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THE CHILD SEATED NEXT TO ME: THE CONTINUING QUEST FOR EQUAL EDUCATIONAL OPPORTUNITY

RANETA J. LAWSON*

I. INTRODUCTION

After expressing doubt that “any child may reasonably be expected to succeed in life if [s/he] is denied the opportunity of an education,”¹ the Supreme Court announced its decision in *Brown v. Board of Education*.² The unqualified conclusion that “separate but equal” is inherently unequal struck down a precept that had been the law of the land since the Court had enunciated over a half century ago that segregation inflicted no damage upon those affected.³ The *Brown* Court’s unprecedented pronouncement, which ended with the characteristic judicial phrase “it is so ordered,”⁴ was, however, only the first step. The Court then confronted the onerous task of fashioning a remedial agenda to dismantle an evil that had not only become deeply ingrained in the social and economic systems of the society, but also was subsequently intensified through the enactment of formal “Jim Crow” legislation.⁵

Recognizing the importance of an enforcement mechanism⁶ and the particularly local nature of legally sanctioned school segregation,⁷

* Associate, Davis, Graham & Stubbs, Denver, Colorado. B.A., *cum laude*, 1985, University of Toledo; J.D., *cum laude*, 1988, University of Toledo. The author would like to thank Professor Donald E. Lively for valuable comments provided on an earlier (1987) draft of this article. The fact that school desegregation issues remain at the forefront of constitutional law litigation is both a sad commentary on the progress toward equal educational opportunity and a potential springboard for the exploration and implementation of alternatives which focus upon the effective education of children without regard to environment. The views expressed in this article are not intended to represent the views of Davis, Graham & Stubbs or any member or employee thereof.

1. *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) (*Brown I*).

2. 349 U.S. 483.

3. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

4. *Brown I*, 347 U.S. at 496.

5. Contrary to popular perception, the “Jim Crow” system of legalized segregation originated in the North and gradually invaded the South in the wake of the Civil War devastation. See C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 17-29 (1966).

6. *Brown I*, 347 U.S. at 495.

7. *Id.*

the Court chose not to independently formulate a comprehensive remedy. Instead, separate arguments were scheduled, and one year later the Court promulgated an implementation procedure.⁸ "Because of [the local courts'] proximity to local conditions,"⁹ the Supreme Court delegated the implementation process to local courts with the directive to evaluate and supervise all local school district compliance measures.¹⁰ The Court was lenient and understanding in its acknowledgment that the "process" would be a deliberate one. It was however equally intolerant of unnecessary delay and demanded a "prompt and reasonable start"¹¹ toward full compliance with the *Brown* edict. The Court in *Brown II* also proclaimed that although the demands of public interest could be considered as a component of any implementation program, "constitutional principles [could] not be allowed to yield [to public interest] simply because of disagreement with [those principles]."¹² What followed was a series of pervasive, systematic delays manifesting a forceful resistance to the Court's decrees.¹³ Despite such staunch defiance however, in areas where genuine compliance efforts were initiated, the "process" of desegregation began.

The articulated goal of the "process" was the forthwith integration of segregated educational institutions.¹⁴ But in the zeal to combine what had been socially accepted and legally mandated as separate, the courts and other proponents of the "process" may have overlooked the primary goal of *Brown*: equal educational opportunity. Although integration and racial balance in public schools is one means to achieve the goals set forth in *Brown*, the increasing limitations placed upon the *Brown* mandate by contemporary courts¹⁵ may signal a need for alternatives which focus upon the overall goal of equal educational opportunity. Those who adhere to integrative and racial balancing approaches may perceive a retreat from desegregation policies as a step

8. *Brown v. Board of Educ.*, 349 U.S. 294 (1955) (*Brown II*).

9. *Brown II*, 349 U.S. at 299.

10. *Id.* The Court mandated that under the local courts' supervisory umbrella, school authorities would "have the primary responsibility for elucidating, assessing and solving the varied local school problems which may require solution in fully implementing the governing constitutional principles." *Id.*

11. *Brown II*, 349 U.S. at 300.

12. *Id.*

13. Generally, overt resistance measures arose in the context of state-adopted resolutions and legislation designed to hinder and/or undermine compliance with what was perceived as an inherently unconstitutional decision. For instance, Eugene Cook, Georgia Attorney General, proposed legislation making it a capital offense to assist the federal judiciary in the desegregation effort. See McKay, *With All Deliberate Speed: The Study of School Desegregation*, 31 N.Y.U.L. Rev. 991 (1956).

14. *Brown II*, 349 U.S. at 301.

15. See, e.g., *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

backward. Realistically, however, this positive approach reflects a recognition that not only do courts appear increasingly unresponsive to modern desegregation challenges,¹⁶ but local courts charged with effectively structuring and supervising implementation processes are rapidly pursuing “transitional course[s] of judicial disengagement”¹⁷ under the pretexts of “unitary”¹⁸ school systems and the inability to “embrace all the problems of racial prejudice.”¹⁹ Moreover, a focus upon progressive alternatives elevates one concern that may have taken a backseat in the “process” of desegregation: the children. Continued emphasis on desegregation and the attendant effectuation plans and programs may not only be a waste of precious resources, but also distracting to the effective education of children.

In light of the modern-day impracticalities and detrimental consequences associated with a continued emphasis on desegregation implementation “processes,” this article proposes to: (i) briefly trace the history and early impact of the *Brown* decision; (ii) analyze the negative human impact resulting from the implementation of various desegregation processes over the past three decades; and (iii) suggest alternatives which focus upon positive utilization of available resources to attain the overall goal of equal educational opportunity.

II. THE HISTORY AND EARLY IMPACT OF *BROWN*

The *Brown* opinion was preceded by several decades in which formalized and legally sanctioned separation of the races did not offend the Constitution.²⁰ Relying upon the “common instance of . . . the establishment of separate schools for white and colored children,”²¹ the Court in *Plessy* prepared the foundation upon which courts and state legislatures would construe and prescribe constitutional pro-

16. *Id.*

17. *Morgan v. McDonough*, 554 F. Supp. 169, 171 (D. Mass. 1982).

18. A “unitary” school system is “one in which the characteristics of the 1954 dual system either do not exist or, if they exist, are not the result of past or present intentional segregative conduct of the [school district].” *Brown v. Board of Educ.*, 671 F. Supp. 1290, 1293 (D. Kan. 1987). *But cf.* *United States v. Lawrence County School Dist.*, 799 F.2d 1031, 1034 (5th Cir. 1986) (unitariness is “a district in which schools are not identifiable by race and students and faculty are assigned in a manner that eliminates the vestiges of past segregation”).

19. *Ross v. Houston Indep. School Dist.*, 699 F.2d 218, 227 (5th Cir. 1983).

20. WOODWARD, *supra* note 5 and accompanying text.

21. *Plessy*, 163 U.S. at 544. The Court in *Plessy* further observed that laws relating to the establishment of separate schools had previously been enacted by Congress “under its general power of legislation over the District of Columbia . . . as well as by the legislatures of many states, and [had] been generally, if not uniformly, sustained by courts.” *Id.* at 545.

tections afforded under the fourteenth amendment for several decades. In doing so, not only did the Court lend further judicial credence to the tenet of "separate but equal," but it justified such reasoning by circumscribing the scope of the fourteenth amendment to encompass simply a guarantee of absolute equality of the races before the law.²² The Court further explained that if any sense of inferiority resulted from this enforced separation, "it [was] not by reason of anything found in any act, but because the colored race [chose] to put that construction upon it."²³ The stage was thus set for several decades of "separate but equal."

Although "separate but equal" became the law of the land, "the nation would learn soon enough that the Court was less interested in equality than in washing its hands of the Negro."²⁴ Vast inequities were instantly discernable in practically every setting,²⁵ but particularly in the schools.²⁶ These conspicuous disparities eventually prompted a concerted effort on the part of the NAACP Legal Defense and Educational Fund and various other groups²⁷ to eradicate a system that, in actual practice, had proven to be unequal. The initially designated target was the higher education arena where it was thought that the "near impossibility of attaining equality and the absence of any valid need for segregation would be most easily seen by judges."²⁸ These initiatives, however, appeared only to further entrench the "separate but equal" doctrine as courts continually ordered that states provide separate but equal graduate schools for black students.²⁹ These orders persisted, moreover, despite the harsh reality that the "black schools"

22. *Plessy*, 163 U.S. at 544. "The object of the [fourteenth amendment] was undoubtedly to enforce absolute equality of the two races before the law, but . . . it could not have been intended to abolish distinctions based upon color, or to enforce social as distinguished from political, equality or commingling of the two races upon terms unsatisfactory to either." *Id.*

23. *Plessy*, 163 U.S. at 551.

24. See J.H. WILKINSON, FROM BROWN TO BAKKE 19 (1979).

25. For instance, it was not unusual for the "separate but equal" water fountain facilities for blacks to be inoperative and unsanitary. Similarly, the "Jim Crow" balcony, customary in most theatres, was generally poorly maintained. *Id.*

26. Since most state appropriations for educational purposes were apportioned on a per capita basis, a phenomenon developed in which the higher the proportion of blacks in a county, the greater the differential in expenditures. The explanation propounded for this remarkable situation was that the more blacks in a community, the more appropriated funds available to divert for the maintenance of white institutions. See G. MYRDAL, AN AMERICAN DILEMMA 339-41 (1944).

27. Groups assisting and often submitting briefs of *amicus curiae* included the American Federation of Teachers, the Committee of Law Teachers Against Segregation in Legal Education, the American Veterans Committee, and the American Jewish Committee. See, e.g., *Sweatt v. Painter*, 338 U.S. 865 (1949).

28. See L. GRAGLIA, DISASTER BY DECREE 24 (1976).

29. See *Sipuel v. Board of Regents*, 332 U.S. 631 (1948); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

were egregiously inferior in quality, facilities, and general expenditures. For example, in *Sweatt v. Painter*,³⁰ a black applicant who sought admission to the University of Texas Law School was instead offered admission to a separate facility established for black matriculants.³¹ Upon presentment to the Court, rather than focus on the practicality and continued viability of the "separate but equal" doctrine, the Court elected to conduct an extensive inquiry into whether the alternate facilities were in fact equal.³²

Although the assault upon the segregated higher education system constituted merely one component of a designed plan of attack upon the "separate but equal" doctrine,³³ the Court's chronic evasion of the underlying constitutional question was nonetheless frustrating to those who sought to effect the dismantlement of a patently inequitable system. The Court's evasive measures were not deadly however, for the next case presented was *Brown v. Board of Education*.³⁴

The case, which would historically become known simply as *Brown v. Board of Education*, was actually a consolidation of cases from different states with various fact patterns.³⁵ The cases presented a common legal question arising from the fact that in each instance, black children had been denied admission to public schools solely upon the basis of race. The local court in each case had steadfastly maintained an adherence to the doctrine set forth in *Plessy* dictating equality of treatment in separate facilities.³⁶ With a resolute awareness that the

30. 339 U.S. 629 (1950).

31. *Id.*

32. *Id.* Citing its "reluctance to extend constitutional interpretation to situations or facts which are not before the Court," the Court nimbly sidestepped the broader constitutional question in *Sweatt* which urged a reexamination of *Plessy v. Ferguson* "in light of contemporary knowledge respecting the purposes of the Fourteenth Amendment and the effects of racial segregation." *Id.* at 636. Limiting its inquiry to a Fourteenth Amendment equal protection analysis, the Court ultimately ordered the petitioner's admission to the University of Texas Law School since "[s]uch education [was] not available to him in the separate law school as offered by the State." *Id.* at 635.

33. See Lively, *Separate But Equal: The Low Road Reconsidered*, 14 Hastings Const. L.Q. 56 n. 82 (1986). "The litigation strategy which eventually defeated the separate but equal doctrine was calculated to seek absolute and complete equalization of curricula, faculty, and physical equipment in white and black schools. . . It succeeded in demonstrating the futility of the separate but equal concept." *Id.*

34. 347 U.S. 483.

35. Specifically, the cases were from Kansas, (*Brown v. Board of Educ.*, 98 F. Supp. 797 (D. Kan. 1951)), South Carolina, (*Briggs v. Elliot*, 103 F. Supp. 920 (E.D.S.C. 1952)), Virginia, (*Davis v. County School Bd.*, 103 F. Supp. 337 (E.D. Va. 1952)), and Delaware, (*Gebhart v. Belton*, 91 A.2d 137 (Del. 1952)).

36. In *Gebhart*, while the doctrine of "separate but equal" emerged unscathed, the court found that the schools for blacks were so inferior that there should be immediate admission to white schools. This decree was subsequently affirmed by the Delaware Supreme Court with the implicit understanding that the decree would in all likelihood be modified when the "Negro

concept and practice of "separate but equal" was fundamentally unfair, the plaintiffs in *Brown* did not seek equalization of the separate schools, but instead launched an all out attack on the doctrine itself. They contended very simply that, under the "separate but equal" banner, educational institutions were separate but *not* equal.³⁷ Furthermore, not only were the institutions unequal in virtually every respect, but also no amount of effort could make them equal.³⁸ The singular alternative required a complete and unconditional dismantling of the system.³⁹

The Supreme Court phrased the principal question as: "Does segregation of children in public schools solely on the basis of race, even though physical facilities and other tangible factors may be equal, deprive children of the minority group *equal educational opportunity*?"⁴⁰ This was directly followed by a brief but potent statement: "We believe that it does."⁴¹ In striking contrast to the conclusion drawn by the Court in *Plessy*, the *Brown* Court observed that first, separation of the races was usually interpreted as denoting inferiority of the Negro group.⁴² Second, the resultant sense of inferiority had a tendency to negatively influence the motivation of a child to learn.⁴³ Finally, in order to remedy the negative impact of segregation *and* provide equal educational opportunities, separate educational facilities would necessarily have to be abolished.⁴⁴

Despite such a momentous conclusion, the Court nevertheless conceded that the formulation of a remedy in these cases "[presented] problems of considerable complexity."⁴⁵ Therefore, in order to provide the opportunity for full participation of the various local concerns, the Court set the case for rehearing to facilitate the formulation of an appropriate remedial agenda.⁴⁶ After reargument,⁴⁷ the objective of the *Brown* mandate became clear. Equally clear, however, was that the effectuation of the Court's order had to be delegated to the openly antagonistic local courts and administrative agencies.⁴⁸

schools" were brought up to standard. See *Gebhart*, 91 A.2d at 152 ("we have not overlooked the fact that the defendants may at some future date apply for a modification of [this] order if, in their judgment, the inequalities . . . have . . . been removed").

37. *Brown I*, 347 U.S. at 488.

38. *Id.*

39. *Id.*

40. 347 U.S. at 493 (*emphasis added*).

41. *Id.*

42. 347 U.S. at 494; *but see supra* note 23 and accompanying text.

43. *Id.*

44. *Id.*

45. 347 U.S. at 495.

46. *Id.*

47. See *supra* notes 8-10 and accompanying text.

48. See *supra* note 13 and accompanying text. It has been observed that the Court's

III. THE "PROCESS"

Compliance with the *Brown* mandate was fairly expeditious in the District of Columbia and nine of the seventeen states that had legally enforced racial segregation in 1954.⁴⁹ In the remaining states, various schemes were introduced in order to demonstrate apparent compliance. For example, pupil placement laws and freedom of choice laws became the order of the day in states that manifested the most deliberate resistance to compliance.⁵⁰ Later, as it became increasingly obvious that these "compliance" ordinances were merely facades designed to ultimately perpetuate the status quo, the Court once again intervened and demanded prompt and genuine advancement toward the paramount goal of desegregation.⁵¹

A. *The Immediate Human Impact*

As interpreted, the *Brown* implementation mandate required segregated school districts to immediately adopt remedial plans allowing for admission to public schools on a non-discriminatory basis.⁵² Among other things, this interpretation implicitly conveyed the dual message that schools previously attended by blacks were inferior, and that forthwith admission to white institutions on a non-discriminatory basis would redress the previous inequities by providing equal educational opportunity.⁵³ Although somewhat appealing in theory, in actual prac-

refusal to grant specific relief to the parties may have signaled that the Court was uncertain that its new law would prevail. Moreover, the Court's apparent vacillation may have contributed to the local courts' inability to implement desegregation remedies premised upon a forceful mandate by the Supreme Court. See L. GRAGLIA, *DISASTER BY DECREE* 38 (1976).

49. See GRAGLIA, *id.*

50. The Alabama School Placement Law, which became the paradigm for other states, provided that students were to be assigned and transferred to schools based upon sixteen obscure factors. Among the factors to be scrutinized were the potential for infliction of psychological distress associated with attendance at a particular school and the possibility of friction or disorder at the school. Most importantly however, the Act explicitly provided that upon written objection of a parent or guardian, no child could be compelled to attend a school where the races were commingled. See ALA. CODE § 61(4) (1960).

51. See, e.g., *Bradley v. School Bd. of City of Richmond*, 382 U.S. 103 (1965) (delays in desegregating of school systems are no longer tolerable); *Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218, 234 (1964) ("The time for mere deliberate speed has run out. . . ."); *Goss v. Board of Educ. of Knoxville, Tenn.*, 373 U.S. 683, 686 (1963) ("It is readily apparent that the transfer system proposed lends itself to perpetuation of segregation.").

52. See *Brown II*, 349 U.S. at 301.

53. "The enemy was said to be the separation of the races and economic groups. That could be licked by [mixing] youngsters in a room together—and . . . shaking well!" R. STEPHEN BROWNING, *FROM BROWN TO BRADLEY: SCHOOL DESEGREGATION, 1954-1974*, at 15 (1975).

tice it was shortly discovered that human beings are not very easily plugged into formulas and processes.

One glaring example was the case of the "Little Rock Nine."⁵⁴ Not only was there a potentially explosive situation outside the school, but "chaos, bedlam and turmoil"⁵⁵ also marked the setting inside Central High School.⁵⁶ What had been an ideal theory on paper had created an educationally disruptive and emotionally disturbing atmosphere for those affected.⁵⁷ Although some degree of hostility and aversion was foreseeable and unavoidable given the uniqueness of the situation, over the past three decades, various studies have documented a profound and enduring adverse human impact.⁵⁸

B. *Programming and Curriculum in Desegregated Schools*

While the influence of the familial relationship assists in the formation of a child's developmental foundation, the impact of school learning experiences also dramatically affects a child's development.⁵⁹ It is therefore essential that school programming and curricula be cloaked with incentives for educational achievement, acceptance, discipline, and programs designed to enhance self-esteem. Evidence suggests that because of administrative intransigence, double standards concerning discipline and expectations and blatant ignorance, this nurturing atmosphere may not be readily accessible to black students in desegregated schools.⁶⁰

54. One of the first instances of "mixing and shaking well" occurred in 1957, when nine black children were admitted to the previously segregated Little Rock Central High School in Little Rock, Arkansas.

55. *Cooper v. Aaron*, 163 F. Supp. 13, 21 (E.D. Ark. 1958), *rev'd*, 358 U.S. 1 (1958).

56. Inside the school, black children were tripped, banged against their lockers, spit upon, kicked, pushed down the stairs and subjected to incessant verbal harassment. See Samuels, *Little Rock: More Tension Than Ever*, N.Y. Times Magazine, March 23, 1958, at 88-89.

57. In 1987, as the "Little Rock Nine" returned to honor the school and remember their shared battles, one of the nine remarked: "For us, the bottom line was every single morning of our lives, for nine months, we got up, we polished our saddle shoes, and we went to war." Detroit News, Oct. 24, 1987, at 3A, col. 2.

58. See, e.g., Eyler, Cook & Ward, *Resegregation Within Desegregated Schools*, in *THE CONSEQUENCES OF SCHOOL DESEGREGATION* 126 (C. Rossell & W. Hawley eds. 1983) (studying the effects of resegregation occurring within desegregated schools); N. ST. JOHN, *SCHOOL DESEGREGATION: OUTCOMES FOR CHILDREN* (1975) (blacks in desegregated schools have lower self-esteem than blacks in segregated schools); Rist, *Student Social Class and Teacher Expectations: The Self-Fulfilling Prophecy in Ghetto Schools*, 40 Harv. Educ. Rev. 411 (1970) (black students generally sorted into a "hidden curriculum" in desegregated schools).

59. See, e.g., Carter, *The Sustaining Effects Study of Compensatory and Elementary Education*, 13 Educ. Researcher 4 (1984); UNITED STATES COMM'N ON CIVIL RIGHTS, *RACIAL ISOLATION IN PUBLIC SCHOOLS* 73 (1967).

60. See *supra* note 58 and accompanying text.

One phenomenon which has been disproportionately associated with black students in desegregated schools is "tracking."⁶¹ Generally, despite progressive desegregation plans and optimistic results from those initiatives, such "academic sorting" is too often a manifestation of negative attitudes and expectations concerning the prospective achievement of black students.⁶² Not surprisingly, the sorting of minority students into distinct "low achievement" academic programs combined with low teacher expectations narrows the perceptions and opportunities of black students, and ultimately widens the overall gap in terms of educational achievement.⁶³ Thus, to the extent that "race [ethnicity and socioeconomic level are] correlated with the criteria used to sort students, ability grouping or tracking results in racial imbalance [in racially balanced classrooms]."⁶⁴

In the area of cultural programming and curricula, the emphasis on Black history and cultural exposure which was present in segregated schools may be negligible in desegregated schools.⁶⁵ For example, since many of the predominantly white faculty in desegregated institutions often exhibit antagonism toward or unfamiliarity with the works of black authors and artists, they are frequently either uncomfortable with the notion or simply unable to provide black students with a balanced diet of African or black American literary and musical works.⁶⁶ In contrast, those desegregated institutions that have endeavored to cater to the needs of black students often overcompensate by encouraging exposure only to the so-called "black studies."⁶⁷ Both examples demonstrate practices which place severe limitations upon the quality, depth and breadth of the educational experience of black students. Such limited exposure and/or stigmatization may negatively affect experiences within, and adaptations to, desegregated schools. A negative adjustment to the educational process may in turn discourage emphasis on educational achievement which, to complete the circle, may result in a perceived and realistic limitation of opportunities.⁶⁸

61. "Tracking" is generally defined as the sorting of students into less demanding, non-college preparatory curricula, and is frequently associated with minority students. See, e.g., Oakes, *Limiting Opportunity: Student, Race and Curricular Differences in Secondary Vocational Education*, 91 *Am. J. of Educ.* 328 (1983).

62. See H. GERARD AND N. MILLER, *SCHOOL DESEGREGATION* 101 (1975).

63. *Id.*

64. COMMITTEE ON THE STATUS OF BLACK AMERICANS, *A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY* 82 (G. Jaynes & R. Williams eds. 1989).

65. See F. RODGERS, *THE BLACK HIGH SCHOOL AND ITS COMMUNITY* 89 (1975).

66. *Id.*

67. *Id.*

68. *Id.* See also J. OGBU, *MINORITY EDUCATION AND CASTE: THE AMERICAN SYSTEM IN CROSS-CULTURAL PERSPECTIVE* (1978) (discussing the impact of social environment on black students' perspectives regarding educational achievement).

If the desegregation process is to be effective then, programming and curricula must be flexible and responsive. Students cannot be presumptively categorized into "slow learner" groups if in fact such groups are nothing more than pretexts for "writing off" the educational achievement of black students. Additionally, black students should not be made to feel as if they must participate in "black studies" programming or curricula simply because they are black. This restrictive attitude performs a critical disservice in two respects: First, it has the potential to create the impression that any given "minority" program is comprehensive and accommodates the needs of all black students, thereby relieving the school of the responsibility for further inroads and expansion into cultural areas. Second, black students may feel trapped and alienated from the traditional curricula; they may feel pressured to select ethnic classes or programs at the expense of choosing programs which broaden their individual experience.⁶⁹ Thus, in order to avoid the irony of a separate but equal experience in the context of a desegregated school, faculty, curricula and programming must work to accommodate special interests, while not stigmatizing and/or circumscribing those choosing to participate.

C. Pupil - Teacher Interaction

Another factor which vitally affects the human impact of the desegregation process is pupil-teacher interaction.⁷⁰ Often, because of the daily contact, a teacher becomes the secondary, and in some cases primary, authority figure in a child's life.⁷¹ Hence, teacher attitudes toward desegregation and the translation of those attitudes into expectations regarding student performance play an essential role in the desegregation process.⁷²

For example, in a study that examined the correlation between race, physical attractiveness and teacher expectations, teachers were asked to view a selection of photographs and evaluate the intelligence and academic potential of each child pictured.⁷³ In general, pre-school teachers judged white children as more intelligent than black chil-

69. See RODGERS, *supra* note 65 at 90. In addition to the cultural exposure of black students in desegregated schools, an important and necessary aspect of any cultural programming is the voluntary and/or mandatory participation of white students in such programs.

70. See, e.g., Rist, *supra* note 58.

71. See UNITED STATES COMM'N ON CIVIL RIGHTS, *supra* note 59 at 93.

72. *Id.*

73. See Adams, *Racial Membership and Physical Attractiveness Effects on Preschool Teacher Expectations*, 8 Child Study J. 29 (1978).

dren.⁷⁴ Whiteness and attractiveness were the most highly valued characteristics, with the highest academic potential predicted for physically attractive white males, and the lowest for the least physically attractive black females.⁷⁵ It thus appears that even before a child has the opportunity to academically participate in the classroom setting, he or she may already be profoundly disadvantaged by negative preconceptions of learning abilities based solely upon race and physical attractiveness.⁷⁶

A separate study examined ten desegregated second grade classrooms in Indianapolis.⁷⁷ The research discovered that although white and black teachers expressed similar pro-desegregation sentiments, both were disproportionately negative in characterizing the potential of black children.⁷⁸ Generally, black teachers most favorable to desegregation tended to perceive and react to black children more positively, while white teachers least favorable to desegregation exhibited slightly unfavorable attitudes toward black children.⁷⁹ Ironically, in some cases it was discovered that although teachers internalized negative attitudes concerning desegregation and black children, their overt behavior in the classroom was slightly favorable.⁸⁰ Such contradictory behavior could ostensibly be attributed to a realization that a negative attitude existed and conspicuous overcompensation for that attitude in response to perceived social pressures.⁸¹

Finally, what has been characterized as "Black English"⁸² also identifies and negatively impacts perceptions of black students' academic abilities in desegregated classroom settings. In a study which required white teachers to read and evaluate two compositions identical in content and vocabulary except for the presence in one composition of certain black dialectical expressions, not only were teachers able to identify the "black compositions," but they also tended to rate them as poorer in quality than the "standard compositions."⁸³

74. *Id.*

75. *Id.*

76. *Id.*

77. See Weinberg, *Improving Education in Desegregated Schools*, in METROPOLITAN DESEGREGATION 153 (R. Green ed. 1985).

78. *Id.*

79. *Id.* See also *supra* notes 61-64 and accompanying text.

80. *Id.*

81. *Id.*

82. "Black English" is defined as a "distinctive non-standard dialect of English spoken by many American blacks." AMERICAN HERITAGE DICTIONARY 184 (2nd ed. 1985).

83. See G. PICHE, D. RUBEN, L. TURNER & M. MICHLIN, RESEARCH IN THE TEACHING OF ENGLISH 60 (1977); see also J. HALE-BENSON, BLACK CHILDREN: THEIR ROOTS, CULTURE, AND LEARNING STYLES (1982) (concluding that black achievement is interrelated with black cultural learning styles and cognitive processes).

The importance of these and the myriad of other studies in this area that measure behavior and attitudes in desegregated schools is that the results are indicative of the profound and yet often subtle human impact ensuing from the implementation of various desegregation plans and processes. An important and necessary rejoinder to these conclusions therefore is a measurement of the benefit, if any, achieved by these various plans.

D. *The Results*

A systematic review of the research on desegregation and achievement reveals that of twenty-nine evaluation reports, twenty-four showed achievement gains.⁸⁴ Detailed research indicates however that not only are these achievement gains modest at best, but also that desegregation may be but one of many contributing factors to the measured improvement.⁸⁵ In particular, desegregation achievement research has concluded that first, although small gains in black achievement are generally associated with attendance at desegregated schools for one-to-two years,⁸⁶ there is no genuine assurance of such gains simply by virtue of attendance at a desegregated school.⁸⁷ Second, with regard to aspiration and occupational levels of black students, research has demonstrated that the respective levels of each for black students in segregated schools is equivalent to or greater than that of white students in segregated institutions.⁸⁸ Importantly however, once the desegregation process occurs, black students' aspiration levels have a

84. See Crain & Mahard, *Desegregation and Black Achievement: A Review of the Research*, 42 *Law and Contemp. Probs.* 18 (1978).

85. For a general discussion of the proposition that desegregation, in and of itself, has little effect on pupil performance, see, N. ST. JOHN, *SCHOOL DESEGREGATION: OUTCOMES FOR CHILDREN* 121 (1975).

86. See Crain & Mahard, *supra* note 84 at 17; Stephan, *School Desegregation: An Evaluation of the Predictions made in Brown v. Board of Education*, 85 *Psychological Bull.* 217 (1978); M. WEINBERG, *MINORITY STUDENTS: A RESEARCH APPRAISAL* (1977). *But cf.* Crain & Mahard, *The Effect of Research Methodology on Desegregation Achievement Studies: A Meta-Analysis*, 88 *Am. J. of Soc.* 839 (1983) (gains for black students on standardized achievement test scores outnumbered losses 173 to 98).

87. See Bradley and Bradley, *The Academic Achievement of Blacks in Desegregated Schools*, 47 *Rev. of Educ. Research* 399 (1977). Positive achievement gains occur most often "(1) when desegregation is required by official policy; (2) when students begin their education in desegregated schools; and (3) when cumulative rather than short-term gains are emphasized." Cook, *Social Science and School Desegregation: Did We Mislead the Supreme Court?*, 5 *Personality and Soc. Psychology Bull.* 428 (1979).

88. See Cook, *supra* note 87; Epps, *Impact of School Desegregation on Aspirations, Self-Concept, and other Aspects of Personality*, 39 *Law and Contemp. Probs.* 300 (1975).

tendency to decrease as the number of white students in the school increases.⁸⁹

Finally, it has been observed that some achievement gains may be partially attributable to a number of other factors including increased parental participation in the educational process due to the controversies surrounding desegregation and the paternalistic attitudes of administrators and faculty often exhibited in desegregated schools.⁹⁰ Such critical factors may ultimately equalize or override the effects of actual desegregation.

Thus, although somewhat inconclusive, current research results in the area of academic achievement are nonetheless disconcerting given the demonstrated negative human impact of the desegregation process.⁹¹ Consequently, from a pure cost/benefit perspective, the moderate gains in achievement, which may be only partially attributable to desegregation, are unjustified by the costs of the negative psychological and emotional impact visited upon those who are processed through the system. Moreover, with the contemporary addition of "white flight," resegregation and judicial unresponsiveness, the costs may indeed become exorbitant.

IV. THE "PROCESS" COMES FULL CIRCLE

Recent court decisions in the area of school desegregation have once again become a source of great concern. In response to modern resegregation cases, courts have concluded that, "consistent with the *de jure/de facto* distinction, the elimination of segregation resulting from official action discharges the obligation to desegregate."⁹² Thus, it has become evident that the protection of the courts is afforded only on a temporary basis without regard to other compelling factors which may and have influenced the formulation of the so-called "unitary" school system. One of those factors, which the *Brown* Court apparently did not foresee, is the redistribution of population.

Rather than comply with court-ordered desegregation, many whites simply chose to leave the school system altogether.⁹³ This trend, typ-

89. *Id.*

90. See R. CLARK, *FAMILY AND SCHOOL ACHIEVEMENT: WHY POOR BLACK CHILDREN SUCCEED OR FAIL* (1983) (parental participation and monitoring generally associated with high achieving students).

91. See *supra* note 58 and accompanying text.

92. See, Lively, *supra* note 33 at 65.

93. By 1973, 75% of black Americans lived in metropolitan areas, and of those, more than 3 out of 4 lived in central cities. In contrast, approximately 66% of white Americans resided in metropolitan areas with only 2 out of 5 within the central city boundary. See BROWNING, *supra* note 53 at 12.

ically labelled "white flight," has the effect of gradually altering demographic patterns of the neighborhoods and consequently the schools. As a result, schools that have made progress pursuant to court-ordered desegregation are once again becoming racially identifiable.⁹⁴ Under circumstances which demand a degree of flexibility, the courts' approach to modern resegregation cases can, at best, be characterized as unyielding.

For instance, in *Pasadena City Board of Education v. Spangler*,⁹⁵ when the demographic pattern of the school system shifted as a result of "white flight," school officials sought to dissolve an injunction issued three years earlier and terminate the court's jurisdiction.⁹⁶ Conceding that school officials in Pasadena had probably not complied with the original desegregation order, the Court nevertheless relied upon the holding in *Swann v. Charlotte-Mecklenburg Board of Education*,⁹⁷ in declaring that once a desegregation plan is effectuated, and discrimination can no longer be tied to official action, the constitutional duty is terminated.⁹⁸ Displaying remarkable insensitivity and inflexibility, the Court continued: "It does not follow that the communities served by [unitary] systems will remain demographically stable, for in a growing mobile society, few will do so."⁹⁹ These cases are enlightening in that they reveal the inherent limitations of the *Brown* mandate AND the necessity of judicial intervention to expand those limitations. Those who may be victimized by the modern courts' unresponsiveness have at least two alternatives.

V. RESISTANCE TO THE COURTS' RETREAT: *BROWN* REVISITED

One response to the courts' apparent retreat is to continue a course of litigation designed to force a recognition that the *Brown* mandate

94. See *Morgan v. Nucci*, 831 F.2d 313, 320 (observing difficulty of further desegregation of schools located in geographically isolated or heavily black sections of Boston); *Lawrence*, 799 F.2d at 1043 (considering demography and geography in reversing trial court's refusal to order new student assignment plan); *Stout v. Jefferson County Bd. of Educ.*, 537 F.2d 800 (5th Cir. 1976) (affirming remedy although three schools remained "racially identifiable" because of geographic isolation and barriers).

95. 427 U.S. 424 (1976).

96. *Id.*

97. 402 U.S. 1 (1971).

98. *Spangler*, 427 U.S. at 435-36.

99. *Id.* (quoting *Swann*, 402 U.S. at 31-32). See also *Estes v. Metropolitan Branches of Dallas NAACP*, 444 U.S. 437, 448 (1980) ("perfect solutions may be unattainable in the context of the demographic, geographic and sociological complexities of modern urban communities"); *Morgan*, 831 F.2d at 323 ("little more can be done to integrate these schools given the available numbers of white students"); *Stout*, 537 F.2d at 801 (geographic obstacles in the form of mountain ranges and dangerous roads made further desegregation measures impracticable).

was not ephemeral.¹⁰⁰ The crux of this argument is that implicit in *Brown* is a guarantee of *equal educational opportunity*.¹⁰¹ Thus, to the extent that remedial adjustments are required, "the courts should be guided by equitable principles characterized by a practical flexibility in shaping remedies and a facility for adjusting and reconciling public and private needs."¹⁰² Therefore, in light of the present day population shifts, the emphasis should now be upon remedies which provide practical flexibility. In particular, if demographic shifts are such that valuable monetary and educational resources are abandoning the inner-city districts in favor of the suburbs, then a flexible desegregation remedy would be one that extends beyond arbitrarily drawn school district boundaries.¹⁰³ This response, however, may itself be criticized as impractical and wasteful.

For example, in Prince George's County, an area near the District of Columbia, a large number of whites left the public schools, moving farther out of the county, while a large number of blacks moved into the county.¹⁰⁴ As a result, a school system that was initially 13% black ultimately became more than 40% black.¹⁰⁵ In such a factual setting, continued litigation would probably not only result in further white flight, but may in fact create the "absurd phenomenon of black children traveling great distances from their neighborhood only to wind up in schools that are overwhelmingly black."¹⁰⁶ Thus, while a sound legal argument can be made to support a flexible, expanded remedy encompassing multiple school districts, "legal arguments [generally only] work well in terms of statistical equity, [but don't] work worth a damn for the education of specific black children."¹⁰⁷ Continued emphasis on "hauling black children needless miles to keep them from

100. Given the Supreme Court's reluctance to recognize that segregation will not die a natural death, black people must not only be "more articulate and imaginative in pleadings and prayers for relief, [but must endeavor] to make oppression operate against the self-interest of those in power." Lawrence, *One More River To Cross*, in *SHADES OF BROWN* 66 (D. Bell ed. 1980).

101. "By equal educational opportunity we mean that the support—both financial and in human resources—and the encouragement provided for education are equal for all students." See *A COMMON DESTINY*, *supra* note 64 at 331.

102. *Brown II*, 349 U.S. at 300.

103. "Desegregation limited within city boundaries often accentuates the conflict between the poor of both races while exempting upper-class whites in the suburbs. This argues for urban/suburban desegregation, as well as for integration according to socioeconomic status." Green, *Desegregation*, in *METROPOLITAN DESEGREGATION* 33 (R. Green ed. 1985). For a discussion of other flexible remedies, see, Lively, *supra* note 33 at 71-72 (suggesting one-way busing plans and magnet schools).

104. Raspberry, *Why is Busing the Only Route?*, *Washington Post*, Sept. 4, 1981, at 29.

105. *Id.*

106. *Id.*

107. *Id.*

sitting next to other black children" is not only a waste of valuable resources but addresses the wrong problem.¹⁰⁸ "Color isn't the problem; education is."¹⁰⁹ A similar improvident pursuit is being undertaken in the modern *Brown* litigation.¹¹⁰

In 1979, the plaintiffs in *Brown* renewed their assertion that the Topeka school district had "failed to desegregate its schools in compliance with the Supreme Court mandate . . . and currently maintain[ed] and operat[ed] a racially segregated school system."¹¹¹ On appeal, the Tenth Circuit analyzed the "general principles of unitariness" before assessing the current status of school desegregation in Topeka.¹¹² According to the court, in order "to determine whether a school district has become unitary . . . a court must consider what the school district has done or not done to fulfill its affirmative duty to desegregate, the current effect of those actions or inactions and the extent to which further desegregation is feasible."¹¹³ Moreover, the court observed that, in the context of desegregation litigation, once the plaintiff establishes intentional segregation at some point in the past and a current condition of segregation, the burden of proof rests with the defendant to demonstrate that "its past acts have eliminated all traces of past intentional segregation to the maximum feasible extent."¹¹⁴

The Tenth Circuit continued its "unitary" analysis by meticulously reviewing the Topeka district's history of progress in the areas of student and faculty/staff assignment to ascertain whether a causal link existed between past *de jure* segregation and the current condition of segregation in the Topeka district.¹¹⁵ Upon close scrutiny of the

108. *Id.*

109. *Id.* Raspberry recently reiterated his stance against busing and argued that "there is also ample evidence that [black] children can learn—even in all-black schools—if they are given sufficient resources and properly taught." Raspberry, *Busing Has Failed—Maybe It's Time We Looked at Schools of Choice*, *The Denver Post*, October 8, 1990, at 7B.

110. *Brown v. Board of Educ.*, 671 F. Supp. 1290 (D. Kan. 1987), *aff'd in part, rev'd and remanded in part*, 892 F.2d 851 (10th Cir. 1989). Linda Brown, a child named plaintiff in the original *Brown* suit, is now the mother of two intervening child plaintiffs. For purposes of this article, this *Brown* case will be referred to as *Brown III*.

111. *Brown III*, 892 F.2d at 855 (D. Kan. 1979). After a trial of the case in October, 1986, the district court found the Topeka school district to be an integrated, unitary school system. *Brown III*, 671 F. Supp. 1290.

112. *Brown III*, 892 F.2d at 859. The court prefaced its analysis of the trial court's unitary finding by acknowledging that "[u]nitariness is a finding of fact reviewed under the clearly erroneous standard." *Id. But cf. Brown III*, 892 F.2d at 890 (Baldock, J., dissenting) (majority failed to give effect to clearly erroneous standard and impermissibly engaged in appellate fact-finding).

113. *Brown III*, 892 F.2d at 859.

114. *Id.*

115. *Brown III*, 859 F.2d at 869. The court noted that while the district court found

historical faculty/staff assignment process,¹¹⁶ the court determined that there was a “clear pattern of assigning minority faculty/staff in a manner that reflects minority student assignment.”¹¹⁷ The court aptly noted that such assignment practices reinforce the identification of particular schools as white or minority and also perpetuate the irrational notion that “minority teachers are inferior and not fit to teach white children. . . .”¹¹⁸

After an extensive discussion of the Topeka district’s progress toward ameliorating the vestiges of past *de jure* segregation,¹¹⁹ the court turned its attention to “what [could] still be done” in Topeka.¹²⁰ Completely discounting any geographical obstacles, the court concluded that Topeka had not “exhausted the repertoire [of remedies] available for desegregating schools.”¹²¹ While conceding that “Topeka [had] generally heeded the prohibition against [active promotion] of segregation,” the court ultimately castigated the school board for not “actively striving to dismantle the *de jure* system and failing to commit to undoing the segregated structure of the system.”¹²²

The conclusion that the Topeka school district has yet to attain the requisite legal unitariness is without question a resounding victory for the *Brown* plaintiffs.¹²³ Nevertheless, a more efficient utilization

disparities in the racial makeup of various school enrollments and a greater than average number of minority faculty and staff in schools with a greater than average number of minority students, “like most courts . . . the district court did not discuss separately the issue of current segregation and the causal connection between that segregation and the prior *de jure* segregation. *Id.*

116. A factor which, according to the court, “is largely within the control of the school district [and] is a potent tool for demonstrating that the district does or does not identify certain schools as white or minority.” *Brown III*, 892 F.2d at 872.

117. *Id.*

118. *Id.*

119. *See Brown III*, 892 F.2d at 874-84. Notably, the court acknowledged that “[m]inorities [had become] well-represented, indeed statistically over-represented, at the managerial level.” *Id.* at 879.

120. *Brown III*, 892 F.2d at 884. The court observed that the feasibility of further measures was not a primary focus of the district court case, and conceded that there was little evidence on the question. *Id.*

121. *Brown III*, 892 F.2d at 885. In making this observation, the court concluded that the Topeka school district “had failed to try magnet schools or to aggressively encourage voluntary transfers to improve racial balance.” *Id.* *But see Brown*, 892 F.2d at 954 n. 58 (dissent concluding that because the smallest decrease in dissimilarity index is associated with magnet programs, magnet schools and voluntary transfers are unlikely to produce the type of racial balance so essential to the majority’s decision).

122. *Id.* at 886. The court concluded that although “[t]he shifting distribution of Topekans . . . sometimes hindered, sometimes aided, the cause of desegregation . . . the school district sought neither to reduce the impact of the former nor to encourage the effects of the latter.” *Id.*

123. Whether it will remain a resounding victory or become yet another exercise in futility will likely be decided by the Supreme Court. *See Brown v. Board of Educ.*, 892 F.2d 851

of resources would focus upon improving the education of black children without regard to environment.

VI. AN ALTERNATIVE TO RESISTANCE: CONFRONTING REALITY

Confronting and addressing the reality of present day circumstances is the second possible response to the courts' retreat from *Brown*. This concept is premised upon a recognition that any given community must endeavor to cultivate those financial and human resources within its control. This is, of course, not a simple undertaking. But it is inherently more practical and yields relatively prompt and effective results for those affected.¹²⁴

As Edmonds put it, "[o]ne of the cardinal characteristics of effective schools is that they are as anxious to avoid things that don't work as they are committed to implementing things that do."¹²⁵ "Among the most important attributes of the culture of effective schools are belief among school administrators and teachers that all students regardless of race or social background, can achieve to some high minimum level of competence. . . ."¹²⁶ Thus, realistically, administrative leadership, attitude, commitment and curricula play a more compelling role in the effective education of children than either race or environment.¹²⁷

In a study which focused upon two inner-city New York public schools, a comparison was made to determine exactly which factors

(10th Cir. 1989), *petition for cert. filed*, 58 U.S.L.W. 3725 (U.S. April 26, 1990) (No. 89-1681). The questions presented to the Court for review are as follows: (i) Does a school district, when seeking determination of unitariness, have burden to show that it has reversed segregation caused by dual system or is school district in addition required to show that it made every effort to achieve greatest possible degree of actual desegregation; (ii) Do plaintiffs, when seeking initiation of court-ordered desegregation remedy premised upon violation of Equal Protection Clause and Title VI of 1964 Civil Rights Act, have burden to show existence of unlawful current segregation, or may presence of constitutional and statutory violations be presumed from current minor racial imbalances coupled with 1954 finding of unconstitutional segregation; and (iii) May appellate court set aside trial court's findings of fact that system is unitary and, based upon legal standards different from those applied by the trial court, make its own evaluation of evidence and rule that plaintiffs are entitled to district-wide desegregation remedy? *Id.*

124. See Carter, *A Reassessment of Brown v. Board*, in *SHADES OF BROWN* 26 (D. Bell ed. 1980).

125. Edmonds, *Effective Education for Minority Pupils*, in *SHADES OF BROWN* 121 (D. Bell ed. 1980).

126. A COMMON DESTINY, *supra* note 64 at 359.

127. In addition to these attributes, the following four "school dynamics" have been associated with effective schools: (1) greater emphasis on collaborative planning among administrators and teachers, (2) a stronger sense of community, (3) well-articulated and shared goals for the school, and (4) improvement in school discipline and order. See Purkey & Smith, *Effective Schools: A Review*, 83 *Elementary Sch. J.* 427 (1983).

contributed to the different achievement levels in the so-called high-achieving and low-achieving schools.¹²⁸ The study revealed that the high-achieving schools focused upon "in school" factors. Specifically, although the children were black and most were from low-income neighborhoods, school administrators and faculty *perceived* them as educable and were fiercely committed to maximizing all of the available resources in an effort to create an optimal learning environment.¹²⁹ Conversely, in the low-achieving schools, administrators and faculty tended to reflect pessimistic attitudes derived from preconceived notions about the effects of race and environment. Accordingly, deep-seated negative perceptions were ultimately translated into low levels of commitment and an inability to create an atmosphere in which a child of any race might be stimulated to achieve.¹³⁰ Consequently, initial pessimism developed into reality.

Creative solutions which seek to optimize available resources are often deemed quixotic because despite positive attitudes and intense levels of commitment, inadequate financial resources ultimately cripple any progress.¹³¹ However, because such "in school" factors rarely correspond to the level of funding in a particular school, this argument may be criticized as being too narrowly focused on the effects of tangible factors. For example, Marva Collins, a black teacher in Chicago, opened a school in her own home.¹³² Her primary assets were not structural facilities or impressive faculty members. Instead, "she believed the children could learn, conveyed this belief and insisted that they work to achieve."¹³³ Although such circumstances are often labeled "exceptional," it is too often forgotten that "most black leaders over 40 years old and much of the black middle class are products of segregated schooling."¹³⁴

128. See Edmonds, *supra* note 125 at 112-13.

129. *Id.*

130. *Id.*

131. For example, the school population of Edgewood, a core-city sector of San Antonio, Texas with little commercial or industrial property, was 90% Mexican-American and 6% black. The assessed property value per student was only \$5960. Therefore, by imposing a property tax of \$1.05 per \$100 of assessed property value, the district could raise only \$26 for the education of each pupil. In contrast, the most affluent metropolitan area in San Antonio, which had only an 18% Mexican-American and less than 1% black population, had an assessed property value of \$49,000. By imposing a property tax of only \$0.85 per \$100 of assessed property value, the district was able to raise \$333 per pupil. See BROWNING, *supra* note 53, at 219.

132. See Bell, *A Model Desegregation Plan* in SHADES OF BROWN 126 (D. Bell ed. 1980).

133. *Id.*

134. *Id.* For instance, for a period of 85 years, Dunbar High School in Washington, D.C. was an academically elite, all-black public school. Notably, the majority of Dunbar's graduates pursued college educations even though most Americans, white or black, did not. Those who

Evidently then, the *Brown* mandate also had a considerable attitudinal impact on those affected by its implementation. It fostered the notion that not only were white schools superior, but that, conversely, black schools were inferior despite the accomplishments of those individuals who had attended and thrived at pre-*Brown* segregated schools.¹³⁵ In light of the modern limitations now placed upon the *Brown* mandate, an attitudinal adjustment is imperative. As we embark upon a new decade of educating children, school administrators and faculty faced with the task of educating black children in black schools must now turn their attention away from "outside" factors. This contemporary approach should not be characterized as defeatist or reversionary, but should be lauded for its recognition that race, environment and finite financial resources do not and cannot portend inferiority. Moreover, this approach requires no further costly litigation, pupil placement plans, or additional buses. Instead, effective education demands a genuine conviction that administrative leadership and academic commitment are uniquely within the control of each individual school. The ultimate challenge for schools, parents and communities in the nineties is to therefore transform available resources into an environment that is conducive to the effective education of black children.

VII. CONCLUSION

Equal educational opportunity was a fundamental component of the *Brown* mandate. Although immediate integration of the schools was the method chosen to effectuate *Brown*, modern reality in the form of demographic shifts, judicial unresponsiveness and modest academic achievements in desegregated schools demands a redefinition of attitudes and policies which will enhance *effective education* of black children. Persistent desegregation litigation not only wastes valuable resources, but perpetuates the attitude that effective education cannot take place in black schools. Educators, administrators and black leaders can no longer afford to neglect those children whose sole alter-

had adequate financial resources were admitted to such prestigious colleges as Harvard, Amherst and Oberlin, and many proceeded to graduate Phi Beta Kappa from these institutions. See Sowell, *Black Excellence: The Case of Dunbar High School*, 35 *The Pub. Interest* 1 (1974). Other secondary schools with similarly impressive records include Booker T. Washington High in Atlanta, Frederick Douglass High in Baltimore and McDonough 35 High, St. Augustine Prep and Xavier Prep., all in New Orleans. Although these schools varied in many factors, their "common denominators have been dedication to education, commitment to the children, and faith in what it was possible to achieve." Sowell, *Patterns of Black Excellence*, 43 *The Pub. Interest* 26, 53 (1976).

135. *Id.*

native is attendance of a black neighborhood school. Further neglect essentially “throws out the baby with the bathwater” simply because the illusory ideal of *Brown* has not been completely accomplished. Black children still require and deserve an effective education which, in the long run, will play a more pivotal role in their future than the race of the child seated next to them.