The Implications of "Resegregation" for Judicially Imposed School Segregation Remedies

Charles T. Clotfelter

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I. INTRODUCTION

In recent years, the loss of white students from desegregating schools has offset significantly the effective integration achieved by desegregation plans for school districts. Regardless of whether losses of white students result from long-term demographic trends or from explicit white avoidance of certain schools, these losses have had the cumulative effect of virtually "resegregating" many schools. The seemingly relentless decline in white enrollment has fostered widespread pessimism in more than a few large urban school systems.[1] Similarly, rural districts, particularly in the South, have experienced significant white losses in the wake of school desegregation. In the face of these trends, some commentators have argued that the process of desegregation itself is causing a significant portion of this "white flight." Consequently, desegregation may contribute signifi-

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1. *See, e.g.,* Oelsner, *Goal of Integration in Schools Elusive,* New York Times, Nov. 20, 1977, at 1, col. 1.

cantly to its own demise as a viable policy. According to James S. Coleman, "The extremely strong reactions of individual whites in moving their children out of large districts engaged in rapid desegregation suggests that in the long run the policies that have been pursued will defeat the purpose of increasing overall contact among races in schools."[2] This argument underlies his widely quoted statement that "the courts are probably the worst instrument of social policy."[3] Despite the undisputed evidence of resegregation and the possibility that desegregation itself may play a role in stimulating white losses, however, whether, or to what extent, resegregation should be considered in formulating desegregation plans is not clear.

This Article examines the implications of changing racial patterns—particularly those tending to resegregate schools—as they bear on the formulation of judicial remedies for school segregation. The Article considers both the effect of changing residential racial patterns upon racial patterns in schools and the effect of school desegregation upon the level of white enrollment. A third question that also may be relevant in this connection concerns the extent to which the possible existence of such resegregation constitutes a legitimate consideration in school desegregation cases. For example, fourteenth amendment requirements may render white flight a wholly irrelevant factor in some desegregation cases. This is a question of constitutional law, however, and will not be addressed directly in this Article.

II. RULINGS AND TRENDS IN SCHOOL DESEGREGATION, 1954-1973

Students of constitutional law are familiar with the succession of Supreme Court decisions concerning school segregation since *Brown v. Board of Education.*[4] The relationship between these decisions and actual racial patterns in public schools, however, is more complex. Table 1 presents historical data over the period roughly from 1950 to 1972 on racial contact and white enrollment in sixteen urban school systems for which data were available.

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2. Coleman, *Recent Trends in School Integration,* EDUC. RESEARCHER, July-August, 1975, at 3.

3. *Id.*

4. 347 U.S. 483 (1954); 349 U.S. 294 (1955).

TABLE 1[5]

WHITE ENROLLMENT, RACIAL COMPOSITION, AND SEGREGATION IN
ELEMENTARY SCHOOLS, 16 SELECTED URBAN DISTRICTS

School District and Year	White Enrollment		Percentage of black students in schools 90-100% black	Percentage of white students in schools 90-100% white
	Number	Percent		
		North & West		
Oakland				
1949-50	25,628	84.1	61.1	82.0
1960-61	21,548	57.9	71.1	56.5
1972-73	10,333	26.1	44.7	0.0
Pasadena				
1950-51	10,317	88.3	26.2	93.0
1961-62	12,047	72.8	60.5	90.7
1972-73	7,751	44.5	0.0	0.0
Indianapolis				
1951-52	36,181	79.8	88.2	91.6
1960-61	42,699	71.7	79.2	80.7
1972-73	43,179	60.2	63.1	69.7
Newark				
1950-51	Not available			
1961-62	16,057	36.9	84.8	35.9
1972-73	6,679	11.6	66.3	0.0
Cincinnati				
1950-51	30,973	77.3	70.7	72.8
1960-61	33,597	65.8	78.0	73.0
1972-73	24,627	52.3	51.9	60.8
Columbus				
1950-51	25,005	83.8	70.2	78.5
1960-61	42,511	75.1	76.8	74.1
1972-73	40,951	70.2	37.8	72.2
Philadelphia				
1950-51	92,324	66.4	84.8	77.5
1960-61	71,246	48.0	75.5	91.5
1972-73	61,003	35.2	72.5	63.2
Pittsburgh				
1950-51	32,449	75.3	51.0	59.9
1957-58	30,244	67.4	73.5	65.9
1972-73	23,617	55.2	56.8	53.6
Milwaukee				
1950-51	40,916	94.1	66.8	92.6
1960-61	53,716	80.9	86.5	92.6
1972-73	44,518	62.3	68.5	65.9

5.   The data in the table were obtained from the following sources: 2 U.S. COMMISSION ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS, Table A.3 (1967); OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF HEALTH EDUCATION AND WELFARE, DIRECTORY OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS IN SELECTED DISTRICTS, FALL 1972 (1974); J. COLEMAN, S. KELLEY, & J. MOORE, TRENDS IN SCHOOL SEGREGATION, 1968-73, Revised Appendix 3 (1975) [hereinafter cited as COLEMAN]; Urban Institute Paper 722-03-01, Revised Appendix (1975). In the 1972-73 (Fall 1972) calculations, elementary schools are defined as those containing no grades higher than eighth.

		Border		
Wilmington				
1950-51	4,259	71.5	100.0	100.0
1960-61	3,114	44.7	89.7	49.6
1972-73	1,610	15.4	44.9	0.0
Washington, D.C.				
1950-51	28,527	48.0	100.0	100.0
1960-61	13,498	16.8	98.8	51.2
1972-73	3,082	3.7	95.7	0.0
Kansas City, Mo.				
1950-51	30,387	82.6	100.0	100.0
1960-61	31,775	69.2	87.0	81.3
1972-73	18,493	43.5	81.3	68.0
		South		
Miami—Dade County				
1950-51	37,749	82.7	100.0	100.0
1960-61	72,348	77.4	99.9	100.0
1972-73	121,037	43.2	29.1	10.5
Charlotte (Charlotte—Mecklenburg in 1972-73)				
1950-51	18,211	71.7	100.0	100.0
1960-61	22,408	69.9	100.0	100.0
1972-73	26,828	65.0	0.0	0.0
Dallas				
1950-51	40,815	81.5	100.0	100.0
1960-61	69,787	77.9	100.0	100.0
1972-73	41,849	45.9	76.6	55.5
Richmond				
1950-51	Not available			
1960-61	11,072	39.9	100.0	100.0
1972-73	8,173	27.4	5.9	0.0

Two measures of segregation are employed: the percentage of black students in predominantly black schools, which are defined as having ninety to one hundred percent black enrollment, and the percentage of white students in predominantly white schools, which are defined as having ninety to one hundred percent white enrollment.[6] The *Brown* decisions had their most immediate effect in the border state districts. These systems terminated de jure segregation soon after the 1954 decision, and, by the 1960-1961 school year, each system had a significant number of white and black students attending schools together. In contrast, little change occurred during this period in either the North or the South. Most Southern districts retained strict de jure segregation through 1960, and as late as 1964,

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6. Because the U.S. Commission on Civil Rights does not define "elementary schools," *see* note 5 *supra*, elementary data may not be strictly comparable for all districts listed. This would seem to be a more serious problem for making inferences about trends in white enrollment than for measuring segregation levels.

only 1.2 percent of Southern black students attended schools with whites.[7]

Significant change in racial patterns in most southern school districts occurred only after three important Supreme Court cases were decided in the late 1960's and the early 1970's. In *Green v. County School Board of New Kent County,*[8] the Court found Virginia's "freedom of choice" plan unacceptable because school boards must establish plans that "promise meaningful and immediate progress"[9] toward desegregation. Then, in 1969, the Court declared in *Alexander v. Holmes County Board of Education*[10] that the "all deliberate speed" desegregation standard was constitutionally impermissible and ordered an immediate end to dual school systems. Finally, the Court ruled in *Swann v. Charlotte-Mecklenburg Board of Education*[11] that federal district courts possessed broad powers to order busing, as well as other remedies, to achieve desegregation. As a result of these decisions, districts throughout the South experienced a sizable increase in contact between black and white students. For example, in the four Southern districts shown in Table 1, the proportion of blacks attending predominantly black schools declined from one hundred percent in 1960-1961 to levels ranging from 76.6 percent in Dallas to zero percent in Charlotte-Mecklenburg in 1972-1973.

A comparison of 1972-1973 segregation levels for black students over all districts in Table 1 reveals two characteristics important to the consideration of school desegregation as a national policy. First, the degree of racial contact still varied significantly between districts, and only part of the variation can be explained by differences

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7.   U.S. COMMISSION ON CIVIL RIGHTS, FULFILLING THE LETTER AND SPIRIT OF THE LAW 4 (1976).

8.   391 U.S. 430 (1968). New Kent County, about one-half of whose residents were black, maintained a dual school system under a "freedom of choice" plan. In three years no white student chose to attend the all-black school and only 15% of the black students chose to enroll in the formerly all-white school. The Court held that, although under some circumstances a "freedom of choice" plan is permissible, the New Kent County plan was inadequate to achieve a racially nondiscriminatory school system. *Id.* at 441.

9.   *Id.* at 439.

10.   396 U.S. 19 (1969). In a per curiam opinion the Court ordered that the Mississippi school districts begin immediate operation as a unitary system excluding no one on grounds of race or color. To ensure compliance with the ruling, the Court ordered supervision by the Fifth Circuit Court of Appeals.

11.   402 U.S. 1 (1971). In *Swann* the district court ordered the Charlotte-Mecklenburg School District to provide a plan for immediate desegregation as mandated by *Green*. Finding this plan inadequate, the court then appointed its own expert to produce a plan and adopted a combination of the two. The Supreme Court found the remedies ordered—limited use of racial ratios, alteration of attendance zones, busing, and faculty reassignment—within the district court's power to fashion equitable remedies.

in local racial makeup. The percentage of blacks in predominantly black schools, for example, varied among districts with similar racial compositions: 81.3 percent in Kansas City, 76.6 percent in Dallas, 29.1 percent in Miami, and zero percent in Pasadena. Second, Southeastern schools had equaled or surpassed the levels of racial integration achieved in other parts of the country. An examination of the proportion of blacks attending predominantly black schools demonstrates that Miami, Charlotte, and Richmond were more integrated than all but one of the non-Southern districts.

TABLE 2[12]

BLACK-WHITE CONTACT AND SCHOOL DESEGREGATION
BY REGION, 1972

	Proportion		Schoolmates		Black-White Desegregation	
	White (1)	Black (2)	Whites for Average Black (3)*	Blacks for Average White (4)**	Within district (5)***	Total (6)****
U.S.	.77	.16	.34	.07	.63	.44
New England	.92	.06	.47	.03	.67	.51
Middle Atlantic	.78	.16	.28	.06	.57	.36
Border	.79	.21	.28	.07	.56	.35
Southeast	.68	.30	.44	.19	.81	.65
West South Central	.76	.17	.28	.06	.52	.37
East North Central	.86	.13	.28	.04	.43	.33
West North Central	.89	.09	.30	.03	.44	.34
Mountain	.80	.03	.52	.03	.75	.65
Pacific	.75	.08	.29	.02	.58	.39

*The proportion white in the average black student's school.
**The proportion black in the average white student's school.
***The proportion white in the average black student's school divided by the maximum possible if schools were racially balanced within districts.
****The proportion white in the average black student's school divided by the maximum possible if schools were racially balanced throughout the region; column (3) ÷ column (4).

In order to obtain a more complete view of desegregation in the country, Table 2 compares indices of racial contact in the major regions of the country. Columns (3) and (4) show the average "exposure" rates between white and black students in each region.

12. COLEMAN, *supra* note 5, Table 7. The "Border" region comprises Delaware, Maryland, West Virginia, and Kentucky, and the "Southeast" region includes all other states in the South Atlantic and East Central census regions. The "Pacific" region exludes Hawaii and Alaska.

Calculated from data gathered for individual schools, these exposure rates indicate the racial compositions of schools attended by the average black and white students. According to these data, the average black child attended a school that was thirty-four percent white, while the average white child attended a school that was seven percent black. These exposure rates also may be used to calculate various measures of relative segregation and desegregation. For example, indices of desegregation are calculated that give actual black-white exposure as a percentage of the maximum exposure that would be obtained by racially balancing all schools within district only (column (5)). Column (6) presents similar measures, but in this case actual rates of desegregation are divided by the maximum rate of desegregation that would be achieved if all schools within the particular region were brought into perfect racial balance, regardless of school district boundaries. One should note that these measures of desegregation do not "favor" regions with either high or low proportions of blacks. Because school districts vary in their racial composition, the figures in Column (6) are uniformly lower than the corresponding figures in Column (5). Thus even the attainment of racial balance within individual school districts would leave disparities between schools located in different districts.

According to these measures, Southeastern schools exhibited the highest degree of desegregation in 1972, achieving eighty-one percent of the possible total black-white exposure within the existing system of school districts. In that region the average white student attended a school that was nineteen percent black, compared to the United States average of only seven percent. This high level of contact was influenced both by the higher proportion of blacks in the region and by the higher degree of desegregation attained. North Central schools, on the other hand, had the highest degree of segregation for both categories. The legal status of Northern segregation changed after 1973 with the Supreme Court's decision in *Keyes v. School District No. 1.*[13] In *Keyes* the Court ruled that federal courts could order remedial desegregation in Northern districts that had used feeder systems and racial gerrymandering of attendance zones to maintain school segregation, even though these

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13.   413 U.S. 189 (1973). In *Keyes* the Court reviewed a challenge to the Denver school system. Although Denver did not practice statutory segregation, its school board maintained a dual system by manipulating attendance zones, designating "feeder" schools on the basis of race, selecting school sites, using mobile classrooms, and related techniques. The Court determined that proof of such actions establishes a prima facie case of intentional segregation and shifts to the school board the burden of proving that its neighborhood school system is not motivated by segregative intent.

districts had employed no explicit policy of de jure segregation. Therefore, patterns of racial contact possibly are more similar between North and South today than they were in 1972.

III. THE METROPOLITAN CONTEXT: SEGREGATION AND SUBURBANIZATION

As important as judicial rulings have been in defining the effective extent of public school segregation, the impact of these decisions cannot be understood without considering the prevailing trends in metropolitan residential patterns since World War II. Metropolitan areas have been transformed by increasing suburbanization of jobs and people and by increasing concentration of minorities in central cities. These two trends, which are summarized in Table 3, are related because whites have been over-represented in the movement to the suburbs.

TABLE 3[14]

AGGREGATE RACIAL COMPOSITION OF U.S. METROPOLITAN AREAS, 1950-1974

	1950	1960	1970	1974
Whites in central cities as percent of metropolitan whites	55.0%	46.9%	41.0%	38.4%
Blacks in central cities as percent of metropolitan blacks	74.7	78.3	78.3	77.1
Percent black				
Metropolitan areas total	9.4	10.6	12.0	12.5
In central cities	12.3	16.6	20.6	22.3
Outside of central cities	5.5	4.6	4.8	5.0

From 1950 to 1974, suburbanization reduced the proportion of whites living in central cities from 55.0 to 38.4 percent of the total metropolitan area white population. In contrast, the proportion of metropolitan blacks living in central cities—approximately three-fourths—remained almost constant. This difference in the net rates of suburban movement, which also reflects significant black migration into central cities over part of the period, has resulted in an increase in the concentration of blacks and other minorities in central cities. The percentage of blacks among central city residents nearly doubled between 1950 and 1974, increasing from 12.3 to 22.3 percent in all metropolitan areas. In the largest cities minority con-

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14. Sources: for 1950, 1960, and 1970: U.S. BUREAU OF CENSUS, DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, Table 15 (1972) (covering 243 Standard Metropolitan Statistical Areas as defined in 1970); 1974: A. Schnare, *Residential Segregation by Race in U.S. Metropolitan Areas: An Analysis Across Cities and Over Time,* Tables 1 and 2 (Urban Institute Working Paper 246-2, 1977).

centration is even more pronounced, and this concentration natu-
rally affects the racial makeup of the public schools in these cities.
In 1973, for example, ten of the nation's twenty largest central city
school systems had black majorities. This included four systems in
which blacks accounted for more than seventy percent of the stu-
dents: Detroit, New Orleans, Atlanta, and Washington, D.C.[15]
These urban enrollment trends place severe constraints on the abil-
ity of desegregation plans to achieve "integrated" education. More-
over, because separate districts with markedly different racial com-
positions exist within a single metropolitan area, segregation in the
metropolitan area would remain even if all segregation within indi-
vidual districts were eliminated.

There are three basic causes of the parallel trends of suburbani-
zation and racial separation in metropolitan areas. First, "natural"
forces such as new land-intensive production techniques, improved
truck and automobile transportation, advances in communications
and remote data processing, and rising family incomes make subur-
ban locations for firms and homes both more feasible and more
desirable. When examined in conjunction with other trends and
statistics, the increased attractiveness of the suburbs has had a
distinct effect upon metropolitan racial patterns. Because whites
have had higher incomes, they have demanded more new suburban
housing than have blacks. At the same time the migration of blacks
from the South in the 1960's increased the proportion of nonwhites
in large Northern central cities. There is evidence, however, that
this migration has changed direction since 1970.[16] Finally, recent
demographic changes in the white population have caused an abso-
lute decline in the number of white children of school age. From
1968 to 1974, the number of white school-age children declined an
average of 0.75 percent per year while the proportion of blacks
among all elementary and secondary students increased from 13.4
to 14.4 percent.[17]

Second, major federal policies, particularly those explicitly
aimed at stimulating home ownership, have contributed to decen-
tralization and, indirectly, to racial separation. Income tax deduc-
tions for mortgage interest and property taxes, as well as a variety
of policies aimed at depressing mortgage interest rates, have stimu-

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15. COLEMAN, *supra* note 5, Revised Appendix 3.

16. U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS: SERIES P-25, No. 460,
PRELIMINARY INTERCENSAL ESTIMATES OF STATE AND COMPONENTS OF POPULATION CHANOE, 1960
TO 1970, at 13; *id.* SERIES P-20, No. 285, MOBILITY OF THE POPULATION OF THE UNITED STATES,
MARCH 1970 TO MARCH 1975, at 61-62.

17. *Id.* SERIES P-20, No. 294, SCHOOL ENROLLMENT-SOCIAL AND ECONOMIC CHARACTERIS-
TICS OF STUDENTS, OCTOBER 1975, at 7 (June 1976 Advance Report).

lated the demand for new homes. Most new homes, in turn, have been built in suburbs. Federal policies also have lowered the cost of commuting from suburban communities to central business districts. For instance, the interstate highway system and other federal highway projects have increased the feasible commuting distance at little cost to suburban residents.

Forces of technology, demography, competitive markets, and public policy therefore are largely responsible for the suburban movement in metropolitan areas and for the tendency of many new suburban residents to have above-average incomes. The generally higher incomes of whites, however, alone do not explain why whites have represented so large a portion of this "flight to the suburbs." A third group of factors must be examined in order to explain the white suburban predominance. Such public policies as FHA practices favoring low density dwellings and avoiding racially mixed neighborhoods in making loans, as well as local large-lot zoning restrictions, have fostered both economic and racial residential segregation. More directly, outright discrimination by loan institutions, real estate brokers, and homeowners strengthens segregated patterns. Local enforcement of racially and nonracially restrictive covenants into the 1940's perpetuated this discrimination. In addition, local governmental practices such as segregation of public housing, limitation of road access between white and black neighborhoods, and segregation of public schools have had a pervasive, though uncertain, effect on residential racial patterns.[18] In order to assess the contribution of governmental action to current residential segregation, the effects of these various factors must be distinguished. This, however, is likely to remain a difficult and complex task.

IV. THE EFFECT OF DESEGREGATION ON "WHITE FLIGHT"

Among the possible explanations for the movement of whites out of central cities, one that has special relevance to judicial remedies for school segregation is the notion that the process of desegregation itself has caused whites to leave central cities.[19] Such "white

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18. For a more detailed discussion of these influences, see Taeuber, *Demographic Perspectives on Housing and School Segregation,* 21 WAYNE L. REV. 833 (1975).

19. White flight, and the possible existence of a "tipping point" (the proportion of nonwhites in a given area that triggers complete white withdrawal from the area), has been noted by a number of courts. Wright v. Council of City of Emporia, 407 U.S. 451 (1972); Monroe v. Board of Comm'rs, 391 U.S. 450 (1968); Otero v. New York City Hous. Auth., 484 F.2d 1122 (2d Cir. 1973); Hart v. Community School Bd., 383 F. Supp. 699 (E.D.N.Y.), *appeal dismissed,* 497 F.2d 1027 (2d Cir. 1974), *aff'd,* 512 F.2d 37 (2d Cir. 1975); Mapp v. Board of Educ., 366 F. Supp. 1257 (E.D. Tenn. 1973), *aff'd,* 525 F.2d 169 (6th Cir. 1975); Hoots v.

flight" from desegregation may be manifested by enrollment in private schools, actual residential moves to other school attendance areas within a district, or moves to nearby school districts. Regardless of which exit route is selected, the loss of whites during the process of desegregation tends to limit the ability of the courts to determine actual enrollment results. Moreover, a change in the racial composition of the district occurs if white flight creates a net loss of whites from the district. Two questions arise in regard to the apparent connection between white flight and desegregation. First, does empirical evidence demonstrate that desegregation causes whites to leave desegregating districts? Second, if there is a causal relation, what implication does "white flight" create for school desegregation cases?

The determination of the effect of desegregation upon white enrollment losses involves three principal empirical tasks: the measurement of the progress of desegregation, the measurement of white enrollment losses, and the determination of the correlation between the desegregation and white enrollment variables when other important variables are statistically controlled for or otherwise held constant. Some other variables that might affect white enrollment losses include demographic trends, incomes of blacks and whites, housing prices, fiscal variables, and trends in employment location. Recent empirical studies by social scientists[20] have performed these analytical tasks with varying degrees of success. While the studies are not unanimous in their conclusions, most support the notion that school desegregation has a significant effect on white losses from desegregating districts. Perhaps the best known study in this group, conducted by Coleman, Kelley, and Moore,[21] analyzes enroll-

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Pennsylvania, 359 F. Supp. 807 (W.D. Pa. 1973). The phenomenon of "white flight" in the context of school desegregation also has been the subject of a number of empirical analyses. *See* note 20 *infra.*

20. *See, e.g.,* COLEMAN, *supra* note 5; Clotfelter, *School Desegregation, "Tipping," and Private School Enrollment,* 11 J. HUMAN RESOURCES 28 (1976); Clotfelter, *The Detroit Decision and 'White Flight,'* 5 J. LEGAL STUD. 99 (1976); Clotfelter, *Spatial Rearrangement and the Tiebout Hypothesis: The Case of School Desegregation,* 42 S. ECON. J. 263 (1975); Clotfelter, *Urban School Desegregation and Declines in White Enrollment: A Reexamination,* J. URB. ECON. (forthcoming); Jackson, *Reanalysis of Coleman's 'Recent Trends in School Desegregation,'* EDUC. RESEARCHER, November 1975, at 21; Lord & Catau, *School Desegregation Policy and Intra-School District Migration,* 57 SOC. SCI. Q. 784 (1977); Pettigrew & Green, *School Desegregation in Large Cities: A Critique of the Coleman 'White Flight' Thesis,* 46 HARV. EDUC. REV. (1976); Rossell, *School Desegregation and White Flight,* 90 POL. SCI. Q. 675 (1975-76); R. Farley, School Desegregation and White Flight (1975) (paper presented at the Symposium on School Desegregation and White Flight, Center for National Policy Review and Center for Civil Rights); M. Giles, Determinants of Resegregation: Compliance/Rejection Behavior and Policy Alternatives (1976) (paper prepared for the National Science Foundation); C. Rossell, *A Reply to Professor Coleman's Response* (1976) (unpublished manuscript).

21. COLEMAN, *supra* note 5.

ment data from sixty-seven districts from 1968 to 1973 and concludes that desegregation significantly aggravates white enrollment losses from central city districts.[22] Furthermore, the effect is strongest in the largest school districts. The few studies concluding that desegregation has no effect on white enrollment suffer as a group from analytical problems that render their conclusions questionable.[23]

The most pervasive finding of the empirical studies on this subject is that white losses tend to accelerate from districts in which desegregation plans attempt to increase the proportion of blacks in the average white student's school. This conclusion corresponds with common perceptions of white attitudes as well as with recent survey evidence. A 1975 survey, for example, indicated that whites were much more likely to object to sending their children to integrated schools as the proportion of blacks in those schools increases.[24] While only 6.8 percent said that they would object to schools attended by only a few blacks, 27.3 percent said that they would object to schools in which half the students were black, and 57.6 percent said that they would object to sending their children to schools in which black students would constitute a majority.[25]

Despite these survey results, empirical studies of actual white losses indicate that the effect of school racial mix upon the parents of white students is by no means uniform over all districts. The effect appears to be strongest in the largest urban districts (over 80,000 in enrollment) and in rural districts with high proportions of blacks. The responsiveness of whites to desegregation also appears to be nonlinear; that is, beyond a certain threshold of racial composition, whites become increasingly sensitive to desegregation. For example, in large urban districts in which whites attended schools that were on the average over six percent black, white enrollment decreased about one percent for every one percent increase in this white exposure rate. In districts with white exposure rates below six percent, on the other hand, changes in the white exposure rate had

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22. Where an index of segregation is defined as one minus measures such as those in column (5) of Table 2, desegregation over time in this study was defined by the change in the index of segregation.

23. For example, the measures used for desegregation in the Farley and Rossell studies, *supra* note 20, do not reflect changes in black-white contact, and Jackson, *supra* note 20, does not employ a multivariate analysis in his reanalysis of Coleman's data. For an extended discussion of this point, see Clotfelter, *School Desegregation as Urban Public Policy,* in ISSUES IN URB. ECON. II (P. Mieszkowski & M. Straszheim eds.) (forthcoming).

24. U.S. NATIONAL CENTER FOR EDUCATIONAL STATISTICS, THE CONDITION OF EDUCATION 206 (1976).

25. *Id.*

no significant effect. Smaller urban districts revealed a similar pattern, although the effect upon white losses is markedly less.[26] Nonlinear responses also were found in studies of private school enrollment in largely rural districts in the South. Threshold levels were higher, ranging from thirty to fifty percent black, reflecting in part the lower incomes and the limited ability of rural white Southern families to pay private school tuitions.[27]

The effect of school racial composition on white losses is conditioned by several other variables. As noted above, large urban districts appear to display greater white sensitivity to desegregation than do small urban districts, although there is no satisfactory explanation for this difference. Second, white losses appear to proceed more rapidly in districts with larger proportions of blacks, holding constant all measures of desegregation. This phenomenon may be explained partly in terms of the common pattern of racial transition in central city residential areas and the growth of a predominantly nonwhite central city. Regional differences in white responses to desegregation are not significant when this racial composition effect is held constant. That is, if other variables are statistically held constant, whites in the South are no more likely to leave a desegregating district than are whites in other regions. Finally, whites with high incomes appear to be more likely to avoid desegregated schools than are whites with lower incomes. Table 4 reveals the combined effect of income and racial composition for 1972 private school enrollment in Georgia counties.

Private school enrollment rates generally are higher in counties with more high-income white residents. In addition, the nonlinear effect of racial composition once again is evident. In counties with fewer high-income whites, thresholds for private school enrollment occur when black enrollment in the average white student's school reaches thirty percent and again at fifty percent. In contrast, those counties with more affluent whites have thresholds at twenty and fifty percent black enrollment.[29]

The relationship between desegregation and white flight must be considered in the broad context of suburban movement and resi-

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26. Clotfelter, *Urban School Desegregation and Declines in White Enrollment: A Reexamination, supra* note 20. Exposure rates referred to in this study were calculated in a manner which left them unaffected by the changing racial compositions brought about by white flight.

27. Giles, *supra* note 20; Clotfelter, *School Desegregation, 'Tipping,' and Private School Enrollment, supra* note 20.

28. Computed from HEW statistics, unpublished nonpublic school enrollment statistics from the Georgia Department of Education, and U.S. BUREAU OF CENSUS, DEPARTMENT OF COMMERCE, CENSUS OF POPULATION 1970, CHARACTERISTICS OF THE POPULATION (Georgia 1973).

29. For similar findings from survey data, see Giles, *supra* note 20, at 87.

TABLE 4[23]

PERCENT OF WHITES IN NONPUBLIC SCHOOLS BY INCOME
AND DESEGREGATION, GEORGIA COUNTIES

Percent Black in Average White Student's Public School, Corrected*		Percent of Whites in Nonpublic Schools, 1972		Number of Counties**
Over	Including	Counties with 0-2% of white families with incomes $25,000 or more, 1969	Counties with more than 2% of white families with incomes $25,000 or more, 1969	
0%	10%	1.3%	2.9%	12
10	20	1.1	6.9	18
20	30	1.5	15.6	15
30	40	7.0	13.9	23
40	50	11.7	12.4	23
50	60	25.6	29.4	17
60		36.1	33.2	14

*Corrected for white enrollment losses by assuming whites in nonpublic schools are re-assigned to schools for the purpose of measurement so as to increase all school enrollments by the same proportion. For a discussion of this methodology, see Clotfelter, *Alternative Measures of School Desegregation: A Methodological Note*, L. & ECON. (forthcoming). Each interval is inclusive of the upper limit.
**Data were available for 121 counties.

dential segregation in urban areas. These findings suggest that, to the extent individual schools within a district differ in racial composition, uneven desegregation contributes to increased racial segregation within the district.[30] Furthermore, since desegregation causes whites in central city schools to face higher proportions of blacks than are faced by whites in suburban schools, urban desegregation accelerates both white suburbanization and metropolitan segregation. No comprehensive study has been made to determine the extent to which white avoidance of desegregation contributes to residential segregation. Recent evidence on trends in residential segre-

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30. The Supreme Court offered a similar opinion in *Swann v. Charlotte-Mecklenburg Bd. of Educ.* in discussing the policy of building new schools or expanding old ones so as to maintain effective segregation. As the Court stated:

Over the long run, the consequences of the choices will be far reaching. People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have impertant impact on composition of inner-city neighborhoods. . . . Such a policy does more than simply influence the short-run composition of the student body of a new school. It may well promote segregated residential patterns which, when combined with "neighborhood zoning," further lock the school system into the mold of separation of the races.

402 U.S. at 20, 21. For similar statements, see the Court's discussion in *Keyes*, 413 U.S. at 202; Taeuber, *supra* note 18.

gation in metropolitan areas, however, suggests that this effect may not be inconsequential. Table 5 presents measures of white residential exposure to blacks within census tracts of metropolitan areas.

TABLE 5[31]

WHITE RESIDENTIAL EXPOSURE TO BLACKS, 1960-1970

		White Residential Exposure Rates to Blacks		
Region	Number of SMSA's in Sample	1960	1970	Percentage Change
North East	32	.0405	.0494	+22.0
North Central	35	.0330	.0336	+ 1.8
South	40	.0804	.0711	−11.6
West	23	.0231	.0270	+16.9
United States	130	.0420	.0449	+ 6.9

*This exposure rate measures the percent black in the average white's census tract. Census tracts are residential areas typically containing several thousand people.

The growth pattern in minority residential areas has slightly increased exposure rates in the country as a whole between 1960 and 1970. Despite these general trends, increased segregation in the South has reduced the average white's exposure to blacks. Because the South experienced the decade's most intensive school desegregation efforts, it is likely that some of the increased residential segregation is attributable to school desegregation. The traditional "marble cake" pattern of Southern cities allowed whites and blacks to live in relatively close proximity while maintaining strict segregation of many public facilities, including the schools. Only with desegregation did a necessary correlation arise between neighborhood racial composition and school racial composition. Consequently, white desires for predominantly white schools could provide one explanation for the movement toward Northern-style de facto residential segregation in the South in the wake of court-ordered school desegregation.[32]

V. "WHITE FLIGHT" AND TWO ISSUES IN DESEGREGATION CASES

The empirical finding that school desegregation causes white

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31. Schnare, *supra* note 14, Table 5.

32. As suggested in section III above, a large number of factors influence regional residential segregation trends. In fact, absolute indices of segregation in the South for 1960 are higher than those for the Northeast and the West. *See* Schnare, *supra* note 14, Table 8; K. TAEUBER & A. TAEUBER, NEGROES IN CITIES: RESIDENTIAL SEGREGATION AND NEIGHBORHOOD CHANGE, Table 5 (1972).

avoidance and increased residential segregation generates several implications for the implementation of recent desegregation decisions. The first concerns the proper weight that should be given to anticipated white reactions in devising desegregation plans. This is part of the more general question of the proper extent of remedial desegregation. The second question concerns the appropriate geographical coverage of desegregation plans.

A.   *White Avoidance and the Proper Extent of Remedial Desegregation*

The relevance of white avoidance of desegregation to the formulation of desegregation orders arises in two contexts. The first is the question the Supreme Court answered negatively in its second *Brown* decision: should a likelihood of white flight deter a desegregation order? According to the Court, "it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."[33] Similarly, in *Mapp v. Board of Education,*[34] the Sixth Circuit adopted the lower court's position that the concern for minimizing white flight could not be a "limiting factor" on the requirements of the fourteenth amendment: "Concern over 'white flight' . . . cannot become the higher value at the expense of rendering equal protection of the laws the lower value."[35]

Some courts, however, have suggested the possibility of rewriting a desegregation plan to achieve greater integration if white departure renders the initial plan ineffective. In this second context, therefore, the presence of white flight may play an important role in the formulation of desegregation plans. In *Wright v. Council of the City of Emporia*[36] the Supreme Court suggested that potential

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33. Brown v. Board of Educ., 349 U.S. 294, 300 (1955).

34. 525 F.2d 169 (6th Cir. 1975).

35. *Id.* at 171 (quoting 366 F. Supp. 1257, 1260 (E.D. Tenn. 1973)). The district court found constitutionally impermissible a Chattanooga desegregation plan designed to accomplish a "stable racial mix" by retaining certain all-black or substantially all-black schools in order to assure a white majority in certain previously all-white schools. 366 F. Supp. at 1259. The Sixth Circuit affirmed the lower court. 525 F.2d 169 (6th Cir. 1975).

36. 407 U.S. 451 (1972). Prior to 1969, schools in Emporia, Virginia, were part of a county-wide system. When the district court ordered system-wide desegregation, Emporia established an independent city school district, thus avoiding the court's plan to assign all students by grade level regardless of race. The district court enjoined Emporia's separation from the county school district. 309 F. Supp. 671 (E.D. Va. 1970).

The Fourth Circuit reversed, finding no intent on the part of the city to perpetuate segregation. 442 F.2d 570 (4th Cir. 1971). In affirming the district court holding, the Supreme Court stated that the proper focus should be upon the effect of the city's action rather than upon the motivations of the city officials. 407 U.S. at 461-62.

white flight would be one proper consideration in fashioning a deseg-
regation remedy. In disallowing the creation of a predominantly
white city school system, the Court noted that racial disparities
between the resulting city and county systems would be worse than
previous enrollment statistics indicated because white enrollment
in the predominantly black county system would decrease.[37] The
Court, however, refused to hold explicitly that disparity in the racial
compositions of city and county school systems alone would be suffi-
cient grounds for injunctive relief.[38]

In *Spangler v. Pasadena City Board of Education*[39] the Ninth
Circuit upheld the validity of a court-supervised desegregation plan
requiring periodic readjustments in attendance zones so that no
school would have "a majority of any minority students."[40] Read-
justment of attendance zones not only would counteract the effect
of selective white withdrawals, but also would offset the effect of
other residential changes, such as growth in the minority population
or white relocation unrelated to school desegregation. In *Pasadena
City Board of Education v. Spangler,*[41] however, the Supreme Court
rejected such a plan, ruling that the constitutional requirement of
desegregation is achieved once the former violations are corrected
through nondiscriminatory reassignment. According to the Court,
"having once implemented a racially neutral attendance pattern in
order to remedy the perceived constitutional violations on the part

37. 407 U.S. at 464.
38. *Id.*
39. 519 F.2d 430 (9th Cir. 1975), *vacated and remanded,* 427 U.S. 424 (1976). The
Pasadena school system operated under a "no majority of any minority" desegregation plan.
After failing to meet this standard for three out of four years, the Board of Education moved
to dissolve the district court's injunction against maintenance of schools with a majority of
any minority and substitute a freedom of choice plan. The Board argued that failure to
comply with the plan was the result of white flight caused by the plan itself. The district court
found no merit in this argument since the Board failed to prove why students left the district.
375 F. Supp. 1304 (C.D. Cal. 1974).

The Ninth Circuit affirmed, holding that white flight does not excuse the school system
from its constitutional duty to desegregate. Since the Board of Education failed to comply
with the standard for three successive years, the district court did not abuse its discretion in
retaining jurisdiction over the controversy. Once a court determines that racial discrimination
has been eliminated, however, the need for annual adjustment no longer exists. 519 F.2d 430
(9th Cir. 1975).

40. 519 F.2d at 435.
41. 427 U.S. 424 (1976). The Supreme Court vacated the lower court ruling and re-
manded the case. Justice Rehnquist wrote the majority opinion, which held that the district
court had exceeded its authority in ordering annual readjustment of school districts to pre-
vent the existence of a majority of any minority in any school. The Court found that post-
1971 shifts in racial balance stemmed from demographic and independent residential trends,
not from Board of Education actions. Thus, according to the Court, the district court per-
formed its full function in instituting an originally neutral plan.

of the defendants, the District Court had fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns."[42]

In two subsequent cases the Court refined its principle of limiting the permissible range of desegregation tools to remedial changes only. Concurring in *Austin Independent School District v. United States*,[43] Justice Powell suggested that a city-wide busing plan went beyond the point "necessary to eliminate the effect of any official acts or omissions."[44] More specifically, the Court stated that "there is no evidence in the record available to us to suggest that, absent those constitutional violations, the Austin school system would have been integrated to the extent contemplated by the plan."[45] Subsequently, in *Dayton Board of Education v. Brinkman*,[46] the Court enunciated an explicit rule to determine the proper remedial action for constitutional violations in school segregation:

> The duty of both the District Court and of the Court of Appeals, in a case such as this, where mandatory segregation by law of the races in the schools has long since ceased, is to first determine whether there was any action in the conduct of the business of the school board which was intended to, and did in fact, discriminate against minority pupils, teachers or staff. . . . All parties should be free to introduce such additional testimony and other evidence as the District Court may deem appropriate. If such violations are found, the District Court in the first instance, subject to review by the Court of Appeals,

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42. *Id.* at 436, 437.

43. 429 U.S. 990 (1977). The United States brought a Civil Rights Act suit charging the Texas Education Agency and the Austin school district with operating a school system that discriminated against blacks and Mexican-Americans. After remand and a second appeal, the Fifth Circuit held that the school board's assignment of students to neighborhood schools with knowledge that the city's housing patterns are segregated, constitutes a prima facie case of de jure segregation, and busing is appropriate when alternative remedies are ineffective. United States v. Texas Educ. Agency, 532 F.2d 380 (5th Cir. 1976). In a memorandum decision, the Supreme Court vacated and remanded for reconsideration in light of Washington v. Davis, 426 U.S. 229 (1976). Justice Powell wrote a concurring opinion.

44. 429 U.S. at 994 (Powell, J., concurring).

45. *Id.* The constitutional violations may be either intentional discrimination against minorities or simple failure to fulfill affirmative obligations to eliminate segregation. *Id.*

46. 433 U.S. 406 (1977). The district court held that the Dayton, Ohio school board had engaged in racial discrimination in the operation of the city's schools. The court relied on a finding of a three-part "cumulative violation" of the equal protection clause: (1) substantial racial imbalance in student enrollment patterns throughout the system; (2) the use of optional attendance zones allowing some white students to avoid assignment to predominantly black schools; and (3) rescission of a 1972 Board resolution acknowledging responsibility for segregated patterns and calling for remedial measures. *See* 503 F.2d 684, 686 (6th Cir. 1974). After several reversals the district court fashioned a system-wide remedy that was affirmed by the Sixth Circuit. 539 F.2d 1084 (6th Cir. 1976).

The Supreme Court vacated and remanded for further findings. The Court held that, absent a showing that racial imbalances resulted from intentionally segregative actions by the Board of Education, such imbalances in Dayton schools do not violate the equal protection clause and are not sufficient to justify the sweeping remedies ordered by the district court. To impose a system-wide remedy, the court must show system-wide discrimination.

must determine how much incremental segregative effect these violations had on the racial distribution of the Dayton school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. The remedy must be designed to redress that difference, and only if there has been a systemwide impact may there be a systemwide remedy.[47]

Thus de facto segregation of schools apparently will be allowed if it results from "neutral" assignments of pupils and residential segregation not attributable to public actions.[48] Presumably, residential segregation produced by white flight will not be attributed to public actions.

Implementation of the Court's limited remedy principle faces at least two serious obstacles. First, the empirical determination of the share of segregation attributable to state action is exceedingly problematical. Many factors contribute to residential segregation, adequate data are difficult or impossible to obtain, and the interactions among the variables are complex. Assuming that an empirical separation of effects can be achieved, however, a further problem arises because the limited remedy principle rests upon a basic conceptual ambiguity in its assessment of "white flight."

Consider a hypothetical school district for which a desegregation plan is being formulated. While the analysis can be applied to an entire district, in the present example the hypothetical area will represent a large section of a single district, such as East Boston or southeast Atlanta. Residential racial contact between blacks and whites is calculated in terms of the percentage of blacks residing in

47. 433 U.S. at 420. In rejecting the term "cumulative violation" as ambiguous, *id.* at 417, Justice Rehnquist questioned whether any one of the three acts constituted a fourteenth amendment violation. The Justice further suggested that courts may fashion remedies to redress only the actual effect of school board violations on racial distribution. *Id.* at 420.

48. The need to prove some discriminatory intent has become a feature in several aspects of the civil rights area. *See, e.g.,* Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976). In *Washington* plaintiffs brought suit under the fifth amendment, alleging that because a disproportionate number of blacks failed a training program admission test used by the Washington, D.C., police department, the test was discriminatory. The Supreme Court held that although a showing that a job test may have had a disproportionate impact on a minority person establishes a violation of Title VII, an equal protection violation is established only by a showing of subjective intent to discriminate.

In *Arlington Heights* the city refused to rezone certain property on which MHDC sought to build low income housing. The Supreme Court rejected an equal protection challenge to the zoning decision, holding that the plaintiffs failed to prove discriminatory intent or purpose. Relying upon the principles established in *Washington,* the Court announced that in an equal protection challenge, disproportionate impact is a relevant but not a sufficient factor to demonstrate a violation. 429 U.S. at 265. On remand, the Seventh Circuit concluded that the failure to rezone may be deemed illegal under the Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3619 (1970 & Supp. V 1975), even in the absence of discriminatory intent. Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977).

the average white resident's neighborhood. For simplicity, assume these neighborhoods correspond to current school attendance areas. Thus a policy of "neighborhood" desegregation—in which schools mirror the racial makeup of neighborhoods—causes the exposure rate of school children to be equal to their residential exposure rate.[49] Further assume that social scientists have succeeded in decomposing existing residential patterns into additive portions explaining the total. Assume also that in the hypothetical school area segregation, or at least incomplete desegregation, has existed. Consequently racial exposure in schools is less than racial exposure in neighborhoods. Thus the problem for the school system or the district court, as reflected in Table 6, is to formulate a desegregation plan that will specify school exposure rates for years c and d.

TABLE 6

DECOMPOSITION OF RESIDENTIAL EXPOSURE RATES FOR
WHITES FOR A HYPOTHETICAL AREA

Component or Measure	Abbrevi-ation	Years			
		a	b	c	d
1. Actual residential exposure of whites to blacks [(2)+(3)+(4)]*	H	.29	.24	.21	.17
2. Residential exposure in the absence of school desegregation and non-school public discrimination	H_n	.30	.28	.26	.24
3. Cumulative change in exposure due to non-school public discrimination	H_s	0	-.03	-.03	-.03
4. Cumulative change in exposure due to resegregation (actual)	H_r	-.01	-.01	-.02	-.04
5. Cumulative change in exposure due to resegregation if "neighborhood" desegregation policy were followed (hypothetical)	$H_r{}^*$	-.02	-.04	-.06	-.08
6. School exposure rate of whites to blacks**	E	.10	.10	—	—

*Percent black residents in average white resident's neighborhood.

**Percent black residents in average white resident's neighborhood school. A policy of "neighborhood" desegregation would imply H = E.

Table 6 presents information for the hypothetical area. The years given are not necessarily consecutive or evenly spaced, but are only chronological. Because the exposure rate in the average white student's school (.10 in year a) is lower than the exposure rate in the average white neighborhood, the schools in the hypothetical

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49. Alternatively, this analysis can be carried out using segregation indices rather than through exposure rates.

area are segregated. One implication of this disparity is that the racial exposure in schools typically differs from that in the neighborhoods, even to the point that some all-black schools may exist. The Table reveals that over time, residential exposure rates for whites have declined as a result of such "natural" causes as employment relocation and rising incomes (row (2)), public nonschool discrimination between years a and b (row (3)), and white flight from partially desegregated schools leading to resegregation (row (4)). The actual resegregation, however, probably is less than that which would have occurred if full "neighborhood" desegregation had been implemented in the past. Row (5) presents the cumulative changes for "neighborhood" desegregation.[50]

TABLE 7

DETERMINATION OF PROPER LEVEL OF SCHOOL
DESEGREGATION IN A HYPOTHETICAL AREA

Desegregation Criterion	Set School Exposure Rate Equal to:	Resulting School Exposure Rate of Whites to Blacks (from example, Table 6)	
		year c	year d
I. Simple-minded "neighborhood" desegregation. Remove effects of present school segregation only.	Actual residential exposure $(E = H)$	.21	.17
II. Remove effects of present school segregation and past non-school public discrimination.	Actual residential exposure minus effects of official discrimination $(E = H - H_s)$	.24	.20
III. Remove effects of present school segregation, past non-school public discrimination, and actual resegregation.	Actual residential exposure minus effects of official discrimination and cumulative change due to actual resegregation $(E = H - H_s - H_r = H_n)$	.26	.24
IV. Remove effects of present school segregation, past non-school public discrimination, and resegregation by returning schools to the situation that would have existed had there been "neighborhood" desegregation all along.	Residential exposure in the absence of school desegregation and public discrimination plus cumulative change in exposure due to resegregation if "neighborhood" desegregation had been followed $(E = H_n + H_r{}^*)$	.20	.16

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50. Although hypothethical resegregation is assumed to be greater under "neighborhood" desegregation, this does not imply that resegregation would be greater under

Table 7 uses the hypothetical information in Table 6 to formulate a desegregation plan appropriate under the Supreme Court's "incremental segregative effect" formula[51] made explicit in *Dayton Board of Education v. Brinkman.* For purposes of comparison, a simple-minded "neighborhood" desegregation plan (Plan I), which would be achieved by racially balancing schools within each neighborhood, also is presented. Although other baseline plans are conceivable, this plan represents the most likely minimum condition that would be imposed to achieve desegregation. Plan I would satisfy articulated Supreme Court standards, however, only if it is determined that the same degree of neighborhood segregation would have existed had a public policy of nondiscrimination been followed in the past. This, of course, is a condition that is not found in the example.

Plan II corrects for past acts of public discrimination that had the effect of decreasing racial exposure, such as segregated public housing or discrimination in the provision of public services. In the example, such correction requires restoration of the .03 loss of exposure that resulted from the hypothetical empirical estimation of the segregative effect of nonschool public acts. Because the exposure levels in the schools must be made to exceed those in the neighborhoods following such restoration, proper desegregation could be accomplished by moving students between neighborhoods or to and from other sections of the district. Plan II is designed to represent what appears to be the Court's formula for determining the "incremental segregative effect of [constitutional] violations" in cases in which school segregation had not occurred along with the acts of nonschool public discrimination. The existence of past segregation and white responses to school racial mix would complicate the issue, however. When such complications are present, the Court uses as its benchmark level of racial balance the "racial distribution" that would have existed "in the absence of such constitutional violations. The remedy must be designed to redress that difference . . . ."[52]

Accordingly, Plans III and IV attempt to correct existing residential patterns for the effects of all varieties of public discrimination. Plan III restores exposure rates to a level that would have been

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all types of desegregation. Notably, district-wide racial balance probably would lead to greater neighborhood integration. The latter case, but not the former, would support Taeuber's view that "I anticipate that desegregation of schools would have a cumulatively increasing effect on residential desegregation." Taeuber, *supra* note 18, at 844.

51. 433 U.S. at 420.

52. *Id.*

expected in the absence of both public nonschool discrimination and any white resegregation. The latter is included on the basis that resegregation is an indirect effect of public policy. Under this plan, school exposure rates would be increased further to .26 and .24 in years c and d, respectively. This solution, however, apparently does not conform to the Court's counterfactual standard of the racial distribution that would have existed in the absence of all public discrimination. Such hypothetical distribution is the basis for Plan IV, which seeks to establish as a justifiable racial distribution the sum of natural demographic changes (H_n) and resegregation that would have occurred if schools had been desegregated in the past (H_r^*). Clearly, this criterion legitimizes not only actual past resegregation, but also a higher hypothetical resegregation level. A scheme as outlined in Plan IV therefore implies lower exposure levels (.20 and .16) than does Plan III and may, as it does in this example, imply even lower exposure levels than a simple-minded desegregation plan. Which of the formulas described in Plans III and IV is implied by the Supreme Court's "incremental segregative effect" rule is not clear. The ambiguity of the doctrine turns on the treatment of past resegregation as it interacts with school segregation or desegregation efforts.

B. *Metropolitan Desegregation and White Losses*

A large part of the segregation in the United States can be attributed to disparities in racial composition between cities and suburbs.[53] That these disparities also explain a significant portion of school segregation is supported by comparisons of within-district and total desegregation exposure levels, such as those presented in Table 2 above. Simply put, racial balance can be achieved in virtually no metropolitan area unless schools are desegregated on a metropolitan basis. Moreover, the phenomenon of white flight further aggravates metropolitan racial disparities when desegregation plans are restricted to the central cities. The problem in desegregating schools solely within the central cities is analogous to that encountered in redistributing income within small geographical areas: those who believe that they are on the "losing" end of the redistribution have the option of "voting with their feet" and moving to a more attractive jurisdiction.[54] Generally, effective redistribution can be accomplished only in geographic areas large enough to make

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53. *See* Table 3.
54. For an economic analysis of fiscal relationships in a local economy, see Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

migration difficult. When viewed as a form of fiscal redistribution, the comparative effectiveness of metropolitan, as distinguished from central city, desegregation plans becomes apparent.

As the shortcomings of city-only desegregation were recognized, the proper geographical scope emerged as a central issue in the judicial formulation of desegregation plans. For example, the Detroit school desegregation case focused on the inclusion of suburban school districts. In calling for a metropolitan remedy, the district court stated that a city-only plan "would change a school system which is now Black and White to one that would be perceived as Black, thereby increasing the flight of Whites from the city and the system, thereby increasing the Black student population."[55] In *Milliken v. Bradley,*[56] however, the Supreme Court overturned the metropolitan plan because no showing was made that state action was responsible for the existing segregation between city and suburban districts. The Court did leave open the possibility, explicit in Justice Stewart's concurring opinion, that other metropolitan plans might be acceptable if public discrimination, such as improperly drawn school lines or improper transfer of schools to other districts, was demonstrated to be the cause of metropolitan segregation.[57] This decision encourages speculation on the future racial stability of central city districts. In geographically large urban districts, such as Charlotte-Mecklenburg, Nashville-Davidson, Albuquerque, and the Florida districts, as well as in other metropolitan areas that may come under the Supreme Court's criteria, the loss of whites to suburban districts necessarily will be limited. Significant private school enrollment can be expected where proportions of blacks are high, but metropolitan desegregation will not necessarily induce large-

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55. Bradley v. Milliken, 484 F.2d 215, 244 (6th Cir. 1973) (quoting from the original district court opinion).

56. 418 U.S. 717 (1974).

57. *Id.* at 755 (Stewart, J., concurring). Justice Stewart believed that the lower courts erred because the remedy they suggested was not commensurate with the constitutional violation found:

Since the mere fact of different racial compositions in contiguous districts does not itself imply or constitute a violation of the Equal Protection Clause in the absence of a showing that such disparity was imposed, fostered, or encouraged by the State or its political subdivisions, it follows that no interdistrict violation was shown in this case. The formulation of an interdistrict remedy was thus simply not responsive to the factual record before the District Court and was an abuse of that court's equitable powers.

Id. at 756-57. Such a remedy goes beyond the boundaries of the violating school district and affects those districts that presumptively have been operated according to constitutional principles. This is not to say, however, that an interdistrict remedy always will be improper. Such a remedy might be appropriate in cases in which state officials draw school district lines to create segregated schools, transfer schools from one district to another, or use zoning laws intentionally to create discrimination. *Id.* at 755.

scale residential movement in any of these districts. In smaller city districts, particularly those with large minority populations, comprehensive city-only desegregation orders will tend to spur white suburbanization similar to that in Washington, D.C., Atlanta, and Richmond. Given the long life of housing capital and the relatively recent experience with intensive desegregation in this country, however, it is still too early to determine precisely how great an effect such desegregation plans will have on long-term residential patterns.

As has been indicated in section V, the Supreme Court in recent cases has attempted to limit the scope of court-imposed desegregation. The principle that has emerged is that the only segregation that may be corrected in desegregation plans is that resulting from constitutional violations by state or local governments. Any behavior of individual whites that may have contributed to segregation, according to the Court, is not a legitimate concern in shaping desegregation plans. The implications of this doctrine seem clear in cases in which there have been official acts to gerrymander school districts or to enforce neighborhood segregation. But in those cases in which past decisions by individual white and black families themselves may have been a function of discriminatory public policies, application of the Court's rule becomes more difficult. There seem to be at least two reasonable interpretations of this rule. One would determine the "proper" level of desegregation by correcting current racial patterns for the separate effects of official discrimination outside of schools and residential resegregation due to discrimination in schools. Another would determine the counterfactual level of desegregation that would have existed in a world of no official discrimination. In addition, both approaches would have imposing data requirements. One could argue, for example, that a complete analysis of the effects of official discrimination on current residential patterns should extend not only over the last decade or two but at least over a significant portion of our national history as well.

VI. CONCLUSION

Trends in racial housing segregation, demography, and private school enrollment exert powerful influences on public school racial compositions. Inevitably, these trends weaken the ability of government to control actual school compositions. In particular, avoidance behavior allows many whites to escape school desegregation in much the same way that deliberate individual responses result in the "shifting" of tax burdens. As in tax incidence, the degree to which the statute's intended incidence is actually achieved depends upon

the ease of escape. These principles are being demonstrated with obvious consequences in desegregating school systems. Where private schools or suburban districts offer comparable education at affordable tuition or at reasonable commuting and housing costs, the possibility of white avoidance must be recognized. This, of course, explains the interest in formulating metropolitan desegregation plans as a means of raising the cost of avoidance in addition to providing a more balanced stock of students for desegregating schools. The recent Supreme Court decisions in the cases concerning Detroit, as well as Pasadena, Austin, and Dayton, have had the effect of confirming the legitimacy of such avoidance behavior beyond a certain point. That is, individual white avoidance behavior—as distinct from state action that fosters segregation—may not be "remedied" because no constitutional violation is deemed to exist. Whatever the constitutional arguments behind these decisions, it is tempting to speculate on their consequences. Depending upon the size and configuration of school districts in individual metropolitan areas, a likely effect is a continuation of the racial rearrangement already evident until a new equilibrium of de facto segregation is reached. Undoubtedly, other public policies and economic factors will continue to have strong influences on racial patterns, perhaps dominating the effects of school racial compositions. The primary result of this effective legitimization of de facto segregation could be to reduce the influence of schools on residential locations, returning this consideration to the level at which it operated prior to the period of intensive school desegregation.