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THE WHITE HOUSE

WASHINGTON

October 28, 1976

File

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP BUCHEN PB
JAMES CANNON

SUBJECT: The Wilmington Busing Case

Yesterday, the Department of Justice filed a friend-of-the-court brief in the Wilmington busing case (Delaware State Board of Education v. Evans), arguing that the lower court went too far in ordering interdistrict busing between the City of Wilmington and ten suburban school districts. This memorandum provides background on the case and outlines the Department's arguments and reason for intervening.

BACKGROUND

As you know, in March 1975, a three-judge District Court in Delaware concluded that, as a result of a 1968 enactment, the State of Delaware had discriminated against black students in Wilmington in violation of the Constitution and that, to remedy such discrimination, an interdistrict plan for reassignment of students would probably be necessary. This holding was appealed to the Supreme Court and affirmed 5-3. On remand, the three-judge court fashioned an interdistrict desegregation plan which, in effect, combined the City of Wilmington and ten surrounding school districts in northern New Castle County into one school district, and required that every grade in every school in the new district have a student population which was not less than 10 percent nor more than 35 percent Black. The defendants in the case have appealed this order to the Supreme Court, maintaining, among other things, that the District Court went too far in requiring interdistrict busing. The plaintiff-appellees have until November 10 to file their answer.

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DEPARTMENT OF JUSTICE POSITION

In its brief, the Department takes two positions. First, the Department maintains that the Supreme Court does not have jurisdiction to hear the appeal from the remedial order of the three-judge District Court, since the three-judge court was improperly convened. The Department argues that the appeal should be heard by the Court of Appeals. The Department goes on to state, however, that the case is an important one in the evolution of constitutional principles pertaining to racial discrimination in the schools and that it should receive the attention of either the Supreme Court or the Third Circuit Court of Appeals as expeditiously as possible.

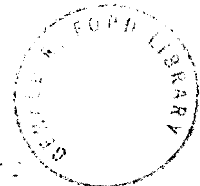
Secondly, on the merits of the case, the Department argues that the proper approach to school desegregation cases requires a court to seek to determine, as precisely as possible, the consequences of acts constituting illegal discrimination and to eliminate the continuing effects. The Department believes that, in merging Wilmington and the ten surrounding suburban districts into one school district and requiring racial balance in each school, the District Court went beyond this requirement.

The Attorney General and the Solicitor General both felt (a) that this was a proper case for the Department to enter in light of the serious questions presented, and (b) that it was necessary to file their brief at this time in order to give the plaintiffs (i.e., parents seeking a remedy) in the case an adequate opportunity to study the Department's position before filing their response.

The Department's position is consistent with the approach taken in your 1976 busing proposal.

We have attached the story appearing in this morning's Washington Post for your information.

Attachment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U.S. Asks High Court Test On Limits to Busing Orders

10/28/76

By John P. MacKenzie
Washington Post Staff Writer

The Justice Department gave notice yesterday that it welcomes an early Supreme Court test of whether federal judges are ordering too much busing as a cure for segregation in public schools.

In a brief filed with the high court, Solicitor General Robert H. Bork intervened in the controversy in Wilmington, Del., saying a lower court went too far in its order merging city and 10 suburban school districts.

Bork's intervention had been a possibility since last May when Attorney General Edward H. Levi, who is under orders from President Ford to find a good test case on busing, passed up a chance to enter the bitter fight in Boston.

The State of Delaware and the suburban districts are appealing the May 19 decision of a U.S. District Court in Wilmington that a new 80,000-pupil district be formed for northern New Castle County in which each school, whether in the city or outside it, would have a black enrollment of 10 to 35 per cent.

Also before the court are petitions by school districts in suburban Indianapolis seeking reversal of a July 16 decision by the Seventh U.S. Circuit Court of Appeals approving busing between city and suburbs.

Bork, filing his brief as a friend of the court, said the justices might wish to hear the Wilmington and Indianapolis cases together during the current term, which runs until June.

In a third pending school busing case, Bork told the justices on Oct. 6 that he had no objection to Supreme Court review in a long-standing dispute over school discrimination against Mexican-Americans in Austin, Tex. He said busing orders there should be approved because of evidence that city officials "engaged in pervasive acts of discrimination against Mexican-Americans."

SOLICITOR GENERAL ROBERT BORK
... intervenes in Wilmington case

Bork's theory is that busing must be limited to correcting specific acts of racial discrimination by city, county and state school officials. Some lower court judges, after finding evidence of racial bias, have held that only large-scale busing orders will effectively remedy the discrimination by establishing a completely desegregated school system.

In Wilmington, said Bork, the lower court's remedy was to seek a "desirable racial mix"—enough blacks in each school to constitute a "viable minority" but not so many as to precipitate "white flight" from the public schools.

"This is not the right way to formulate a desegregation order," Bork said. "The proper approach requires a court to seek to determine, as precisely as possible, the consequences of the acts constituting the illegal discrimination and to eliminate their continuing effects."

The lower court found racial discrimination in certain housing covenants and zoning provisions and a 1969 state law excluding Wilmington from any statewide school-redistricting plan. Bork said that even if busing is limited to correcting these violations, there would be "a substantial amount of student reassignment in New Castle County."

Although Bork found it "impossible to say" how much reduction in busing his approach would produce, he went on: "It seems safe to say, however, that it is highly implausible that—but for the acts of racial discrimination—every grade in every school in northern New Castle County would have been between 10 and 35 per cent black," as the lower court ordered.

For technical reasons, Bork said, the Wilmington case ordinarily should be heard by the Third U.S. Circuit Court of Appeals in Philadelphia before reaching the high court. He noted that if the court wants to hear the Wilmington and Indianapolis cases together, it could exercise its power to bypass the court of appeals. That rare procedure was last used in 1974 to expedite final action in the dispute between the Watergate prosecutor and former President Nixon over the White House tapes.

The court could act in the Austin case as early as Monday but is not scheduled to decide until after the election whether to hold full hearings on Wilmington and Indianapolis.

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THE WHITE HOUSE

WASHINGTON

October 30, 1976

MEMORANDUM FOR: DICK CHENEY

FROM: JIM CANNON

SUBJECT: Buffalo Visit

Congressman Jack Kemp suggests the President be prepared for these issue:

1. School Busing

Under a court order, Buffalo began limited pupil assignment in September, and the School Board must come up in January with a plan for complete desegregation.

About 46% of Buffalo school enrollment is black, and the School Board is under court order to "substantially reflect" in its plan this racial balance throughout the Buffalo school system.

Last Wednesday the nine-member Buffalo School Board voted unanimously to ask the U.S. Attorney General to intervene in its school busing problem. The Board Chairman is a black woman who was elected city-wide, and two other members of the board are black.

The Justice Department has not yet received any formal request from the Buffalo School Board to intervene.

The Justice Department Community Relations Service is following the Buffalo school desegregation situation closely and is working with community groups to assist them in developing an effective plan.

From Kemp and others in Buffalo, it is clear that the community leaders of Buffalo would like to resolve their desegregation problems on their own, and not have to follow a plan imposed or dictated by a Federal Court.

Recommendation

That in Buffalo the President avoid any commitment to have the U.S. Attorney General enter the Buffalo busing case at this time.

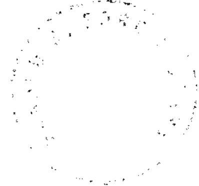
That the President reassert his firm position:

-- Every American community should be given the opportunity to work out a school desegregation plan on its own initiative.

-- The President is responsible to see that the laws and court orders are faithfully executed.

-- The President is personally opposed to court-ordered forced busing to achieve racial balance.

Jack Marsh and Jim Cavanaugh concur.



THE WHITE HOUSE

WASHINGTON

October 28, 1976

MEMORANDUM FOR: JACK MARSH

FROM: PAT ROWLAND PR

SUBJECT: Buffalo Stop

Congressman Jack Kemp called regarding the President's stop Saturday night and Sunday morning in Buffalo.

Wednesday night the Buffalo School Board voted to ask the U.S. Attorney General to intervene in their school bussing problem. Kemp had a call from Millard Brown, Editor of the BUFFALO EVENING NEWS, a newspaper which is friendly to the President. The editor suggested off the record that the President mention bussing in his stop in Buffalo.

Brown thinks that any encouragement that the President can give the people of Buffalo that the Justice Department will seriously consider the request of the school board will make headlines in the newspapers. If there is any possibility that such a statement is going to be made if the newspapers could be told in advance they could banner it on Saturday which would stimulate people to attend the President's rally on Sunday. Kemp, of course, endorses Brown's suggestion.

Would have intervened when it started

NOW all can intervene only on Const grounds — w/o consent by city or court - NO basis for ~~Federal~~ intervention

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

INFORMATION
(REQUEST)

October 29, 1976

MEMORANDUM FOR: Jim Cannon

FROM: Dick Parsons D.

SUBJECT: Buffalo School Desegregation Case

As I understand it, the facts in this case are as follows:

(1) On April 30, 1976, the Federal District Court for the Western District of New York held that the School Board of the City of Buffalo and the Board of Regents of the State of New York had unlawfully discriminated against minority students in the Buffalo public school system. Subsequently, on July 9, 1976, the Court ordered the defendants to submit a desegregation plan in two parts: Part 1, to be implemented for the 1976 school year, would require only limited student assignment; and Part 2, which was to be submitted to the Court by October 14, 1976, would require complete desegregation.

(3) The State of New York, on behalf of the State Board of Regents, has appealed the District Court's order on the limited grounds that the Board of Regents was improperly joined as a defendant in the case. The City of Buffalo, however, has not appealed the order.

(2) Last week, the City requested additional time in which to submit its "Phase 2" plan. It has been given until January 5, 1977.

It appears, therefore, that there is no appeal on the basic findings of the case in which the Federal government could join. In fact, I am advised by both Federal and State representatives in Buffalo that reaction to the Court's order has been mild. However, I am told that several disgruntled City Councilmen have attempted to intervene in the case for the purpose of pursuing an appeal.

If the President is asked about this situation, I think he should simply indicate that we are following it closely (through the Justice Department's Community Relations Service) and that he is hopeful that the responsible elements of the community will work with the Court to develop an effective plan which meets the requirements of the Constitution.

THE WHITE HOUSE

WASHINGTON

October 28, 1976

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THE WHITE HOUSE

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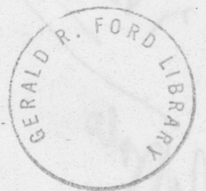
(REQUEST)

October 29, 1976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Suggest revote supt of schools in city of Buffalo

Yd plane order negroes

city approximate racial

balance in every district

city-wide balances

Buffalo community involvement no [illegible]

other Dist to supply a

city wide plan all (23%)

approximately 46% of school enrollment

is black

approximate racial balance in every [illegible]

settle school Bd

[illegible] 3 black [illegible]

6 white

unanimous

black ch-district city-wide

[undated]

DATA ON PUBLIC ELEMENTARY AND SECONDARY SCHOOL SYSTEMS

PREFACE: All data provided are for the 1972-73 school year, the last year in which the Office for Civil Rights (OCR) conducted a so-called large survey encompassing 8,056 districts which represent approximately 46 per cent of the Nation's public school districts but 72.5 per cent of the schools and 91.8 per cent of the enrolled pupils. It is the OCR-collected survey data which provide the figures for items 1-5 below. Since there are no other available data on which to base responses, items 1-5 below refer only to the 8,056 1972-73 OCR-surveyed districts.

1. Total number of operating public elementary and secondary school systems, fall 1972 16,515
   (Source: Education Directory 1972-73, Public School Systems, NCES, 1973)

2. Total number of districts with an appreciable percentage of minority students[1]. 3,441

3. Estimated total number of districts which have gone through desegregation (number of districts under Federal court order, State court order or which have HEW-accepted plans) 1,305

   a) Federal court order. 678
   b) State court order. 20
   c) HEW plan 707

4. Total number of districts with appreciable percentage of minority students which have not gone through desegregation. 2,136

5. Total number of districts in which minority students are assigned to racially segregated[2] schools (i.e., likely to have to go through desegregation) . . . . approximately 600

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1 Appreciable percentage is defined as 5 per cent or more total minority enrollment, for purposes of this reprot.

2 Segregated is defined as a school with a minority enrollment of more than 50 per cent.

NOTE TO THE FILE

Presidential Statements and Presidential Meetings data on Busing are in two black notebooks in the small storage room at the back of JMC's office.

jm

[Undated]

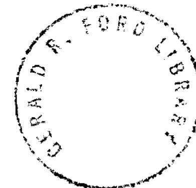
BUSING

Q. Can you tell us more specifically what you are considering? Is it really an alternative to busing?

A. I am hoping to do two things:

First, to limit the extent to which a court can order busing. The limits would be determined by the degree to which the court found that official acts (rather than other forces) contributed to the segregation situation.

Second, where illegal segregation exists, I believe that local communities are the proper place to correct the problem. I want to help them in these efforts, and I am considering several ways of doing so. Local solutions may, of course, involve some busing, but I think such decisions should not be made by the courts.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[undated]

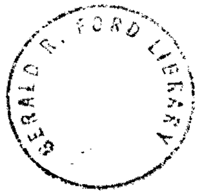
BUSING

Q. Mr. President, there has been a great deal of attention in recent weeks to the issue of busing. Your Administration was talking about legislation to provide for an alternative to busing. Last Saturday you indicated that you would shortly send legislation to the Congress. What will the legislation provide for us?

A. Before I say anything about legislation, I would like to place this extremely sensitive issue into what I believe to be its proper context. First of all, we must remember that this Nation has a fundamental commitment to achieving an integrated society where an individual's race creates no barriers. I wholeheartedly embrace that commitment. To me, it means that we must eliminate illegal discrimination and promote equal opportunity.

The Federal Government already plays a major role in seeking these objectives. We spend large sums for Civil Rights Enforcement. We also invest extensively in education and training programs designed to improve the capacities of underprivileged individuals to acquire good jobs. Much more needs to be done, but I think we should be proud of the significant progress that has been made towards eliminating discrimination.

Now, with regard to segregated school systems, and particularly with regard to busing, my objective is to create better educational opportunities in a manner consistent with the Nation's commitment to justice and to the elimination of illegal segregation. In my view, forced school busing, while done with the best of intentions, has often disrupted the lives and impeded the education of the children affected. Therefore, I believe that ways must be found to minimize forced busing while also remaining true to the Nation's ideals and our educational goals. This is not an easy task, but it is my objective.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For a number of months we have been working within the Administration on legislation and other means of minimizing court-ordered busing. We now have draft legislation which appears to be a positive step in the course we are following. During the next few weeks, I plan to meet personally with a wide range of people outside the Administration to seek their views on what we are considering. Following those meetings, I plan to send a bill to the Congress.

[undated]

Answer to Busing Question:

The first question we must answer is, "What are we really trying to do by busing?" All of us--white, black, every American, in my opinion--want quality education.

Second, let me strongly emphasize that the Supreme Court, in 1954, decided that separate but equal schools were not constitutional. That is the law of the land. As far as my Administration is concerned, the law of the land will be upheld and we are upholding it.

Consequently, the Federal Court decided that busing is one way to desegregate schools and perhaps improve education at the same time. But there is always more than one answer, and I have the responsibility to give what I think is a better answer to the achievement of quality education, which is what we all seek.

I believe that quality education can be enhanced by better school facilities, lower pupil-teacher ratios, the improvement of neighborhoods and possibly by other alternatives.

Accordingly, I directed the Secretary of Health, Education and Welfare, the Attorney General, and members of my staff to develop better methods of achieving quality education within an integrated environment for all children.

The development of these alternatives is going on now. When these proposed alternatives have been thoroughly prepared, I shall make them public.

From: Margita White

[Undated]

BUSING

Q: Boston, more than any other city in the nation, has seen its people divided, its racial tensions increased, its classrooms become centers of conflict, and its streets become battlegrounds because of the forced busing of thousands of its schoolchildren. There is growing agreement among parents, politicans, sociologists and educators that though desegregation of the schools is a desirable end, forced busing is an imperfect and ineffective means to achieve it. You have added your voice to the critics of busing by saying that you oppose it and that there are better alternatives to it. But you have nevery really spelled out, in specific detail, what these alternatives are and what you propose to do as President to bring them about.

Exactly what do you advocate to bring about integration in the schools and reduce the racial tension in our city-and what actions will you take to achieve those goals?

[Undated]

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[Undated]

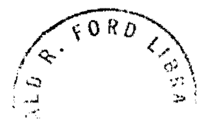
STAGES OF THE INDIANAPOLIS, INDIANA CASE

1. In June 1967 a complaint alleging discrimination in Indianapolis was forwarded to the Civil Rights Division by the United States Commission on Civil Rights. The investigative stage of this case lasted until April 1968.

2. On May 8, 1968 Department attorneys had a meeting with the local school officials, their staff and their attorneys. It was agreed that the Department would forward to the school board a list of the steps which the school board must take to remedy the deficiencies that our investigation had uncovered; it was also agreed that the board would meet again on May 14 and decide whether it was prepared to take voluntary action. On May 21 the board informed the Department that it would not take voluntary action.

3. On May 31, 1968 suit was filed by the United States against the local school officials seeking to enjoin them from discrimination on the basis of race in the operation of their schools and from failing to adopt and implement a plan for the elimination of the discriminatory practices.

4. On July 1, 1968 the United States filed a motion for preliminary injunction. Based on a stipulation that racial factors had been considered in the assignment of teachers and staff the Court on August 12 entered an order enjoining the board from assigning faculty members on a racial basis for the 1968-69 school year.



5. Discovery on the student issues continued and the trial was held (after first being set for January 20, 1969) on July 12-21, 1971. On August 18, 1971, the district court handed down its decision, ruling that the defendant board had discriminated in student assignments. The court ordered interim relief for the 1971-72 school year. The court also ordered the school board to take whatever steps might be necessary to convert to a unitary system. The district court also found that the consolidation of the city of Indianapolis and the surrounding county in 1969 presented a situation calling for inter-district relief and ordered the United States to join as additional parties defendant the municipal corporations and school corporations which would have an interest in the Court's intended consideration of a metropolitan remedy.

6. On September 7, 1971, the United States moved to add the defendants as required by the district court. Thereafter, numerous other interested parties were allowed to intervene on both sides of the case.

7. During the next year there was considerable procedural litigation involving the rights of all the intervening and added parties, including applications to the Court of Appeals for writs of prohibition or mandamus to vacate the joinder and intervention orders of the district court, to compel the convening of a three-judge district court, and to compel the recusation of the district judge. All these lateral attacks on the district court's orders were unsuccessful.

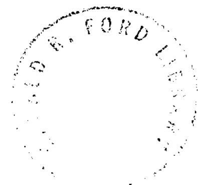
8. On September 28, 1972, the district judge for the first time ordered the development and submission of comprehensive plans for the desegregation of Indianapolis. In response the Indianapolis board on February 8, 1973 submitted a plan called the "Stabilization Plan" which the district court rejected on June 11, 1973. (Earlier, in 1969, a team from HEW had prepared some interim recommendations for desegregation of the district which had been rejected by the board that year. In addition, a federally funded study by two specialists employed by the school board resulted in a series of desegregation recommendations which were also rejected by the board shortly before trial in 1971.)

9. The remedy phase was tried before the district court from June 12 through July 6, 1973. On July 20 the court entered its decision concluding that intra-district remedies did not promise a reasonable degree of permanence, that the State and its officials and agencies had promoted segregation and inhibited desegregation within the district and that a remedy affecting 19 surrounding school corporations in and adjacent to Marion County was called for. The court in its order provided first that the General Assembly should get the first chance to select a plan but if it failed to do so the court would promulgate a plan. The court ordered interim (intra-district) relief in the form of some new student assignments which involved some new busing for the 1973-74 school year.

10. None of the parties to the case were satisfied with the Judge's order and there followed a series of appeals and cross-appeals. They argued on February 20, 1974 and the Seventh Circuit rendered its decision on August 21 of that year. Various aspects of the district court order were upheld but the circuit court remanded the inter-district relief portion of the case for reconsideration in light of the Supreme Court's then recent decision in the Detroit case which limited inter-district relief to those situations in which an inter-district violation had been found. The circuit court also ordered the school corporations beyond the Marion County line to be dropped from consideration as participants in the relief.

11. Additional district court hearings were held in March 1975 and there followed on August 1, 1975 a further order by the district judge requiring the defendant Indianapolis district to transfer a number of black students to the defendant outlying school district and enjoining the defendant housing authority from constructing public housing projects in the old city of Indianapolis. (The court had found racially discriminatory site selection policies on the part of the housing authority.) This order also required the Indianapolis board to complete integration within the old city of Indianapolis.

12. Most of the defendants took an appeal from the latest district court order. It was argued before the Seventh Circuit in November 1975 and has not been decided yet.



[Undated]

STAGES OF THE OMAHA, NEBRASKA CASE

1. The first complaint concerning discrimination in the Omaha public schools was forwarded to the Civil Rights Division from HEW in April 1971. During the months that followed HEW continued to handle the case and to receive additional complaints from citizens in Omaha. During this period of time the responsibility for enforcement of the school desegregation requirements of federal law was with HEW. In late 1971 HEW and Department of Justice officials met and a decision was made that the Department of Justice would take over enforcement responsibilities in Omaha rather than have HEW seek compliance through fund termination under Title VI.

2. After some initial discussions with the local school board officials the Civil Rights Division investigation began in April 1972. The process of gathering information about the school system continued throughout 1972 and into 1973.

3. On June 7, 1973 the Civil Rights Division wrote to the Omaha Board of Education noting the results of our investigation and requesting that the school board undertake a comprehensive review of its operations in order to arrive at voluntary steps necessary to come into compliance with the law. The school board attorney replied to this letter on July 20, 1973.

4. On August 10, 1973, after determining that the school board response was inadequate the Department filed suit seeking to enjoin the defendant school board from discriminating on the basis of race in the operation of its schools. A motion for preliminary injunction was also filed that day requesting specific relief with respect to the scheduled opening of a new middle school that fall. The motion for preliminary injunction was denied by the district court on August 31.

5. On November 27, 1973, the district court granted a motion allowing the intervention in the suit of a group of black students and parents.

6. Pre-trial discovery continued and on March 4 through March 20, 1974 trial was held. The matter was taken under advisement by the district court on June 5, 1974 after all post-trial briefs had been filed.

7. On October 15, 1974 the district court ruled against the United States and the private intervenors and entered an order dismissing the complaint.

8. The United States and the intervenors appealed and on June 12, 1975 the Court of Appeals for the Eighth Circuit reversed and remanded the case to the district court with instructions to "take those steps necessary to bring about a thoroughly integrated school system" in accordance with certain guidelines and timetables. These included certain preliminary steps at desegregation for the 1975-76

school year and the implementation of a comprehensive desegregation plan with the beginning of the 1976-77 school year.

9. After the Court of Appeals decision the school board unsuccessfully sought review by the Supreme Court. In the meantime, the district court on remand ordered the school board to consult with a newly appointed biracial committee and the parties in the development of a plan.

10. The school board submitted its plan to the district court and the parties on December 31, 1975. Thereafter, the United States and the intervenors suggested some modifications of what was in most respects a legally sufficient plan and the district court gave its final approval on May 24, 1976. On the same day, the intervenors filed a notice of appeal and a request for expedited consideration by the court of appeals. Their objections to the court-approved plan pertain to the exclusion of first graders from mandatory reassignments, the conversion of two former black schools to primary grade centers, and the allocation of the burdens of desegregation (even though over 60 percent of those reassigned are white).

11. In a related case, filed in March 1976, a group of white "taxpayers" filed a lawsuit against the Omaha Board of Education in a state court alleging that the requirement by the Eighth Circuit Court of Appeals requiring the school district to pay for any necessary transportation under the final desegregation plan, constitutes a "judicially imposed"

tax and is violative of both the United States and State of Nebraska Constitutions. The defendant school district removed the case to the United States district court and on April 2, 1976, the district court denied the plaintiffs' motion for a temporary restraining order and on April 22, 1976, the United States was added as a party defendant.

12. It is expected that the defendant school board will appeal from the district court's remedial order.

[Undated]

STAGES OF THE KANSAS CITY, KANSAS CASE

1. In September 1969 the Civil Rights Division asked the FBI to conduct an investigation of the Kansas City schools. This was predicated on a complaint received from a parent alleging that her children were being deprived of equal educational opportunities because of race. Thereafter, the Division obtained a copy of HEW's preliminary compliance review of the Kansas City public schools and, in addition to obtaining information through the FBI, entered into an exchange of communications with the school board to obtain information on a variety of matters such as attendance zones, bus route maps, student transfer records, teacher assignments, etc. This investigative stage lasted until June 1972 when an internal recommendation in the Civil Rights Division was made to bring suit against Kansas City alleging discrimination in faculty assignment. In the meantime, the Division's investigation of student assignments continued.

2. In October 1972 Civil Rights Division officials met with Kansas City school officials and their lawyer as part of a continuing effort to persuade the district to make changes on a voluntary basis. There followed a long exchange of correspondence between the Division and the district on the issue of faculty desegregation.

3. On May 18,1973, suit was filed by the Department charging the school district with unlawful discrimination in the assignment of faculty and staff. Pre-trial discovery on the teacher issue started in July 1973 and continued throughout the year.

4. On February 11, 1974, the Civil Rights Division recommended to the Attorney General that the complaint be amended to include an allegation of discrimination in student assignment and a motion seeking to file a supplemental complaint was filed on February 27, 1974.

5. After the filing of the supplemental complaint intensive discovery and pre-trial motions were had. Trial in the district court on the issue of the school district's liability to correct student and faculty assignment discrimination was begun on November 4, 1975 and continued for 26 days of trial. Both parties filed their post-trial briefs on May 14, 1976 and the Court has scheduled oral argument for June 4, 1976.

[Undated]
DRAFT

EXECUTIVE ORDER

NATIONAL COMMUNITY AND EDUCATION COMMISSION

Throughout the history of our Nation, the education of our children, especially at the elementary and secondary level, has been a community endeavor. The concept of public education began in the community and continuous support for public schools has been provided by the community. Although the States, and to some extent the Federal government, have been providing increasing financial assistance for education, it has become clear that the solution of many of the most pressing problems facing our schools lies within the community which supports those schools.

This fact has particular relevance to the problem of school desegregation. Over the past two decades, communities have been under pressure from the courts, the Department of Health, Education, and Welfare, and in some cases the States, to institute changes in the assignment of students to schools. Too often this has been accomplished without the involvement of the community or with its involvement only after confrontations have occurred and community positions have been established.

The problems that have arisen in the process of school integration have not been due to the inadequacy of law or the lack of appropriate resources. Rather, they can be attributed to the fact that the burden of initiating and enforcing school desegregation has been borne by the courts and the Federal government without the benefit of those forces from within the community that are uniquely able to bring about necessary change in an orderly and peaceful manner.

It is therefore the purpose of this executive order to provide a means to activate and energize effective local leadership in the desegregation process at an early stage in order to reduce the incidence and severity of the trauma that would otherwise accompany that process, and to provide a national resource that will be available to assist communities in anticipating and resolving difficulties encountered prior to and during desegregation.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America, it is hereby ordered as follows:

Section 1. Establishment of the Commission. (a) There is hereby established a National Community and Education Commission (hereinafter referred to as the "Commission"), the purpose of which shall be to consult with, provide technical assistance to, and informally mediate between, community groups and State and local governmental organizations (including educational agencies) in order to anticipate and resolve problems and conflicts relating to the desegregation of schools.

(b) Composition of the Commission. The Commission shall be composed of nine members who shall be appointed by the President from among individuals who are nationally recognized and respected in business, education, government and other fields and whose experience, reputation, and qualities of leadership render them uniquely capable of carrying out the purposes of the Commission. No person who is otherwise employed by the United States shall be appointed to serve on the Commission. No more than five of the members of the Commission at any one time shall be members of the same political party.

(c) Terms of members. The term of office of each member of the Commission shall be three years, except that of the members first appointed to the Commission three shall be appointed for a term of one year and three shall be appointed for a term of two years. Any member appointed to fill an unexpired term on the Commission shall serve for the remainder of the term for which his predecessor was appointed.

(d) Chairman; quorum. The Chairman of the Commission shall be designated by the President. Five members of the Commission shall comprise a quorum.

(e) Compensation of members. Each member of the Commission shall be compensated in an amount equal to that paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5313 of title 5, United States Code, prorated on a daily basis for each day spent on the work of the Commission, including travel time. In addition, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government Service.

(f) Executive Director; staff. The Commission shall have an Executive Director, designated by the Chairman with the approval of a majority of the members of the Commission, who shall assist the Chairman and the Commission in the performance of their functions as they may direct. The Executive Director shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Commission is also authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel, including consultants, as may be necessary to enable the Commission to carry out its functions. Such personnel, including the Executive Director, shall be compensated at rates not to exceed that specified at the time such service is performed for grade GS-18 in section 5332 of that title.

Sec. 2. Functions of the Commission. The functions of the Commission shall include, but shall not be limited to:

(1) Consulting with leaders in the community and local groups in determining means by which such leaders and groups can, through early involvement in the development of, and preparation for, school desegregation plans, contribute to the desegregation process in such a way as to avoid conflicts and the invocation of judicial procedures.

(2) Encouraging the formation of broadly based local community organizations to develop a program designed to encourage comprehensive community planning for the desegregation of schools.

(3) Providing advice and technical assistance to communities in preparing for and carrying out comprehensive plans to desegregate the schools, involving the broadest possible range of community interests and organizations;

(4) Consulting with the Community Relations Service of the Department of Justice (established under title X of the Civil Rights Act of 1964), the Office for Civil Rights in the Department of Health, Education, and Welfare, the National Institute of Education, the U.S. Office of Education,

General Assistance Centers (funded under title IV of the Civil Rights Act of 1964), the United States Civil Rights Commission, and State and local human relations agencies to determine how those organizations can contribute to the resolution of problems arising in the desegregation of schools within a community; and

(5) Providing informal mediation services among individuals, groups, and agencies within a community in order to resolve conflicts, reduce tensions, and develop acceptable means of desegregating schools without resort to administrative and judicial processes.

Sec. 3. Limitations on activities of the Commission. It shall not be the function of the Commission--

(1) to prepare desegregation plans;

(2) to provide mediation services under the order of a court of the United States or of a State; or

(3) to investigate or take any action with respect to allegations of violations of law.

Sec. 4. Cooperation by other departments and agencies. (a) All executive departments and agencies of the United States are authorized to cooperate with the Commission and furnish to it such information, personnel and other

assistance as may be appropriate to assist the Commission in the performance of its functions and as may be authorized by law.

(b) In administering programs designed to assist local educational agencies and communities in planning for and carrying out the desegregation of schools, the Secretary of Health, Education, and Welfare and the heads of agencies within that Department shall administer such programs, to the extent permitted by law, in a manner that will further the activities of the Commission.

Sec. 5. Expenses of the Council. Expenses of the Commission shall be paid from such appropriations to the Department of Health, Education, and Welfare as may be available therefor.

Sec. 6. Confidentiality. The activities of the members and employees of the Commission in carrying out the purposes of this executive order may be conducted in confidence and without publicity, and the Commission shall, to the extent provided by law, hold confidential any information acquired in the regular performance of its duties if such information was provided to the Commission upon the understanding that it would be so held.

SUCCESSFUL COMMUNITY EFFORTS

The merit of this approach is reflected by studies of school desegregation plans which indicate that there are areas which have desegregated their schools with relatively few disorders. The prerequisite to this achievement is cooperative community involvement, usually spearheaded by committees that include a wide range of spokesmen. Two examples:

Since 1973, school desegregation in Charlotte, North Carolina, has proceeded with minimal difficulty. This is undoubtedly the result of the combined efforts of several groups. One is the Citizens Advisory Group, a coalition of blacks and whites that has worked with the school board in equitably distributing the burdens of change throughout the school system. School board meetings are held every two weeks and are broadcast live by the local public television station; substantial home audiences reflect the intense local interest and involvement in school board deliberations.

A vigorous effort to involve students and parents in every stage of the desegregation process has been consistently maintained in Charlotte. A Student Coordinating Council conducts "rap sessions" with student bodies and advises school administrations on preventing and handling violence. Another, more informal student group has sought to promote the benefits of positive race relations thoughout junior and senior high schools.

Active parental participation has also been strong. Especially during transition periods in newly desegregated schools, parents helped in tutoring slow learners and developing relationships with children that dissolved racial barriers. Parents were involved in curriculum planning so that better understanding could be gained as to what their children were being taught. A book was published by parents listing those who could be called on for advice in various areas of education and who would come into the school and give "talks" in their particular field of interest.

Tampa, Florida implemented its desegregation plan with the assistance of a task force consisting of 15 school system staff members and five lay people. Technical advice was requested from the Desegregation Consulting Center at the University of Miami. In addition, a community-wide organization was established that included 156 citizens, ranging from business leaders to students. This group was responsible for making final recommendations on desegration plans to the school board.

The task force, working in open sessions before the press and the public, adopted a set of operating principles and debated

[Undated]

ESTABLISHMENT OF THE NATIONAL COMMUNITY AND EDUCATION COMMISSION

A MAJOR INITIATIVE IN SCHOOL DESEGREGATION

Summary Description

In an effort to encourage and facilitate constructive, comprehensive planning for school desegregation at the local level, it is proposed that the National Community and Education Commission be established by Executive Order. The Commission would be a Presidentially-appointed, bipartisan group of distinguished citizens drawn from business and other professional circles. Its charge would be to assist local communities in carrying out desegregation planning activities designed to build lines of communication, avert disorder, and encourage constructive interracial classroom environments through the example of constructive interracial community environments.

Specific Function

The Commission's chief responsibility would be to advise local community leaders at the earliest stages of desegregation planning. Assistance would be initiated at the request of the affected community, and at that point a determination would be made by one or more Commission members as to what course of Commission activity offered the greatest promise of success within the particular community. In general, however, the orientation of the Commission would be toward working quietly with a broad spectrum of local leaders to identify problems before they develop and to devise solutions which could be carried out locally. While working within a community, the Commission would function primarily in a supportive and advisory role.

In the course of its consultations with the community and the school district, one of the Commission's chief functions would be to inform local leaders of additional sources of desegregation assistance (Federal, State, local and private) and encourage that these sources be investigated. Such sources include direct funding through the Emergency School Aid Act; technical assistance through OE's General Assistance Centers; OE's ten regional offices, and the Justice Department's Community Relations Service; formal mediation service through the Federal Mediation and Conciliation Service; and other forms of aid through the U.S. Commission on Civil Rights, State human relations agencies, and related private agencies.

Although the Commission's activities will overlap to some extent with those of the organizations mentioned above, the Commission should be

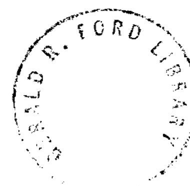
able to minimize unnecessary duplication through careful liaison with these other resources. It will be particularly important to work out non-duplicative roles with the Community Relations Service (CRS) since the function of CRS -- helping communities defuse tensions and conflicts arising from inequities or discrimination based on race, color, or national origin -- is notably similar to that of the proposed Commission. The CRS focuses less of its attention on pre-crisis intervention now than it did prior to FY 1974. Budget cuts that year effectively removed CRS from its earlier pre-crisis role, even though some individuals have held that the nature of the CRS function and expertise makes the agency particularly well suited to pre-crisis assistance. Thus, although CRS may not be currently active in some of the Commission's more important roles, its staff probably will have valuable insights and experiences to share with the Commission.

In keeping with its general functions already described, the Commission's role would not be to serve as a court-appointed intermediary between parties in a legal suit related to desegregation. Mediation would be a proper role for the Commission only in instances where it was conducted informally and with the voluntary participation of the major elements of the community. Similarly, the Commission would not be empowered to act for any State or Federal agency in an enforcement or compliance capacity. Moreover, it would not be expected to draw up desegregation-related student assignment plans at the request of a State or Federal agency.

Federal Incentives for Comprehensive Community Planning

The Commission is intended primarily to provide help to school districts which have not yet adopted or been issued a desegregation plan (although districts at other points in the desegregation process certainly would not be precluded from receiving assistance from the Commission). In order to provide support for districts which are conducting comprehensive, community-based planning for desegregation, it is proposed that a specified amount of funds in the Emergency School Aid Act (ESAA) discretionary account be set aside to support local planning activities, including those initiated with Commission involvement.

The ESAA discretionary account (Section 708 (a)) is the only part of the ESAA under which a school district without an eligible desegregation plan may receive funds. Therefore, it would be possible to stipulate by regulation that a community which showed proof of effort to conduct community-wide desegregation planning could receive funding to conduct such planning and other activities authorized under ESAA. The intention would be that this planning would involve all major sectors of the community, including business and housing representatives.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Structure

The Commission would be made up of nine members who would be appointed by the President for three-year terms of office. To provide continuity within the Commission, terms of office for individual members would be staggered at one-year intervals. The Commission chairman would be selected by the President, with the first chairman appointed for a full three-year term. Commission members would be expected to maintain their regular occupations but would be compensated at EL IV for the days they work on Commission activities. To ensure bipartisan representation, restrictions would be placed on the number of Commission members permitted from each political party. The Commission would have the authority to hire staff on an excepted service basis and to retain consultants as needed for specific projects.

[Undated]

DATA FROM CHARLES ROLL

(This is as close and as late-of-date as the data comes to your two questions)

October 18-21, 1974

Question: I favor (I oppose) busing school children to achieve better racial balance in the schools.

35% favor 65% oppose

(this was answered by "secret ballot"; i.e. participants marked answer themselves rather than replying verbally to question)

September 12-15, 1975

Which, if any, of these ways do you think is the best way to achieve integration of public schools in terms of different economic and national groups?

Create housing	18%	
Change boundaries	31%	
Busing	4%	
Something else	19%	
Oppose integration	17%	(this figure was no higher in the South than in any other part of country)
No opinion	11%	

September 12-15, 1975

Would you yourself have any objection to sending your children to a school where a few of the children are black?

15% Southern white parents object
3% Northern white parents object

--where half the children are black?

38% Sothern white parents object
24% Northern white parents object

--where more than half are black?

61% Southern white parents object
47T Northern white parents object

Observation of Charles Roll on your comment that this is a highly "emotional" issue:

He said he once wrote that busing involves all the sacred cows of America:

> children, education, the individual's dream
> (he moved away from the black city only to be bused back in--thus his suburban dream is exploded)

~~CRISTY, KRIS~~

If Charles Roll of the Gallup Poll calls back, we are to take down the data that he has for Mr. Cannon.

Mr. Cannon had asked him for data on responses to two busing questions:

1. Are you in favor of equal educational opportunity for all Americans?

   not that philosophical

2. How do you feel about busing your children?

[Undated]

Busing

Syllabus.

BROWN ET AL. v. BOARD OF EDUCATION OF TOPEKA ET AL.

NO. 1. APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.*

Argued December 9, 1952.—Reargued December 8, 1953.—Decided May 17, 1954.

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment—even though the physical facilities and other "tangible" factors of white and Negro schools may be equal. Pp. 486–496.

(a) The history of the Fourteenth Amendment is inconclusive as to its intended effect on public education. Pp. 489–490.

(b) The question presented in these cases must be determined, not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation. Pp. 492–493.

(c) Where a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms. P. 493.

(d) Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal. Pp. 493–494.

(e) The "separate but equal" doctrine adopted in *Plessy* v. *Ferguson*, 163 U. S. 537, has no place in the field of public education. P. 495.

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*Together with No. 2, *Briggs et al.* v. *Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina, argued December 9–10, 1952, reargued December 7–8, 1953; No. 4, *Davis et al.* v. *County School Board of Prince Edward County, Virginia, et al.*, on appeal from the United States District Court for the Eastern District of Virginia, argued December 10, 1952, reargued December 7–8, 1953; and No. 10, *Gebhart et al.* v. *Belton et al.*, on certiorari to the Supreme Court of Delaware, argued December 11, 1952, reargued December 9, 1953.

GERALD R. FORD

(f) The cases are restored to the docket for further argument on specified questions relating to the forms of the decrees. Pp. 495–496.

Robert L. Carter argued the cause for appellants in No. 1 on the original argument and on the reargument. *Thurgood Marshall* argued the cause for appellants in No. 2 on the original argument and *Spottswood W. Robinson, III,* for appellants in No. 4 on the original argument, and both argued the causes for appellants in Nos. 2 and 4 on the reargument. *Louis L. Redding* and *Jack Greenberg* argued the cause for respondents in No. 10 on the original argument and *Jack Greenberg* and *Thurgood Marshall* on the reargument.

On the briefs were *Robert L. Carter, Thurgood Marshall, Spottswood W. Robinson, III, Louis L. Redding, Jack Greenberg, George E. C. Hayes, William R. Ming, Jr., Constance Baker Motley, James M. Nabrit, Jr., Charles S. Scott, Frank D. Reeves, Harold R. Boulware* and *Oliver W. Hill* for appellants in Nos. 1, 2 and 4 and respondents in No. 10; *George M. Johnson* for appellants in Nos. 1, 2 and 4; and *Loren Miller* for appellants in Nos. 2 and 4. *Arthur D. Shores* and *A. T. Walden* were on the Statement as to Jurisdiction and a brief opposing a Motion to Dismiss or Affirm in No. 2.

Paul E. Wilson, Assistant Attorney General of Kansas, argued the cause for appellees in No. 1 on the original argument and on the reargument. With him on the briefs was *Harold R. Fatzer,* Attorney General.

John W. Davis argued the cause for appellees in No. 2 on the original argument and for appellees in Nos. 2 and 4 on the reargument. With him on the briefs in No. 2 were *T. C. Callison,* Attorney General of South Carolina, *Robert McC. Figg, Jr., S. E. Rogers, William R. Meagher* and *Taggart Whipple.*

J. Lindsay Almond, Jr., Attorney General of Virginia, and *T. Justin Moore* argued the cause for appellees in No. 4 on the original argument and for appellees in Nos. 2 and 4 on the reargument. On the briefs in No. 4 were *J. Lindsay Almond, Jr.,* Attorney General, and *Henry T. Wickham,* Special Assistant Attorney General, for the State of Virginia, and *T. Justin Moore, Archibald G. Robertson, John W. Riely* and *T. Justin Moore, Jr.* for the Prince Edward County School Authorities, appellees.

H. Albert Young, Attorney General of Delaware, argued the cause for petitioners in No. 10 on the original argument and on the reargument. With him on the briefs was *Louis J. Finger,* Special Deputy Attorney General.

By special leave of Court, *Assistant Attorney General Rankin* argued the cause for the United States on the reargument, as *amicus curiae,* urging reversal in Nos. 1, 2 and 4 and affirmance in No. 10. With him on the brief were *Attorney General Brownell, Philip Elman, Leon Ulman, William J. Lamont* and *M. Magdelena Schoch.* *James P. McGranery,* then Attorney General, and *Philip Elman* filed a brief for the United States on the original argument, as *amicus curiae,* urging reversal in Nos. 1, 2 and 4 and affirmance in No. 10.

Briefs of *amici curiae* supporting appellants in No. 1 were filed by *Shad Polier, Will Maslow* and *Joseph B. Robison* for the American Jewish Congress; by *Edwin J. Lukas, Arnold Forster, Arthur Garfield Hays, Frank E. Karelsen, Leonard Haas, Saburo Kido* and *Theodore Leskes* for the American Civil Liberties Union et al.; and by *John Ligtenberg* and *Selma M. Borchardt* for the American Federation of Teachers. Briefs of *amici curiae* supporting appellants in No. 1 and respondents in No. 10 were filed by *Arthur J. Goldberg* and *Thomas E. Harris*

for the Congress of Industrial Organizations and by *Phineas Indritz* for the American Veterans Committee, Inc.

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.[1]

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[1] In the Kansas case, *Brown* v. *Board of Education*, the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan. Gen. Stat. § 72–1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F. Supp. 797. The case is here on direct appeal under 28 U. S. C. § 1253.

In the South Carolina case, *Briggs* v. *Elliott*, the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. S. C. Const., Art. XI, § 7; S. C. Code § 5377 (1942). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admis-

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance,

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sion to the white schools during the equalization program. 98 F. Supp. 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 U. S. 350. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this inequality as well. 103 F. Supp. 920. The case is again here on direct appeal under 28 U. S. C. § 1253.

In the Virginia case, *Davis* v. *County School Board*, the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va. Const., § 140; Va. Code § 22-221 (1950). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F. Supp. 337. The case is here on direct appeal under 28 U. S. C. § 1253.

In the Delaware case, *Gebhart* v. *Belton*, the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del. Const., Art. X, § 2; Del. Rev. Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance in-

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they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy* v. *Ferguson*, 163 U. S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction.[2] Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.[3]

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volved in travel. 87 A. 2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (see note 10, *infra*), but did not rest his decision on that ground. *Id.*, at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. 91 A. 2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 U. S. 891. The plaintiffs, who were successful below, did not submit a cross-petition.

[2] 344 U. S. 1, 141, 891.

[3] 345 U. S. 972. The Attorney General of the United States participated both Terms as *amicus curiae*.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time.[4] In the South, the movement toward free common schools, sup-

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[4] For a general study of the development of public education prior to the Amendment, see Butts and Cremin, A History of Education in American Culture (1953), Pts. I, II; Cubberley, Public Education in the United States (1934 ed.), cc. II–XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Cremin, *supra*, at 269–275; Cubberley, *supra*, at 288–339, 408–431; Knight, Public Education in the South (1922), cc. VIII, IX. See also H. Ex. Doc. No. 315, 41st Cong., 2d Sess. (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (*e. g.*, the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, *supra*, at 408–423. In the country as a whole, but particularly in the South, the War

level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Sipuel* v. *Oklahoma,* 332 U. S. 631; *Sweatt* v. *Painter,* 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt* v. *Painter, supra,* the Court expressly reserved decision on the question whether *Plessy* v. *Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt* v. *Painter,* there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors.[9] Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy* v. *Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout

[9] In the Kansas case, the court below found substantial equality as to all such factors. 98 F. Supp. 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F. Supp. 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and progressing" (103 F. Supp. 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. 91 A. 2d 137, 149.

the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of 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. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt* v. *Painter, supra,* in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin* v. *Oklahoma State Regents, supra,* the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."

Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system." [10]

Whatever may have been the extent of psychological knowledge at the time of *Plessy* v. *Ferguson*, this finding is amply supported by modern authority.[11] Any lan-

[10] A similar finding was made in the Delaware case: "I conclude from the testimony that in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated." 87 A. 2d 862, 865.

[11] K. B. Clark, Effect of Prejudice and Discrimination on Personality Development (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952), c. VI; Deutscher and Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, 26 J. Psychol. 259 (1948); Chein, What are the Psychological Effects of

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guage in *Plessy* v. *Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.[12]

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term.[13] The Attorney General

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Segregation Under Conditions of Equal Facilities?, 3 Int. J. Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., 1949), 44–48; Frazier, The Negro in the United States (1949), 674–681. And see generally Myrdal, An American Dilemma (1944).

[12] See *Bolling* v. *Sharpe*, *post*, p. 497, concerning the Due Process Clause of the Fifth Amendment.

[13] "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(*a*) would a decree necessarily follow providing that, within the

of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.[14]

It is so ordered.

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limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(*b*) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (*b*),

"(*a*) should this Court formulate detailed decrees in these cases;

"(*b*) if so, what specific issues should the decrees reach;

"(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

[14] See Rule 42, Revised Rules of this Court (effective July 1, 1954).