diego and San Jose and a startling 20 percentage points in Denver. In Florida, black students in Hillsborough, Lee, Polk, and St. Lucie districts also experienced at least a 10 percentage point increase in exposure to Latino peers. In other Southern states such as North Carolina and Texas, the share of Latino students in the school of the average black in Charlotte increased from one to 10 percent and in Dallas, the percent Latino in the school of the average black increased from 20 to 27 percent.

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[59] Frankenberg, E., Lee, C. and Orfield, G. (2003). A Multiracial Society with Segregated Schools: Are We Losing the Dream? Cambridge, MA: The Civil Rights Project.

[60] For a comparison of residential patterns in areas with metrolitan desegregation and more limited plans, see: Myron Orfield and Thomas Luce, *Minority Suburbanization and Racial Change: Stable Integration, Neighborhood Transition, and the Need for Regional Approache.s* Presented at Race and Regionalism Conference, Inst. On Race and Poverty, University of Minnesota, Minneapolis, Minnesota, May 2005.

Although the black and Latino students had much less contact with whites, the idea that ending desegregation would produce a return of white classmates to neighborhood schools proved wrong, as the overall demographic change of districts continued, and the proportion of whites in the class of the average white student fell in all districts except Mobile, Denver, Chatham, DeKalb, Cincinnati, Cleveland, and Houston.

It is instructive to look at what happened to the major school districts involved in the Supreme Court's landmark desegregation cases after the termination of their plans, and to review the general pattern of change in the largest city, suburban, and metropolitan districts. The landmark cases include *Brown* (1954), from Topeka, KS, which established the right to desegregation[61]; *Cooper v. Aaron* (1958) from Little Rock, which overrode the ability of state government to block desegregation on the claim that it would produce violence[62]; *Swann* (Charlotte, 1971) which established the right to comprehensive urban desegregation and implemented city-suburban desegregation in a county-wide district, accepting busing if necessary to desegregate urban districts in the South[63]; *Keyes* (Denver, 1973) which established the right to desegregation outside the South and the right of Latino students to desegregation[64]; *Milliken* (Detroit, 1974) which blocked city-suburban desegregation in most states[65]; *Dowell* (Oklahoma City. 1991) which established the policy of terminating desegregation plans and returning to segregated neighborhood schools after a period of years[66]; *Freeman v. Pitts* (DeKalb—suburban Atlanta, 1992) which authorized piecemeal termination of desegregation orders[67]; and *Jenkins* (Kansas City, MO, 1995) which held that the educational components of desegregation plans could be cancelled even if they had not yet produced educational progress.[68] In all of these historic districts the desegregation orders have now been ended and it is possible to look at the ensuing conditions

Among all these districts, the highest level of desegregation was achieved in Charlotte and Topeka, and the most radical increase in segregation after the plan was dissolved has taken place in Charlotte.[69] The Detroit plan, as Justice Thurgood Marshall pointed out in his dissent, was deeply unsuccessful and the city continued to move through rapid residential resegregation producing schools attended by black students that are only three percentage points away from complete apartheid.[70] However, despite the low white enrollment, white students are in schools that have far more whites than the district average. Detroit consistently in recent decades has rated among the most hypersegregated metropolitan housing markets in the U.S.

The Charlotte schools were among the most integrated metropolitan areas for three decades following the implementation of county-wide busing in 1971. After the county school board's

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[61] *Brown v. Borad of Education of Topeka*, 347 U.S. 483(1954).
[62] *Cooper v. Aaron*, 358 U.S. 1 (1958).
[63] *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. I (1971).
[64] *Keyes v. Denver School District No. I*, 413 U.S. 189 (1973).
[65] *Milliken v. Bradley*, 418 U.S. 717 (1974).
[66] *Board of Education of Oklahoma v. Dowell*, 498 U.S. 237 (1991).
[67] *Freeman v. Pitts*, 503 U.S. 467(1992).
[68] *Missouri v. Jenkins*, 115 S.Ct. 2038(1995).
[69] Mickelson, R. (2005). *The Incomplete Desegregation of the Charlotte-Mecklenburg Schools and Its Consequences*, 1971-2004 in John Boger & Gary Orfield, eds. School Resegregation: Must the South Turn Back? Chapel Hill: The University of North Carolina.
[70] See Appendix for black isolation figures.

long and costly struggle to continue its desegregation plan was rejected by the federal courts, the county has experienced enormous increases in segregation. In 2003, the average black student attended a school that was 28 percent white, compared to 51 percent a little over a decade ago. Despite the drop in white share of enrollment, white isolation remained essentially unchanged. Charlotte had a major decline in residential segregation during the period of school desegregation, and its housing in 2000 was much less segregated than Detroit.[71]

Following the 1973 desegregation order that was limited to the city of Denver, there was a significant decline in segregation for blacks and Latinos in Denver during the 1970s. For Latinos, Colorado was the only state with significant Latino enrollment where segregation did not increase during the 1970s. However, lasting desegregation was jeopardized when a state constitutional amendment, the Poundstone amendment, was enacted the year of Denver's desegregating, prohibiting Denver from continuing to expand its district boundaries. As white suburbanization to neighboring school districts continued, there was a gradual increase of segregation in the 1980s. After the plan was terminated in the 1990s, there was a significant additional increase in segregation.[72] Denver is one of the districts in which black students are attending multiracial schools: the average black student in 2003 attended a school that is 18 percent white and 39 percent Latino.

Oklahoma City, a large district including much of the urban area, achieved a level of significant desegregation before it began to dismantle its plan, a process that was accelerated after the Supreme Court decision in 1991. There have been substantial increases in segregation for blacks since the plan was ended. In 2003, the average black student attended a four-fifths minority school that has similar shares of White and Latino students at 19 and 14 percent respectively. Interestingly enough, the major growth of enrollment in the district has been Latino, and there were no provisions for desegregation of Latinos in the plan. Their segregation has increased but they have no rights to any remedy since the Supreme Court has held that the district has fulfilled all of its obligations and is free to take actions which have the result of increasing segregation as long as that is not the stated intent. In the Southern and Border states where Latino enrollment is now surging, the desegregation rights of Latino students have been cancelled before any remedy was received.

DeKalb County, Georgia, home to the large black middle class exodus from Atlanta, was going through rapid racial change and had never fully desegregated when the Supreme Court authorized termination of the student assignment plan in 1992. Subsequently, the courts forbade the continuation of a student transfer plan that let a few thousand black students transfer to stronger white schools in other parts of the district. There has now been a substantial increase in black segregation: the average black student in 2003 attended an overwhelming black school that was only 6 percent white, 3 percent Latino and 89 percent Black. White students are similarly isolated: despite the fact that white students constitute only 12 percent of the student population, the average white student attends a school that is 43 percent white, an *increase* since 1991.

The Kansas City (*Jenkins*) case ended an unusual effort by federal courts to stabilize integration by radically upgrading the schools and offering many special programs in a district where both

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[71] Orfield and Luce, 2005.

[72] Lee, C. (2006). *Denver Public Schools: Resegregation Latino Style*. Report to be release by Piton Foundation in its January, 2006 issue of its publication, *Term Paper*.

the city and state education officials were found guilty of a long history of discrimination. After a great deal of money had been spent without producing he expected education gains or much desegregation though a choice system, the federal judge supervising the case ordered tougher educational measures, but the Supreme Court's 1995 *Jenkins* decision terminated the plan saying enough had been done.[73] The district whose enrollment had stabilized to some degree, continued to resegregate as the percentage of white classmates for the average black student fell from 22 percent to 8 percent.

In each of these districts segregation is increasing, and the increase is the most dramatic in districts that achieved the most for a substantial period of time with area-wide desegregation policies that were initially the most opposed but, in the long run, the most successful. The resegregation orders did not stabilize anything. White enrollment continued to fall even as the neighborhood principle was resestablished.

Table 15
Changes in Exposure in Select Districts That Have Been Declared Unitary Between 1990-2003 [74]

	%White		Change	White Isolation		Black/White Exposure		Black/Latino Exposure	
	1991	2003	1991-2003	1991	2003	1991	2003	1991	2003
Mobile	52	46	-6	0.72	0.73	0.30	0.21	0	0.01
San Diego Unified	35	26	-9	0.48	0.44	0.28	0.19	0.27	0.40
San Jose Unified	39	29	-10	0.41	0.38	0.40	0.28	0.40	0.50
Denver County	33	20	-13	0.39	0.42	0.32	0.18	0.19	0.39
Broward County	56	36	-20	0.69	0.50	0.32	0.21	0.09	0.18
Dade County	18	10	-8	0.36	0.23	0.12	0.06	0.23	0.29
Duval County	59	48	-11	0.73	0.59	0.36	0.34	0.01	0.04
Hillsborough County	63	49	-14	0.68	0.58	0.55	0.37	0.13	0.23
Lee County	76	62	-14	0.78	0.65	0.69	0.53	0.08	0.20
Pinellas County	78	70	-8	0.80	0.74	0.72	0.60	0.02	0.07
Polk County	72	61	-11	0.76	0.63	0.59	0.59	0.05	0.15

[73] Alison Morantz, "Money and Choice in Kansas City: Major Investments with Modest Returns," in G. Orfield and S. Eaton, *Dismantling Desegregation*, New York: New Press, 1996, pp. 241-264.

[74] Special thanks to Jacinta Ma, Educational Opportunities Section of the U.S. Department of Justice, NAACP Legal Defense Fund, and Byron Lutz for providing much of this information. This chart does not include a number of unreported decisions.

Table 15 (cont.)
Changes in Exposure in Select Districts That Have Been Declared Unitary Between 1990-2003 [75]

	%White		Change	White Isolation		Black/White Exposure		Black/Latino Exposure	
	1991	2003	1991-2003	1991	2003	1991	2003	1991	2003
Seminole County	76	67	-9	0.78	0.69	0.64	0.60	0.07	0.16
St. Lucie County	63	55	-8	0.65	0.57	0.60	0.52	0.04	0.14
Chatham County*	38	30	-8	0.44	0.45	0.34	0.22	0.01	0.02
DeKalb County*	23	12	-9	0.41	0.43	0.16	0.06	0.02	0.03
Muscogee County*	42	35	-7	0.60	0.56	0.28	0.22	0.03	0.03
Indianapolis Public Schools	47	31	-16	0.52	0.46	0.42	0.23	0.01	0.07
Jefferson County	68	60	-8	0.69	0.63	0.66	0.56	0	0.03
East Baton Rouge Parish	42	21	-21	0.57	0.40	0.31	0.15	0	0.01
Prince Georges County	25	8	-17	0.40	0.23	0.19	0.07	0.04	0.08
Boston	21	14	-7	0.30	0.27	0.18	0.10	0.19	0.26
Detroit City	8	3	-5	0.30	0.20	0.05	0.02	0.01	0.01
Minneapolis	46	27	-19	0.48	0.44	0.44	0.20	0.02	0.11
Kansas City	26	13	-13	0.35	0.34	0.22	0.08	0.03	0.08
St. Louis City	20	16	-4	0.41	0.37	0.15	0.11	0	0.01
Clark County	68	44	-24	0.72	0.55	0.61	0.37	0.15	0.34
Buffalo City	40	26	-14	0.44	0.40	0.38	0.20	0.05	0.08
Charlotte-Mecklenburg	56	42	-14	0.60	0.59	0.51	0.28	0.01	0.10
Cincinnati	35	25	-10	0.47	0.51	0.29	0.16	0	0.01
Cleveland	23	18	-5	0.27	0.44	0.21	0.09	0.05	0.04
Oklahoma City	44	27	-17	0.54	0.38	0.32	0.19	0.06	0.14
Aldine ISD	31	6	-25	0.36	0.09	0.30	0.07	0.28	0.50
Austin ISD	43	30	-13	0.57	0.55	0.29	0.19	0.33	0.56
Corpus Christi ISD	26	20	-6	0.40	0.32	0.20	0.19	0.67	0.71
Dallas ISD	16	6	-10	0.39	0.24	0.09	0.04	0.20	0.37
Fort Worth ISD	33	18	-15	0.55	0.40	0.20	0.13	0.15	0.31
Houston ISD	14	9	-5	0.33	0.35	0.09	0.06	0.23	0.35
Norfolk City*	34	26	26	0.43	0.37	0.28	0.22	0.01	0.02

*These numbers are from 1993-4 school year.
Source: Common Core of Data, 1991 and 2003

[75] Special thanks to Jacinta Ma, Educational Opportunities Section of the U.S. Department of Justice, NAACP Legal Defense Fund, and Byron Lutz for providing much of this information. This chart does not include a number of unreported decisions.

Voluntary Integration

Under their current leadership, the federal courts are not going to integrate America's segregated schools. Indeed, the Supreme Court became the driving force in resegregation in three major decisions in the 1990s, concerning Oklahoma City[76], DeKalb Country[77], Georgia, and Kansas City, MO[78]. The Court held that desegregation was only a temporary requirement, that following a court order for a number of years made up for the historic violation, and that courts should end orders and permit school districts to return to neighborhood schools, even if they would be predictably segregated and unequal. The Court said that plans could be disestablished piecemeal, even if all elements had never been achieved. Finally, in the 1995 Kansas City case the Court held that the educational programs required to help make up for a history of segregated and unequal education could be dismantled, even if they had not accomplished their goals. Across the country, districts returned to policies that reestablished extensive segregation. Every measure of segregation since the late 1980s has shown growing separation.

Once mandatory desegregation was largely dismantled, the civil rights critics began an active attack on voluntary desegregation, which was undertaken not under a court order but by local educational leaders and school boards and involved forms of educational choice. Many of these magnet school and voluntary transfer and controlled choice plans had been created to avoid mandatory student reassignment and to encourage parents to choose educationally valuable alternatives that would produce schools that were both integrated and desirable to parents of all races. The way these schools were kept integrated was to actively recruit across racial lines, provide free transportation to assure real choice for families who could not provide private transportation, to make the schools welcoming to all groups of students, and to set aside seats for white and minority students when necessary to assure integration. Many of these schools were very popular and successful, and federal magnet school funds were eagerly sought in spite of desegregation requirements. Conservatives wanted these programs banned because they believed that any use of race in student assignment was illegal, not only if it imposed segregation but even when it fostered integration. These arguments had some success in federal courts especially in the conservative Fourth Circuit Court of Appeals where the judges banned race-conscious assignment for magnet schools in Arlington, VA, and Montgomery Country, MD, as well as Charlotte, NC.

The Supreme Court's decision supporting affirmative action at the University of Michigan Law School, however, clearly held that educational integration had great value for students, the educational process, and for society and its major institutions. Following that decision three other Courts of Appeals, the First Circuit in New England, the Sixth Circuit in the Midwest, and the Ninth Circuit in the West have spoken in 2005 on the issue of voluntary integration in cases from Massachusetts city of Lynn, from the metropolitan Louisville (Jefferson Country) school district, and from Seattle, Washington, and each has upheld the right of school districts to follow such policies.[79]

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[76] *Dowell v. Oklahoma City*, U.S. (1991).
[77] *Freeman v. Pitts*, U.S. (1992).
[78] *Missouri v. Jenkins*, U.S. (1995).
[79] Hampton v. Jefferson County Board of Education, 72 F. Supp. 2d 753; (WD Ky.1999,McFarland v. Jefferson County Public Schools, 330 F. Supp. 2d 834 (WD Ky. 2004), McFarland v. Jefferson County Public Schools, 416

Voluntary action by school districts and state governments to preserve and expand good magnet and choice plans could help end the growth of racially separate schools. When federal funds were available to expand racially integrated magnet schools and to develop special curriculum and staff training for schools of choice, they were eagerly sought, and many of the schools became highly popular with parents, educators, and community leaders. Funds should again be provided on a major scale for such schools. Now, many of these schools could well be created in racially changing suburbs as well as central cities and be explicitly designed to serve both city and suburban schools as some successful schools under Connecticut's *Sheff* decision have done.[80]

Such schools need certain equity provisions to avoid becoming elite schools serving the most privileged students. Those policies include: explicit desegregation standards and recruitment to meet them, including holding seats for under-represented groups if necessary, good personal parent information, staffs and materials to reach families regardless of language and educational status, welcoming all groups of students including English Language learners, staff integration and multicultural curriculum, selection on the basis of interest and choice, not academic screening, random selection when schools are over-chosen to avoid giving special advantage to well-connected parents who choose first. Obviously the impact of such standards would be greatly enhanced if they were applied to the thousands of charter schools, which typically lack these policies and are even more segregated than traditional public schools. Finally, the good idea in No Child Left Behind that gives students in failing schools the right to transfer could be transformed from a little used and generally useless right to transfer to another segregated high poverty school to a right to transfer under such desegregation policies to better multiracial schools regardless of school district boundary lines.

The changing racial composition of schools in the U.S. requires that we think about desegregation more broadly. What are needed are policies that are not limited to getting "minority" students into white schools but focus on integrating students from isolation in high poverty black and Latino schools to middle class white, Asian and multiracial schools. We also need serious support for research, curriculum development, and teacher training in schools that serve several minority groups in a high poverty context, such as the historically black schools in California or Florida, or New York or Texas which are experiencing surging Latino enrollment.

No Child Left Behind promised to deal with racial inequality, never mentioning segregation, but has usually ended up, so far, documenting in vast detail the systematic inequality of high poverty minority schools and has ended up not providing the promised resources to those schools but directing a very disproportionate share of the policy's harsh sanctions at this group.[81] Recent dropout research has shown that the nation's crisis of high school completion is concentrated in a few hundred high poverty minority high schools which have been accurately described as "dropout factories," since dropouts are their major product and less than half their students typically graduate, sometimes much less. For forty years, optimists have pointed to the relative handful of schools that break the barriers of segregation by race and poverty, as if it is the

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F.3d 513; (6th Circuit, 2005) U.S. App Parents Involved in Community Schools v. Seattle, 426 F.3d 1162 (9th Circuit 2005) Comfort v. Lynn, 418 F.3d 1 (1st Circuit 2005).

[80] Sheff v. O'Neill, 238 Conn. 1, 678 A.2d 1267 (1996).

[81] Gail Sunderman, James Kim and Gary Orfield, NCLB Meets School Realities, Corwin, 1995.

solution, but these successes have been largely at the elementary level and have never been generalized across the system in any district with a large minority enrollment. Perhaps the Supreme Court was correct when it held in 1954 that segregated schools that are the product of discrimination are "inherently unequal." Certainly until we have serious evidence to the contrary and learn that there is some way to successfully prepare our students to live and work in an extremely multiracial society in segregated schools and neighborhoods, it would be well to take prudent steps to build on successful models and begin to turn back the tide of resegregation.

What Can Be Done?

If growing segregation threatens the American future and denies important opportunities to children of all races, the logical question is--what can be done?

It is often said that the trends are deeply unfortunate but that there is little or nothing that can be done about them, given the force of the demographic changes or the current leadership of the judiciary and the elected branches of government. This is wrong.

Substantial progress can be made and some communities are successfully defending desegregation or seeking new ways to achieve it. Most of our school districts and communities are doing very little to work on this issue or even to discuss it, and some are taking steps that are clearly negative. The floodtide of data about racial differences and school level achievement scores produced by No Child Left Behind and state reforms and recent dropout research show the persisting educational inequalities in segregated schools. In fact, the little discussed reality is that no one has a program shown to equalize segregated schools on scale; and, as the Supreme Court recognized in the recent college affirmative action case, there are lessons very important to living and working in a multiracial society that cannot, in their nature, be learned in segregated schools.

It is true that demography changes the issues. In a country with only 58% white students and two of its major regions without a white majority, there is no way that all minority students could attend majority white schools. If that were considered the only reasonable achievement of desegregation, it would become less feasible every year. The right way to begin to think about this is to adopt a few basic principles and then consider a variety of decisions and practices in light of how they may assist or undermine the goals.

The first principle is that segregation by race and ethnicity is almost always related to seriously unequal opportunities for all races, including whites, and it should be minimized. The second is that, to the extent that we can increase the access of students from historically excluded to stronger middle class schools without jeopardizing those schools and their students, that is a very desirable goal for many reasons relating not only to the students' own destinies but also to the realization of the broad goals of creating a successful and stable multiracial society. The third is that successful models for lowering segregation have been demonstrated for decades in various districts and programs.

The first principle that is needed is recognition of the problem and the opportunity and creation of a goal of successfully integrated schools at the level of the school, the district, the state, and the nation. There are important things that can be done at each level. The recent decisions of

three high federal courts that affirm the right of communities to take race-conscious action to create or retain integrated schools clearly lend support to community efforts and to state policies supporting integration. State constitutions and laws can also provide support for integrationist policies. The following are important dimensions for policy on this issue:

1) Communities and community groups considering moves to terminate desegregation orders should be made fully aware of the fact that unitary status rulings eliminate the rights and judicial protection for minority students that grew out of the history of local discrimination. A court order provides protection against local political decisions which create segregated and unequal education for minority children and protects the rights of local educators to pursue voluntary magnet school and other educational approaches without fear of judicial challenge.

2) Communities should carefully examine the relationship between segregation and the success of schools in meeting state standards and NCLB requirements as well as a good graduation rate for students and the availability of college-oriented courses in high school. If there is a systematic relationship and the local reform plans have failed to resolve it, civil rights and educational organizations should ask for a plan to lessen segregation by race and poverty.

3) In areas of increasing school segregation and racial transition in sectors of suburbia, federal, state and local civil rights enforcement agencies and private fair housing groups should continually monitor housing market discrimination and steering, including inappropriate use of test score data to steer homebuyers away from integrated communities.

4) Successful magnet school programs that produce integrated student bodies within school districts should be expanded, and regional magnets drawing students together for special programs across school district boundary lines should be created.

5) Charter schools should have specific integration goals and policies, including policies on recruitment and transportation to school.

6) Transfer policies that foster integration should be continued and transfers that increase segregation or undermine integrated communities discontinued. The transfers provided under NCLB should follow that rule and should open opportunities to transfer from segregated high poverty failing schools to better, more integrated schools in other districts.

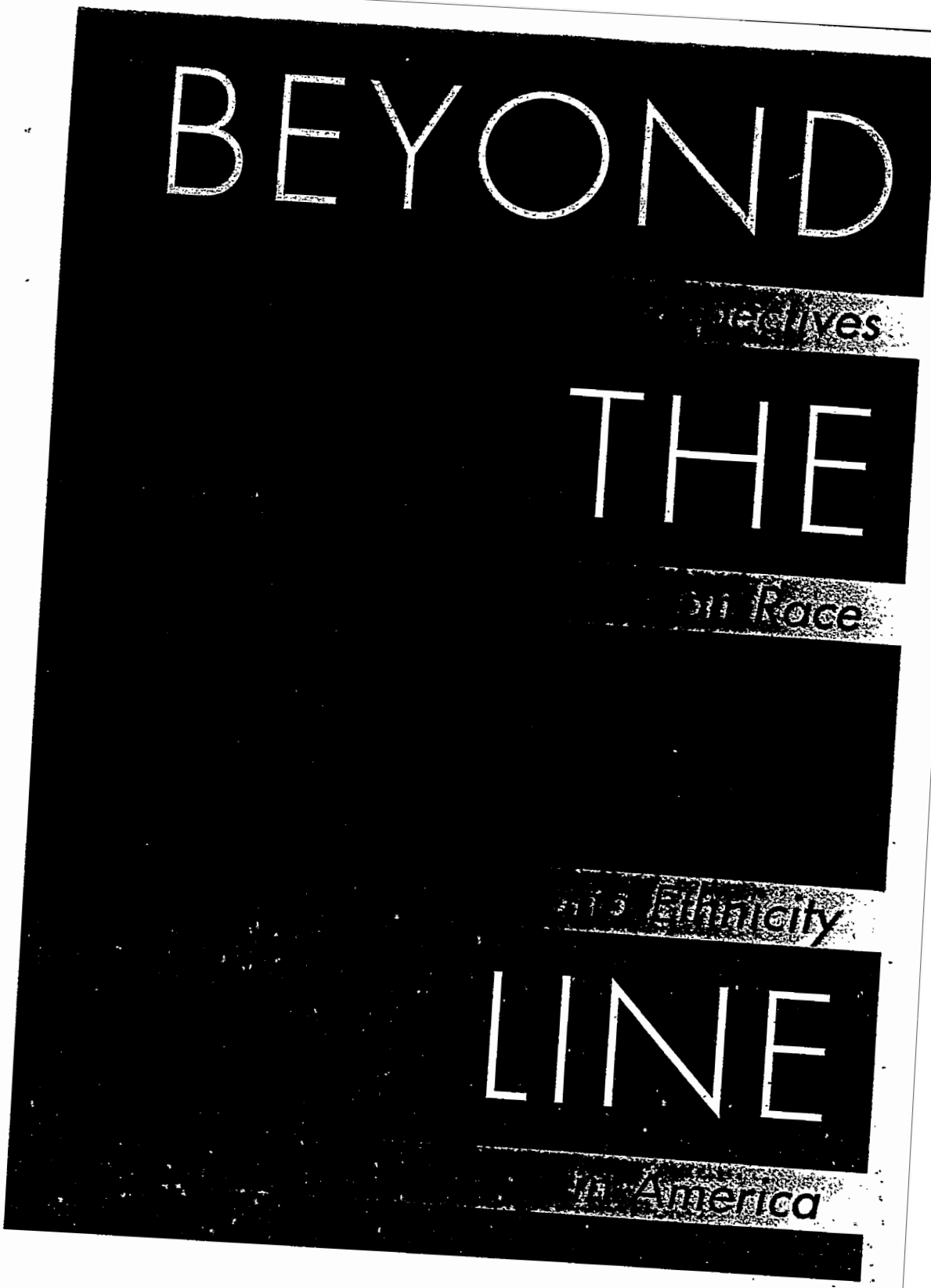
7) State civil rights and legal officials should support efforts of communities to retain and expand school integration and should encourage regional cooperation among suburbs as suburban resegregation spreads.

8) Private foundations, university centers, and federal research agencies should sponsor basic and applied research on the spread of multiracial schools, their impact on learning and degree attainment, and preparation for functioning in multiracial communities and on the development of techniques and curricula to improve outcomes in these schools.

APPENDIX

Black Isolation in Select Districts That Have Been Declared Unitary, 1990-2003

	Black Isolation	
	1991	2003
Mobile	0.69	0.77
San Diego Unified	0.25	0.23
San Jose Unified	0.05	0.06
Denver County	0.44	0.38
Broward County	0.57	0.59
Dade County	0.64	0.64
Duval County	0.62	0.59
Hillsborough County	0.31	0.38
Lee County	0.22	0.26
Pinellas County	0.24	0.30
Polk County	0.35	0.26
Seminole County	0.27	0.20
St. Lucie County	0.34	0.32
Chatham County	0.64	0.75
Dekalb County	0.79	0.89
Muscogee County	0.68	0.74
Indianapolis Public Schools	0.56	0.69
Jefferson County	0.33	0.39
East Baton Rouge Parish	0.67	0.82
Prince Georges County	0.73	0.83
Detroit City	0.93	0.96
Minneapolis	0.39	0.50
Kansas City	0.73	0.82
St. Louis City	0.84	0.87
Clark County	0.19	0.21
Buffalo City	0.55	0.69
Charlotte-Mecklenburg	0.45	0.58
Cincinnati	0.70	0.82
Cleveland	0.72	0.86
Oklahoma City	0.57	0.61
Aldine ISD	0.37	0.41
Corpus Christi ISD	0.12	0.08
Dallas ISD	0.70	0.57
Fort Worth ISD	0.62	0.54
Houston ISD	0.66	0.57
Norfolk City	0.68	0.74


BEYOND
THE
LINE

Beyond the Color Line

New Perspectives on Race and Ethnicity in America

Edited by

Abigail Thernstrom *and* Stephan Thernstrom

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Desegregation and Resegregation in the Public Schools

DAVID J. ARMOR AND
CHRISTINE H. ROSSELL

WHEN THE SUPREME COURT declared the end of official (de jure) segregation in *Brown v. Board of Education* in 1954, the public schools became the center stage for the struggle to promote racial integration and equity in America. Most of us born by the beginning of World War II will never forget the graphic images of black children in Little Rock, Arkansas, being escorted into school buildings by soldiers, surrounded by crowds of jeering white adults. About a decade later, we saw similar crowds of white adults shouting epithets, throwing stones, and burning buses when school desegregation moved to the North in such cities as Pontiac, Michigan, and Boston, Massachusetts. Unlike other social policies, vehement public protests did little to deter the school desegregation movement because it was being advanced and enforced by the (almost) politically immune federal courts.

From the mid-1960s to the late 1970s a vast transformation took place in American public schools as federal courts and government agencies demanded race-conscious policies in every facet of school operations. The most controversial aspect of school desegregation during this period involved the rules for assigning students to schools, when racial balance quotas were adopted instead of neighborhood or other geographic rules.

[ ] Designates the reporting entity	FY 2005 Actual	FY 2006 (Revised Final) Target	FY 2007 Target
Strategic Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People			
Number of transnational criminal enterprises dismantled **[FBI]**	34 (revised)	24	27
Number of child pornography websites or web hosts shut down **[FBI]**	2,088	2,300	2,300
Percent of high-crime cities (with an ATF presence) demonstrating a reduction in violent firearms crime **[ATF]**	N/A*	60%	60%
Consolidated Priority Organizations Target-linked drug trafficking organizations Disrupted **(DEA, FBI [Consolidated data – Associate Deputy Attorney General/Drugs)** Dismantled **(DEA, FBI [Consolidated data – Associate Deputy Attorney General/Drugs])**	204 Disrupted (revised) 121 Dismantled (revised)	Disrupted: 208 Dismantled: 119	Disrupted: 233 Dismantled: 119
Value of stolen intellectual property **[FBI]**	Data not available until after 6/30/06	$43 Billion	$43 Billion
Number of top-ten Internet fraud targets neutralized **[FBI]**	10	7	6
Number of criminal enterprises engaging in white collar crime dismantled **[FBI]**	163 (revised)	45	60
Case resolution for all DOJ litigating divisions: **(ENRD, ATR, CRM, USA, TAX, CIV, CRT, [Consolidated data - JMD/BS])** Percent of Criminal Cases favorably resolved Percent of Civil Cases favorably resolved	 .91% 84%	 90% 80%	 90% 80%
Percent of Assets/Funds returned to creditors: **[USTP]** Chapter 7	Data not available until after 1/31/06**	55%	56%
Chapter 13	Data not available until after 4/30/06**	83%	84%

For DOJ's performance measure: DOJ's reduction in the supply of illegal drugs available for consumption in the U.S. (2002 Baseline) **[OCDETF]:** Measuring reduction in the drug supply is a complex process reflecting of a number of factors outside the control of drug enforcement. Moreover, the impact of enforcement efforts on drug supply and the estimated availability are currently not measurable in a single year. Accordingly, DOJ is unable to set interim goals; however, we remain focused on achieving a long-term reduction of 10%, when compared to the baseline supply of drugs available for consumption.

FY 2006 (Revised Final) Target: Targets for FY 2006 were initially set with the submission of the FY 2006 President's Budget. Following the reporting of FY 2005 actual performance and an analysis of enacted resources, the Department is submitting its final (and in some cases revised) FY 2006 targets within this performance plan.

FY 2005 Actuals showing as "revised": This data was initially reported in the Department's FY 2005 Performance and Accountability Report, November 15, 2005; however, it has been revised to accurately reflect FY 2005 accomplishments.

* ATF data lags two years due to time lag in publication of Uniform Crime Report.
** Data lags due to the requirement to audit data submitted by Trustees prior to reporting.

Strategic Goal 2: Resources

Appropriation	FY 2005 Actual Obligations		FY 2006 Enacted w/Rescissions and Supplemental		FY 2007 President's Budget	
	FTE	$ thousands	FTE	$ thousands	FTE	$ thousands
Administrative/Enabling	*686*	*89,165*	*777*	*132,826*	*788*	*156,372*
September 11th Fund	0	13,133	0	0	0	0
Criminal Division	699	105,432	741	111,427	743	116,849
Federal Bureau of Investigation	11,842	1,813,006	13,442	2,097,478	12,980	2,075,558
FBI Health Care Fraud	[825]	114,000	[775]	114,000	[760]	114,000
Interpol	58	12,255	64	20,586	65	20,812
U.S. Attorneys	10,591	1,445,010	11,064	1,504,475	11,153	1,572,573
ATF	4,752	877,501	5,037	923,138	5,027	851,449
General Administration	0	0	0	0	120	15,852
Assets Forfeiture Fund	0	288,674	0	308,311	0	307,211
DEA	8,515	1,708,534	9,579	1,642,171	9,309	1,680,138
Diversion Control Fee	739	143,228	1,107	201,673	1,152	212,078
Interagency Crime and Drug Enforcement	[3,756]	555,076	[3,516]	483,189	[3,524]	706,051
National Drug Intelligence Center	238	40,070	239	38,610	0	0
Antitrust Division	792	139,113	851	144,088	851	147,742
Environment & Natural Resources Division	628	89,274	677	92,774	674	95,051
Tax Division	492	78,261	526	80,507	539	87,691
Civil Rights Division	704	107,503	755	109,037	751	113,583
U.S. Trustees	1,137	174,961	1,325	211,664	1,486	236,116
Civil Division	1,041	177,622	1,137	192,864	1,217	213,286
Foreign Claims Settlement Commission	6	1,102	11	1,303	11	1,559
Health Care Fraud	[262]	49,415	[250]	49,415	[250]	49,415
Office of Dispute Resolution	0	271	3	480	3	586
Office of Legal Counsel	37	5,175	37	5,861	37	6,278
Office of Solicitor General	49	8,157	49	8,291	49	9,977
Radiation Exposure Compensation	0	92,429	0	53,625	0	43,950
HHS Discretionary Reimbursement	0	0	0	0	0	11,450
Spectrum Transfer to ATF	0	0	0	0	0	47,685
Spectrum Transfer to DEA	0	0	0	0	0	75,000
Spectrum Transfer to FBI	0	0	0	0	0	48,400
Total Strategic Goal 2:	**43,006**	**$8,128,367**	**47,421**	**$8,527,793**	**45,955**	**$9,016,712**

GENERAL LEGAL ACTIVITIES
DECISION UNIT RESTRUCTURING CROSSWALK
(Dollars in Thousands)

Current Decision Unit Structure	2006 Enacted (w/ Rescissions)			Performance-Based Realignment		
Comparison by activity or program	Perm. Pos.	FTE	Amount	Perm. Pos.	FTE	Amount
CIVIL RIGHTS DIVISION						
1. Federal Appellate	28	27	$5,230	-28	-27	-$5,230
2. Civil Rights Prosecution	100	100	12,567	-100	-100	-12,567
3. Special Litigation	72	69	12,096	-72	-69	-12,096
4. Voting Rights	102	106	11,758	-102	-106	-11,758
5. Employment Litigation	61	60	9,522	-61	-60	-9,522
6. Coordination and Review	21	20	4,040	-21	-20	-4,040
7. Housing and Civil Enforcement	98	93	13,541	-98	-93	-13,541
8. Educational Opportunities	35	36	5,629	-35	-36	-5,629
9. Disability Rights	97	95	16,626	-97	-95	-16,626
10. Office of Special Counsel	31	32	4,464	-31	-32	-4,464
11. Management & Administration	92	101	13,564	-92	-101	-13,564
12. Civil Rights Division *	0	0	0	737	739	109,037
Total, CIVIL RIGHTS DIVISION	737	739	$109,037	737	739	$109,037

* Denotes new decision unit.

Explanation:
TAX, CRIMINAL, CIVIL, ENVIRONMENT, AND CIVIL RIGHTS DIVISIONS have collapsed their decision units into one decision unit each.