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Simple Justice in the Cradle of Liberty: Desegregating the Boston Public Schools

*Ronald R. Edmonds**

This Article provides a summary view of the desegregation of the Boston public schools. Some aspects of teaching and learning in the Boston schools clearly have improved as a direct consequence of Boston's desegregation, while others seem little affected. Teaching and learning are mentioned at the outset because later discussion will establish that black Bostonians seek desegregation as part of their larger and more general quest for improved schooling for their children.[1] The success or failure of desegregation therefore may fairly be judged partly on the basis of its effect upon the quality of schooling made available to black children. What follows is a discussion of a mixed set of educational outcomes, judged from the point of view of black plaintiffs. This much is certain: the current educational developments in Boston can best be understood when viewed as a continuation of an enduring black struggle for educational equity, a struggle that began in Boston in the eighteenth century.

In their earliest years the Boston schools made no provision whatever for the education of black children, and black attempts to gain access to the Boston schools were persistently frustrated. By 1800 blacks had abandoned the quest for access and petitioned instead to have the Boston School Committee create a school explicitly set aside for the education of black children.[2] Even this effort to obtain racially separate schools took twenty years to accomplish, the first black access to public schooling in Boston occurring in 1820.[3] The black schools that followed remained unsatisfactory, receiving treatment that made clear School Committtee disinterest

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1. *See, e.g.*, text accompanying notes 6, 9-10 *infra*.

2. A separate school for blacks had been established in 1798, under the charge of a white man, in the house of "a Negro of very good standing." Two years later, however, the local School Committee refused to grant the petition of sixty-six free blacks to create a separate school, thus limiting educational facilities for blacks to those volunteered by private citizens. *See* C. Woodson, The Education of the Negro Prior to 1861, at 95 (1919).

3. "An epoch in the history of Negro education in New England was marked in 1820, when the city of Boston opened its first primary school for the education of colored children." *Id.* at 96.

in, if not contempt for, the education of black children.[4]

By 1845 the Boston Committee on Grammar Schools was compelled to report that:

> Your Committee are aware, that there are many circumstances to be considered before blame should be laid on any individual, for the present low state of the [Smith] school. . . . But they do believe that there is good sense enough among the parents, and intellect enough among the children, if fairly enlisted in the subject, and directed by a zealous and discreet [*sic*] friend, to create a school which shall reach at least to the rank *now attained* by one half of the city schools.
>
> It is to be regretted that the present incumbent has not more faith in the desire of the colored population for the education of their children, and in the capacities of the children themselves; for we fear that, without much faith, and even some enthusiasm, no great harvest can follow the teacher's labors.[5]

In 1846 eighty-six black Bostonians, persuaded that separate black schools would remain bad, shifted their tactic for school reform and petitioned for an end to racially separate schools:

> The undersigned colored citizens of Boston, parents and guardians of children *now* attending the exclusive Primary Schools for colored children in this City, respectfully represent; that the establishment of exclusive schools for our children is a great injury to us, and deprives us of those equal privileges and advantages in the public schools to which we are entitled as citizens. These separate schools cost more and do less for the children than other schools, since all experience teaches that where a small and despised class are [*sic*] shut out from the common benefit of any public institutions of learning and confined to separate schools, few or none interest themselves about the schools,—neglect ensues, abuses creep in, the standard of scholarship degenerates, and the teachers and the scholars are soon considered and of course become an inferior class.
>
> But to say nothing of any other reasons for this change, it is sufficient to say that the establishment of separate schools for our children is believed to be unlawful, and it is felt to be if not in intention, in fact, insulting. If, as seems to be admitted, you are violating our rights, we simply ask you to cease doing so.
>
> We therefore earnestly request that such exclusive schools be abolished, and that our children be allowed to attend the Primary Schools established in the respective Districts in which we live.[6]

The Boston School Committee rejected the blacks' petition.

In 1849 a black father sought damages for the exclusion of his daughter from an all-white primary school.[7] The Supreme Judicial Court dismissed the action, holding that the child was not unlaw-

4. One visiting committee, evaluating a Negro public school, stated that: "In regard to the Smith school, we have come to the conclusion that it is not only in an unsatisfactory, but in a deplorable condition. The attainments of the scholars are of the lowest grade." 1 CHILDREN AND YOUTH IN AMERICA 526 (R. Bremner ed. 1970).

5. *Id.* at 527 (emphasis in original).

6. *Id.* at 528 (emphasis in original).

7. Roberts v. City of Boston, 59 Mass. (5 Cush.) 198 (1850).

fully excluded because the Boston School Committee had the power to establish separate schools for black children.[8] Not to be denied, the black citizenry turned to the Massachusetts Legislature. In 1855 the legislature was persuaded to pass a state law that read in part: "In determining the qualifications of scholars to be admitted into any public school or any district school in this Commonwealth, no distinction shall be made on account of race, color or religious opinions, of the applicant or scholar."[9] Racially separate schools in Boston thus were officially ended, and there the matter rested until modern times.

Black dissatisfaction with the Boston schools took a dramatic turn in 1963 and 1964. In each of those years thousands of black children were kept out of Boston schools in a boycott intended to dramatize black dissatisfaction with the quality of teaching and learning for black children.[10] In response to these new pressures, the Massachusetts State Board of Education and the Massachusetts Legislature joined forces in 1965 to pass the Nation's first "Racial Imbalance Act."[11] The legislation, which was intended to end segregation in Boston, states that it is the public policy of Massachusetts:

> to encourage all school committees to adopt as educational objectives the promotion of racial balance and the correction of existing racial imbalance in

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8. *Id.* at 208-09. For a general discussion of Boston's reluctance to desegregate its public schools, see WOODSON, *supra* note 2, at 317-25.

9. 1 CHILDREN AND YOUTH IN AMERICA 535 (R. Bremner ed. 1970).

10. In 1960 approximately 80% of black elementary school students attended majority black schools. UNITED STATES COMMISSION ON CIVIL RIGHTS, DESEGREGATING THE BOSTON PUBLIC SCHOOLS: A CRISIS IN CIVIC RESPONSIBILITY xiv (1975) [hereinafter cited as CIVIL RIGHTS COMM'N]. In 1961 the Boston public schools adopted a policy of "open enrollment" that allowed black students to transfer to predominantly white schools. As noted by the United States Commission on Civil Rights, however, the open enrollment policy "achieved nothing as far as school integration was concerned, since wbite students were also free to transfer from schools whose compositions were not to their liking." *Id.* at xiv-xv.

11. MASS. GEN. LAWS ANN. ch. 15, §§ 1I-1K (West Supp. 1978); *id.* ch. 71, §§ 37C-37D (West Supp. 1978). The Act evolved from an April 1965 report of an advisory committee appointed by tbe State Board of Education and the Commissioner of Education to study racial segregation in the Massachusetts and Boston public schools. Named the Kiernan Report after the then Commissioner of Education for the Commonwealth, tbe report concluded that 45 Boston schools were "imbalanced"—having more than 50% nonwhite students—and that such racial imbalance was educationally harmful and should be ended. The Report also noted that "[o]pen enrollment alone cannot achieve school integration. Relying on open enrollment places the responsibility for school integration on the uncoordinated actions of thousands of parents, rather than on the planned actions of schools themselves." CIVIL RIGHTS COMM'N, *supra* note 10, at xv (quoting ADVISORY COMMITTEE ON RACIAL IMBALANCE AND EDUCATION: MASSACHUSETTS STATE BOARD OF EDUCATION, BECAUSE IT IS RIGHT—EDUCATIONALLY 4 (1965)).

The Boston Scbool Committee responded to the Kiernan Report by refusing to acknowledge that racial imbalance was a problem that ought to be ended or that was educationally harmful. Morgan v. Hennigan, 379 F. Supp. 410, 417 (D. Mass.), *aff'd sub nom.* Morgan v. Kerrigan, 509 F.2d 580 (1st Cir. 1974), *cert. denied,* 421 U.S. 963 (1975).

> the public schools. The prevention or elimination of racial imbalance shall be an objective in all decisions involving the drawing or altering of school attendance lines, establishing of grade levels, and the selection of new school sites.[12]

Despite the Racial Imbalance Act, however, the School Committee did not move to alter the racial character of the great many racially imbalanced schools existing in Boston in 1965.[13]

Black parents responded by organizing Operation Exodus, a private program for transporting black students to underutilized, predominantly white schools.[14] The presumption was that black children could occupy empty seats in white schools. The 1965 president of black Boston's parent association remembers the alternative solutions considered in the association's nightly meetings.

> The first consisted of forming a human chain of parents around a school and not allowing anyone to trespass. Secondly, some parents wanted to pressure more extensively, by using petitions and pickets. The third idea was to have sit-ins by parents in both classrooms and the School Committee office. Almost by a process of elimination, we voted against all three proposals because in all instances the inconvenience would be to ourselves and our children, just as in previous demonstrations, producing short-range results. We arrived at the position of mass displacement of Negro children, now called Exodus, in order to take advantage of the 7,000 vacant seats throughout the city and available under the Open Enrollment Policy. Problems arose around this decision: how to transport, and where to finance. We called a final meeting on September 8th, attended by 600 community people. At 12:30 that night, we found ourselves with 250 children to bus and with many families committed to our program. We left the meeting and embarked on a wild recruitment program to round up transportation. We called all through the night until 4 a.m., and wound up having seven buses donated by private organizations and civil rights groups. At 8 a.m. September 9, 1965, all buses, cars and children were ready to roll. The money for our buses was donated by various groups, such as the NAACP, labor unions, and from many individuals. The second day of school, we had financial support from merchants and businessmen in our immediate community. Thus, the die had been cast.[15]

By the 1967-68 school year, Operation Exodus was busing 600 black children from Boston's overcrowded black schools to Boston's underutilized white schools at an approximate annual cost of $180,000.[16] These monies were private and were raised entirely by black parents.

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12. MASS. GEN. LAWS ANN. ch. 71, § 37C (West Supp. 1978).

13. In 1966 the School Committee unsuccessfully attacked the constitutionality of the Act in School Committee v. Board of Educ., 352 Mass. 693, 227 N.E.2d 729 (1967), *appeal dismissed,* 389 U.S. 572 (1968). At that time the Supreme Judicial Court of Massachusetts stated that "[t]he committee seems bent on stifling the act before it has a fair chance to become fully operative." *Id.* at 698, 227 N.E.2d at 733.

14. *See* J. TEELE, EVALUATING SCHOOL BUSING: CASE STUDY OF BOSTON'S OPERATION EXODUS 6-11 (1973).

15. *Id.* at 10-11.

16. *Id.* at 14.

In 1966 Metco (Metropolitan Council for Educational Opportunity, Inc.) joined the repertoire of voluntary efforts to provide Boston's black children with access to schools offering a modicum of effective instruction.[17] Metco sought black parents who would volunteer to have their children bused to suburban schools that had made space available for limited numbers of black children from Boston. From its beginning until the present time, Metco has had a waiting list of black children for the limited number of available suburban spaces.[18]

The most recent tactic in black Boston's quest for educational equity[19] is *Morgan v. Hennigan*,[20] a class action suit filed in federal court alleging that the Boston public schools were segregated and discriminatory. In 1974 the district court found for plaintiffs and ruled that the Boston public schools were in fact racially separate and had been made so by discriminatory means.[21] Having so ruled,

17. Both the Metco and Exodus programs for transporting black pupils to predominantly white schools were started by black parents as private projects, with state financing coming later. 379 F. Supp. at 424.

18. In June 1974 the program provided transportation for approximately 1,650 pupils. *Id.*

19. Despite the Racial Imbalance Act and programs such as Exodus and Metco, the Boston public schools remained racially segregated. By 1971, 62% of black students attended schools that were more than 70% black. CIVIL RIGHTS COMM'N, *supra* note 10, at xvi.

Moreover, in seeking desegregation of the public schools the black community and the State Board of Education faced continued opposition by the Boston School Committee. In addition to challenging the constitutionality of the Racial Imbalance Act, *see* note 13 *supra*, the committee also successfully challenged the withholding of state funds for noncompliance with the Racial Imbalance Act. School Committee v. Board of Educ., 363 Mass. 20, 292 N.E.2d 338 (1973). The Committee unsuccessfully challenged the State Board of Education's plan for correcting imbalance in the Boston public schools. School Committee v. Board of Educ., 364 Mass. 199, 302 N.E.2d 916 (1973). In 1974 the Supreme Judicial Court of Massachusetts found that the Committee had not complied with the orders of the State Board or the court, and stated that several of the Committee's submissions manifested a continued attempt to delay implementation of the racial imbalance plan. For a review of state court litigation involving the Racial Imbalance Act, see 379 F. Supp. at 418-20.

20. 379 F. Supp. 410 (D. Mass.), *aff'd sub nom.* Morgan v. Kerrigan, 509 F.2d 580 (1st Cir. 1974), *cert. denied*, 421 U.S. 963 (1975). Plaintiffs alleged that the Boston School Committee (city defendants) had intentionally caused and maintained racial segregation in the Boston public schools, thereby violating the equal protection clause of the United States Constitution. *Id.* at 415. Plaintiffs also alleged that certain administrative practices by the State Board of Education (state defendants) had violated plaintiffs' equal protection rights. *Id.* The city defendants responded by claiming that the disproportionate number of blacks and whites was caused by residential segregation; the state defendants responded that they had little control over the city defendants and that they had done as much as possible to eliminate racial segregation in the schools. *Id.* at 415-16.

21. *Id.* at 482. The court concluded that "the defendants have knowingly carried out a systematic program of segregation affecting all of the city's students, teachers and school facilities and have intentionally brought about and maintained a dual school system." *Id.*

In reaching this conclusion the district court examined six aspects of the Boston public schools. These were (1) facilities utilization and new structures (*Id.* at 425-32), (2) districting

presiding Judge Arthur Garrity was faced with the urgent obligation to end discrimination in the Boston public schools, to eliminate the racially separate schools, and to remedy, so far as was practical, the past harms of segregation.

In responding to this task, the court faced several major obstacles. As I have noted, in the decade of the 1960's Boston's black parents repeatedly pressed for instructional reform, and black activism and organization rallied around the cry for better schools. Partly in response to Boston's municipal parochialism, there grew up in the 1960's a generation of local politicians whose principal platform was opposition to desegregation.[22] In the spring of 1975 when the district court issued its "Student Desegregation Plan,"[23] these local politicians set the tone of vituperation and contempt for the law that characterized Boston's 1975 discourse on desegregation.[24]

The social science literature since the Supreme Court's decision in *Brown v. Board of Education*[25] identifies local leadership as the most critical variable in determing the climate within which desegregation will occur.[26] Those communities whose desegregation is or-

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and redistricting (*Id.* at 432-41), (3) feeder patterns (*Id.* at 441-49), (4) open enrollment and controlled transfer (*Id.* at 449-56), (5) faculty and staff (*Id.* at 456-66), and (6) examination and vocational schools and programs (*Id.* at 466-76). The court found that defendants had acted in these areas to intentionally segregate the schools. *Id.* at 480-81. For example, in examining the feeder system by which students from intermediate schools were channelled to the city's eighteen "city-wide" high schools, the court stated that "[t]he only consistent basis for the feeder pattern designations, changes and deletions was the racial factor. Neither distances between schools, capacities of receiving schools, means of transportation or natural boundaries explain them." *Id.* at 446.

With regard to the state defendants, the court held that they had done everything possible to force the city defendants to comply with state and federal law. *Id.* at 476.

22. For example, while the Racial Imbalance Act of 1965 appeared to represent a significant step forward toward integration, debate over the Act revealed an intensity of opposition foreshadowing future problems. Indeed, at the same time the Boston School Department was notifying parents and students of new school assignments for 1974, moves were being planned in a number of quarters to thwart desegregation efforts. The governor and many state legislators promised to seek repeal or modification of portions of the Racial Imbalance Act. CIVIL RIGHTS COMM'N, *supra* note 10, at xv-xvii.

23. *See* note 44 *infra* and accompanying text.

24. For example, the United States Civil Rights Commission described the conduct of Boston mayor Kevin White as follows:

> Following the Federal district court's decision in June 1974, Mayor Kevin White made a series of public pronouncements which, taken together, were ambivalent. While never supporting the constitutional mandate to desegregate Boston's public schools, the mayor did take the position that he would uphold the law. However, his several pronouncements concerning opposition to the desegregation order undercut his frequent statements on upholding the law.

CIVIL RIGHTS COMM'N, *supra* note 10, at 29.

25. 347 U.S. 483 (1954).

26. *See* SCHOOL DESEGREGATION: MAKING IT WORK (R. Green ed. 1976). Emphasis was placed on the role of the school superintendent, the community's educational leader, in

derly and educationally productive have elected officials and business and civic leaders who generally lead the community in understanding and accepting principles of constitutional law as applied to the desegregation process.[27] Those communities like Boston whose desegregation is characterized by violence, disorder, and educational malaise have elected officials and business and civic leaders who characteristically join in distorting the truth and subverting the law. Equally significant in such circumstances, no counter voices are raised, and those leaders who are not parties to the disorder remain silent while it proceeds. Such was the situation in Boston in the summer of 1975.

Thus, when Boston's desegregated schools opened in September, the streets became battlegrounds between busing opponents and law enforcement officials. Hundreds were arrested, buses were vandalized, schools were disrupted, and pupils were terrorized.[29] These events occurred largely through the encouragement of a cli-

implementing school desegregation. *Id.* at 39. Furthermore, school hoard members were assigned a vital role. *Id.* at 59. *See also* CIVIL RIGHTS COMM'N, *supra* note 10, at 1 ("a vital element in successful school desegregation is the support of leaders from all segements [*sic*] of the community; political, governmental, religious, civic, economic, educational, and religious among others").

27. Each school desegregation case is unique. Yet, there are factors common to most cases. There are many determinants of whether or not the community will be desegregated peacefully and successfully in the earliest implementation stage: the quality of human leadership; community acceptance of the decision and involvement in the planning for desegregation; the attitudes of parents, students, and school personnel; help or lack of it from the business community; help or lack of it from political leaders and elected officials; the comprehensiveness and specificity of the court order; and the willingness of all segments of the community to obey that order.

SCHOOL DESEGREGATION: MAKING IT WORK 42 (R. Green ed. 1976).

28. *See* notes 22 & 24, *supra.*

29. In his opinion in Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass.), *aff'd,* 530 F.2d 401 (1st Cir. 1975), *cert. denied,* 426 U.S. 935 (1976), Judge Garrity described the opening of the schools as follows:

> The opening of school under the state plan in September of 1974 was accompanied by some violence and much fear. School buses were stoned, their windows broken and some children cut by shattered glass. Angry crowds of white parents and students gathered in front of schools to protest the entry of black students assigned there. Student hoycotts of varying effectiveness were organized. Many students stayed home or were kept home by their parents out of fear for their personal safety. Several city high schools were the scenes of racially-connected fights and incidents . . . . State troopers joined city police in large numbers in troubled areas, such as predominantly white South Boston and Hyde Park . . . . In December a white student was stabbed inside South Boston High School by a black student. Community residents gathered and surrounded the high school building, trapping black students inside until a decoy operation by police permitted the departure of the black students. In the aftermath of this incident, all schools in the South Boston-Roxbury district were closed early for the Christmas vacation and reopened late, and then only against advice of city and state police officials who urged the permanent closing of South Boston High.

Id. at 224-25.

mate of aggressive irresponsibility against which the court stood, very nearly alone.

In formulating its plans for desegregating the Boston school system, the court had to overcome unexpected, monumental, and tenacious obstacles to desegregation. The court found itself faced with an unresponsive school committee, a bloated and largely ineffective school bureaucracy, and an obligation to desegregate Boston's schools with more than deliberate speed. Presiding District Court Judge Arthur Garrity first ordered defendant Boston School Committee to begin formulating a plan to end segregation in the public schools.[30] In addition, the court, as a temporary measure, enjoined defendants[31] from failing to comply with a partial desegregation plan[32] formulated in 1973 by the Massachusetts State Department of Education in response to the Racial Imbalance Act. Dissatisfied with the state plan, the School Committee in July 1974 requested time to prepare a substitute temporary plan. The court gave the School Committee until July 29 to formulate a plan; at the end of this time the Committee reported that it had been unable to prepare a satisfactory substitute for the state plan. Thus, lacking an alternative, the court ordered that the state plan be put into effect.[33]

The plan which Judge Garrity ordered the School Committee to temporarily implement on June 21, 1974, thus was wholly created by Massachusetts state agencies. The School Committee not only had been offered a role in creating this plan, but had been aware of the plan for some time and in fact had been under orders to comply with it. While Judge Garrity, the School Committee, and the plaintiffs certainly never considered the plan to be a satisfactory permanent remedy for the violations Judge Garrity had found, it was considered to be a workable temporary solution. Accordingly, that plan was put into effect during the 1974-75 school year.[34] This plan

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30. Partial Judgment and Interlocutory Order, 379 F. Supp. at 484 ("[D]efendants are further Ordered to begin forthwith the formulation and implementation of plans which shall eliminate every form of racial segregation in the public schools of Boston, including all consequences and vestiges of segregation previously practiced by the defendants.").

31. *Id.*

32. The state plan aimed to reduce the number of majority black schools from 68 to 44 and the number of black children attending "imbalanced" schools from approximately 30,000 to approximately 10,000. To accomplish these goals the plan called for redistricting and busing. *Id.* at 483.

33. *Id.* at 484. ("[D]efendants [shall] be preliminarily enjoined from (a) failing to comply with the Racial Imbalance Act plan ordered by the Supreme Judicial Court of Massachusetts to be implemented on or before the opening day of school in September, 1974.") For a more complete discussion of the interaction between Judge Garrity and the School Committee, see 401 F. Supp. at 224.

34. *See* J. ADKINS, J. MCHUGH, & K. SEAY, DESEGREGATION: THE BOSTON ORDERS AND THEIR ORIGINS 24 (1975).

was implemented in the context of elaborate "remedial guidelines" under which the School Committee was to function. School authorities were charged with the affirmative duty of taking all steps necessary to secure the rights of the plaintiff class, including busing, repairing the schools, redistricting, involuntary student and faculty assignments, and all other means, regardless of how distasteful to school officials, teachers, and parents, to achieve a unitary school system.[35]

As the temporary plan was being implemented, the court proceeded immediately to develop a permanent plan for desegregating Boston's schools. To that end, the School Committee was ordered to present a desegregation plan by December.[36] In December, the School Committee refused to plan for Boston's desegregation.[37] Plaintiffs asked that the School Committee be held in contempt, but the court declined and instead directed the School Committee to try once more to develop and authorize a plan.[38] This time the School Committee reluctantly complied and on January 27, 1975, submitted to the court what was, in effect, a freedom of choice plan that did not provide for busing as an instrument of desegregation.[39] The court concluded that the School Committee plan would not achieve actual desegregation and moved therefore to a more active role in planning for Boston's desegregation.[40]

On January 31, 1975, the court appointed two experts to assist in formulating a desegregation plan.[41] The experts, Dr. Robert A.

35. 379 F. Supp. at 482.

36. Order Requiring Creation of Desegregation Plan (October 31, 1974). This order, which is documented in 401 F. Supp. at 225, required the filing of progress reports on the development of the plan and filing of the plan itself on December 16, 1974. The court stated that:

> the student desegregation plan shall provide for the greatest possible degree of actual desegregation of all grades in all schools in all parts of the city. . . . [T]he defendants shall utilize as a starting point and keep in mind the goal that the racial composition of the student body of every school should generally reflect the ratio of white and black students enrolled at that grade level of schools . . . throughout the system.

37. On December 16, 1974, the deadline date for filing a desegregation plan, the School Committee voted three to two not to approve for filing the plan developed at the direction of the School Committee. *Id.* at 226.

38. The court denied plaintiffs' motions to hold defendants in criminal contempt. It granted the motion to hold in civil contempt the three members of the School Committee who voted against submission of the plan, but provided that defendant could purge the holding of civil contempt by voting to authorize submission of a plan. On January 7, 1975, the School Committee voted to authorize and file a plan. *Id.*

39. *Id.* at 228. The court stated that the plan of January 27 "was constitutionally inadequate because it did not promise realistically to desegregate the public schools." *Id.*

40. "[A]ny plan that places complete reliance on parental choice to desegregate Boston's schools cannot be constitutionally adopted. Such plans must be rejected where, as here, there are more effective methods of desegregation reasonably available." *Id.*

41. Order Appointing Experts (January 31, 1975) in substitution for Judge Garrity's

Dentler and Dr. Marvin B. Scott, the Dean and Associate Dean of Boston University's School of Education, are still at work. Since their appointment they have evaluated proposed plans, suggested modifications, monitored implementation, and otherwise acted as professional staff for the court. On February 7, 1975, the court also appointed four masters whose task was to review any and all plans for desegregation submitted to the court and to hold hearings and take such testimony as might assist the masters in recommending to the court a plan for desegration.[42] The masters were Francis Keppel, former United States Commissioner of Education; Edward J. McCormack, Jr., former Massachusetts Attorney General; Jacob J. Spiegel, a retired Massachusetts Supreme Judicial Court Justice; and Charles V. Willie, a Harvard Professor of Education. These four men proceeded to examine various means by which Boston might be desegregated and recommended an innovative approach that included the school-university pairings to be discussed in a subsequent portion of this Article.[43] The plan for permanent desegregation that was ordered to be implemented in September 1975 was made up of recommendations from the masters, analyses by the experts, critiques from defendants, petitions from plaintiffs, and finally the court's summary judgment of how best to obtain maximum feasible desegregation.[44] At its core the plan sought racial balance through busing, with generous provisions for magnet schools.[45]

Order of October 31, 1974. The order established the filing date and general contents of the student desegregation plan that was to be filed by defendant School Committee (*see* note 36 *supra*) and reiterated the court's directive of December 30, 1974, to the School Committee to once again attempt to formulate a desegregation plan. The above-mentioned court orders and other judicial proceedings precipitated by the *Hennigan* decision on June 21, 1974, are documented in 401 F. Supp. at 224-27.

42. Order of Appointment and Reference to Masters (February 2, 1975) (documented in 401 F. Supp. at 227).

43. *See* notes 67-71 *infra* and accompanying text.

44. Order Promulgating Student Desegregation Plan (May 10, 1975). This remedial order issued by Judge Garrity is documented and explained in the opinion of June 5, 1975, 401 F. Supp. at 227-50. Excerpts from the Student Desegregation Plan are contained in that opinion at 250-70.

45. Regarding the legal principles governing formulation of the plan, the court stated in part that a desegregation plan must eliminate "racial identifiability" of schools; it held that "[t]he test of identifiability then becomes substantial disproportion in composition compared to the racial composition of the school system." *Id.* at 232. Judge Garrity also noted that the possibility of "white flight" was not a consideration to be weighed against the rights of plaintiffs in considering the remedy. *Id.* at 233.

The plan sought to correct racial imbalance through two major methods. *See id.* at 249. The first established a network of citywide magnet schools with distinctive features, including a system of pairing local colleges and universities with each citywide school. The court stated that "[t]he goal of this arrangement is to make the school distinctive and attractive because of its concentration on the arts, or the classics, or on open space teaching methods, for

Two summary points are important at this stage. First, in commenting on the level of court intiative in developing a plan, Judge Garrity observed:

> Education is a matter entrusted initially to elected local authorities and appointed state authorities. Even after unlawful segregation has been found, responsibility falls initially upon the local school authorities to remedy the effects of this segregation. . . . Only the default of the school committee in this case has obliged the court to employ the help of the appointed experts and masters and to draw an adequate plan.[46]

Second, in discussing the use of busing in the plan, Judge Garrity further observed:

> [T]he court does not favor forced busing. Nor, for that matter, have the plaintiffs advocated forced busing. What the plaintiffs seek, and what the law of the land as interpreted by the Supreme Court of the United States commands, is that plaintiffs' right to attend desegregated schools be realized. That right cannot lawfully be limited to walk-in schools. . . . If there were a way to accomplish desegregation in Boston without transporting students to schools beyond walking distance, the court and all parties would much prefer that alternative. In past years, feasible proposals that would have substantially lessened segregation through redistricting without busing were made by various public agencies and uniformly rejected or evaded by the Boston School Committee. The harvest of these years of obstruction and of maintenance of segregated schools is that today, given the locations and capacities of its school buildings and the racial concentrations of its populations, Boston is simply not a city that can provide its black schoolchildren with a desegregated education absent considerable mandatory transportation.[47]

Having devised and ordered a plan for permanent desegrega-

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example." *Id.* at 236. These provisions were designed to attract students voluntarily to desegregated schools. The court also created pairings for district schools. *Id. See* notes 67-71 *infra* and accompanying text.

The second major method the court used to correct racial imbalance was the creation of new school districts and assignment guidelines. In creating the districts, the court noted that it tried to minimize required transportation. 401 F. Supp. at 239. Furthermore, the court took equitable considerations into account: it did not order busing to desegregate 95% white East Boston, in part because this would "require transporting between four and five thousand children either into or out of other parts of Boston, many through the tunnels with their gassy air at heavy traffic hours, for distances of up to 5.2 miles one way." *Id.* at 238.

Once it abolished racially identifiable schools, the assignment guidelines for particular schools were guided by two considerations: allowing students to attend schools near their homes, and minimizing the sense of isolation experienced by a minority, black or white, in any school. *Id.* at 241. To accommodate these interests, the guidelines provided that the allowable variation in racial composition depended on the size of the racial group considered. The court reasoned that a large group could suffer a large reduction in numbers before it would feel isolated, and that a small group reduced by the same number might "feel isolated, uneasy and defensive." *Id.*

The plan also provided for creation and continuation of citizen organizations to participate in and monitor the desegregation process. *Id.* at 248-49. *See* notes 72-79 *infra* and accompanying text.

46. 401 F. Supp. at 230.

47. *Id.* at 239.

tion, the court turned to problems of implementation. Recognizing School Committee intransigence, the court created a citizen body whose task was to monitor the implementation of the "Student Desegregation Plan" that was fully implemented during the 1975-76 school year. This body, known as the Citywide Coordinating Council (CCC), consisted of forty-four citizens (since reduced to fifteen) who represented various community organizations, business and labor, colleges and universities, and public school parents and students.[48] The CCC and its professional staff functions as the eyes and ears of the court; consequently, it maintains constant communication with the court.[49] Every aspect of desegregation is monitored, assessed, described, and analyzed periodically by the CCC. The court thus has been assured of an objective and reliable measure of progress toward desegregation in every segment of the Boston public schools. The CCC will cease to exist on September 1978.[50]

A Department of Implementation has been established within the Boston School Department and is responsible for monitoring all aspects of Boston's desegregation.[51] The presumption is that any School Committee or School Department action resulting in resegregation would be noted by the Department of Implementation, which would then prompt the School Committee or School Department to rescind its action and, if necessary, to adopt corrective measures. The success of such an arrangement depends upon the effectiveness of the Department of Implementation. In this regard, the court order establishing the Department prescribed that it be staffed in conformity with the court's standards of selection and desegregation, and that it be designed to a higher standard of competence than is ordinarily true of the Boston School Committee and School Department. One may reasonably predict that, once the court withdraws, fear of the court's return to active participation may not only keep Boston's desegregation in force, but also may

48. Order Appointing Citywide Coordinating Council (May 30, 1975) (documented in 401 F. Supp. at 265).

49. The CCC:

> will be the primary body monitoring implementation [of the desegregation orders] on behalf of the court. It will in this connection file montbly reports with the parties and the court covering its activities. . . . It may bring unresolved problems to the attention of the parties, the court or other appropriate persons. It may communicate and publicize its views and recommendations to the public, the parties and the court.

Id.

50. Boston Evening Globe, June.2, 1978, at 29.

51. Memorandum and Orders Modifying Desegregation Plan (May 6, 1977) (copy on file with the *Vanderbilt Law Review*).

permit the Department of Implementation to perform as the court intended.

The court demonstrated its capacity for forcefulness when it placed South Boston High School in receivership in December 1975.[52] South Boston High had been a continuous scene of disorder and disruption, displaying open school staff hostility to black pupils sent there by court order.[53] By December the court recognized no prospect for improvement in the school.[54] Moreover, and perhaps more importantly, the court was anxious to demonstrate the tenacity of its commitment to desegregation and the lengths to which it would go when circumstances required.[55] Therefore, on December 9th the court placed South Boston High in receivership, naming as receiver the superintendent of the Boston schools, and ordered administrative and coaching personnel transferred from the school. In April 1976, following a national search, the court ordered the School Committee to appoint a new administrative team to South Boston High School.[56] The school is now orderly and greatly improved in the quality of its teaching and learning. The receivership remains in effect.

We must consider now desegregation matters that have not

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52. Written Order *re* South Boston High School (December 9, 1975). While the court dictated on December 9 numerous findings of fact and conclusions of law upon which this order was based, supplementary findings and conclusions on the motion concerning South Boston High School, as well as documentation of the December 9 order, are contained in Judge Garrity's opinion of December 16, 1975. Morgan v. Kerrigan, 409 F. Supp. 1141 (D. Mass. 1975). There was precedent for placing a school in receivership in a civil rights case. In Turner v. Goolsby, 255 F. Supp. 724 (S.D. Ga. 1966), the School Board of Taliaferro, Georgia, in order to frustrate a desegregation plan required by the United States Department of Health, Education, and Welfare, bused the county's white students to schools in neighboring counties. The court removed the School Board and appointed as receiver the superintendent of schools for the state of Georgia. *See generally* CIVIL RIGHTS COMM'N, *supra* note 10, at 63-65; Note, *Receivership as a Remedy in Civil Rights Cases*, 24 RUTGERS L. REV. 115 (1969).

53. As a unit, the faculty reportedly felt put upon by desegregation, and this attitude impeded integration of the school. The pervasive hostility of the majority of white teachers at the high school was reflected in faculty meeting dialogue between white and black faculty members. *See* 409 F. Supp. at 1147-48.

54. The court stated: "The most difficult issue involved in deciding [whether to place South Boston High School in temporary receivership] . . . is whether the required changes can occur under the leadership of its distinguished headmaster . . . and his team of loyal administrative assistants. The court has come to the firm conclusion that they cannot." *Id.* at 1150.

55. *See* Order Containing Supplemental Findings and Conclusions *re* South Boston High School (December 16, 1975) (documented in 409 F. Supp. at 1150-51) (in which the court, in support of its decision to place the school in receivership, stated that "SBHS is preoccupied with policing and not getting at the causes of hate"). *See also* Order *re* Facilities at South Boston High School (December 24, 1975) (copy on file with the *Vanderbilt Law Review*) (in which the court outlined specific renovation and repair needs of the high school).

56. Memorandum and Order *re* Appointment of South Boston High School Headmaster (April 7, 1976) (copy on file with the *Vanderbilt Law Review*).

prompted the court to be as forceful as it might. On the basis of its own standards for desegregation, the court's greatest failing is in its efforts to desegregate Boston school personnel. The trial in *Morgan v. Hennigan* had found segregation and discrimination in the personnel practices in the Boston public schools.[57] In response to that finding, and noting that black pupils comprised more than forty percent of the school population in January 1975, the court ordered the School Committee to implement affirmative action procedures to bring black teachers to twenty percent of the total.[58] As of May 1978, black teachers comprised about twelve percent of the total[59] with little prospect of that proportion rising to twenty percent. Despite the court's order for staff desegregation, the Boston School Department and School Committee have maintained personnel practices resulting in the busing throughout a hostile community of black children who are then not met in the classroom by adequate numbers of black teachers. The court is to be criticized for a standard of equity that pursues black pupil dispersal with great vigor without an equal commitment to the nondiscriminatory employment of black personnel throughout the Boston schools.

This Article employs black pupil performance as a principal measure of the equity of desegregation.[60] Judged by such a standard, court-ordered desegregation has a decidedly mixed record. On the basis of existing research literature, following desegregation some black pupils do better, some do worse, and some do about the same as they did in previously segregated facilities.[61] After greater than a

57. *See* Plaintiffs' Requests for Findings (March 1973) (copy on file with the *Vanderbilt Law Review*) (which indicated that only 6% of the faculty in Boston's 204 schools were black, and that 75% of that number were assigned to schools that enrolled more than 50% black students). *See also* Morgan v. Kerrigan, 509 F.2d 580, 595 (1st Cir. 1974) (which acknowledged the district court's finding that the Boston school system was segregated as to faculty and staff, as well as students, and stated that such segregation is "among the most important indicia of a segregated system").

58. Order for Desegregation of Administrative Staff (February 24, 1976). *See also* Memorandum and Orders on Faculty Recruiting and Hiring, 388 F. Supp. 581 (D. Mass. 1975), *aff'd*, 530 F.2d 431 (1st Cir.), *cert. denied*, 426 U.S. 935 (1976).

59. Boston Evening Globe, June 2, 1978, at 29.

60. In most studies on the outcome of desegregation, the criterion is the raw or grade-equivalent score on a standardized achievement test. In a few studies "mental ability" or "scholastic aptitude" or IQ is the criterion available. It generally is acknowledged that there are significant problems in the predictive value of such measures. N. ST. JOHN, SCHOOL DESEGREGATION: OUTCOMES FOR CHILDREN 17 (1975).

61. The Equality of Educational Opportunity Service conducted a national survey of desegregated schools, and the data produced received extensive analysis. A 1966 study indicated that the proportion of white students in a school was positively related to individual performance, but that the effect appeared to be accounted for "by other characteristics of the student body than the racial composition per se." Further analysis in 1968, however, showed that school desegregation is associated with higher achievement for black pupils only

decade of research, there have been no definitive positive findings. Adequate data has not yet been gathered to determine a causal relation between racial composition and racial achievement.[62] White pupil performance, on the other hand, is not affected by desegregation.[63] In sum, desegregation in and of itself neither causes nor precludes gains in performance for black pupils. Nevertheless, desegregation has been the greatest occasion of educational gain in the modern history of the Boston public schools. Boston public schools are still unsatisfactory, but they are not as bad as they once were[64]—and in Boston, that is a great gain. There is no evidence to suggest that, absent court intervention, any educational reform benefiting black children would have come to pass in the Boston schools. Because it is premature to subject Boston's desegregation to rigorous pupil performance analysis, this Article will not give close attention to evaluations of pupil performance in discussing Boston's desegregation. There are, however, a number of court-ordered school reforms that auger well for the future quality of schooling in Boston.

First, the court has substantially reformed and regularized the selection and placement of administrative personnel in school buildings and in the central offices of the School Department.[65] Historically, one became a principal or central administrator in the Boston schools exclusively by promotion from within the school system, and promotion required a personal champion on the Boston School Committee. Regrettably, School Committee members often chose those to be championed largely on the basis of their willingness to give financial support to the School Committee member at election time. Such practices ceased when desegregation came, but not before Boston was administratively staffed at a rate 400 percent greater than were school districts of comparable size.[66] One of the ironies of desegregation is that the quest for equity for black children must inevitably accrue to the even greater benefit of white

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if they are in predominantly white classrooms, but that desegregation is favorable irrespective of the percentage of white students. A 1972 study then reaffirmed the 1966 conclusions that racial composition has little effect on black academic achievement when school quality and the background of individuals and their peers are controlled. *Id.* at 19-20.

62. *Id.* at 36.

63. *Id.* at 32.

64. *See* Boston Public Schools, CITY-WIDE PUPIL ACHIEVEMENT PROFILES 1972-1974, at 5, 9 (March 1975) (copy on file with the *Vanderbilt Law Review*).

65. *See* Order *re* Administrator Desegregation (February 24, 1976) (copy on file with the *Vanderbilt Law Review*).

66. These conclusions are based on the author's interviews and conversations with teaching and administrative personnel of the Boston public schools. I conducted the interviews in October of 1975, 1976, and 1977, as a representative of the Citywide Coordinating Council and of the Freedom House Coalition, both organizations that monitor desegregation in the Boston public schools.

children. Boston is no exception. Attempts to reform administrative selection in the Boston public schools have for many years met with total failure. Now, despite halting progress, Boston is moving toward a system of administrative selection based largely on candidate merit. My own evaluation of the politics of educational decisionmaking in Boston leads me to conclude that absent the court's order for administrative desegregation, the School Committee would have prevented even the progress toward personnel reform that is now underway.

The court has brought about a second major school reform by initiating dramatic and unprecedented intercourse between Boston schools and area universities, businesses, and cultural institutions. In devising the plan for Boston's desegregation, Judge Garrity sought the means by which quality education might become a part of the desegregation process.[67] To that end, in 1975 the court invited twenty-two Boston area colleges and universities to "support, assist, and participate in the development of educational excellence within and among the public schools of Boston."[68] In response, each college and university developed a relationship with one or more Boston schools. The pairings are now in their third year of operation and have been supported by upwards of eight million dollars in state funds.[69] The pairings presently serve more than two-thirds of the 65,000 Boston public school students, and the number of participating colleges and universities has grown to twenty-four.[70] While the pairings vary in their activities, most are characterized by the following:

> 1. Almost all pairings have planned for extensive parent outreach and involvement, through a variety of paid and unpaid róles. Parent "coordinators," "parent liaison committees," or "community relations specialists" are the most consistently undertaken activities in the pairings.
> 2. Almost all pairings provide for at least a half-time university staff person to coordinate university involvement. The extent to which the other university faculty are involved varies greatly from project to project. Somewhat less uniform are the requests by schools for a co-project director; such requests range from one-half release-time for a teacher to designation of an assistant principal as co-project director at no cost.
> 3. Most projects focus on a combination of direct services to students through diagnostic testing, tutoring, additional teacher aides, materials, field trips and guidance services and direct services to teachers and administrators through inservice workshops, college courses, curriculum development, and on-site consultation.[71]

67. *See* Hunt, McMillan, & Worth, *University-School Collaboration in Boston,* 16 INTEGRATED EDUC. 21, 21 (March-April 1978).

68. 401 F. Supp. at 259.

69. *See* Hunt, McMillan, & Worth, *supra* note 67, at 21.

70. *Id.*

71. *Id.* at 22.

The pairings are mixed in their richness and productivity but they unquestionably have enhanced the life of Boston schools and their students.

Excepting only the actual desegregation of the schools, the court's most profound impact on the Boston schools has been the court-ordered parent participation in the life of the schools. Historically, the Boston public schools have been closed. Nonschool personnel were permitted in the schools at the pleasure of principals, and principal pleasure extended only to a very few who were almost always white.[72] The historic organization for Boston public school parents is the Home and School Association. That the Association entered *Morgan v. Kerrigan* as an amicus curiae[73] on behalf of defendant School Committee indicates the Association's bias in favor of the discriminatory status quo that prevailed before the instant suit.

Fortunately, the court moved early in the remedial phase of the litigation to devise legitimate nondiscriminatory parent-school organizations. Beginning in October 1974, the court ordered the creation of a multi-tiered citizen advisory structure whose elected parent members are multiracial.[74] In addition, each Boston school has a Racial Ethnic Parent Council (REPC),[75] and each of Boston's nine school districts has a Community District Advisory Council (CDAC)[76] composed of elected parents, high school students, and court-appointed citizens. Finally, an all parent, elected Citywide Parents Advisory Council (CPAC) consisting entirely of parents has been established.[77] The court has characterized the role of these multiracial, democratically elected parent groups as follows:

> All matters which are apt to facilitate or hinder the desegregation process in particular schools or districts or citywide are appropriate subject matters for citizen concern and action, e.g., implementation of Court orders for special

72. These conclusions are based on my interviews of representatives of more than forty organizations that either represent or serve minority parents in Boston. *See* Edmonds, *Desegregation and Equity: Community Perspectives*, 19 HARV. GRADUATE SCH. OF EDUC. A. BULL., No. 2 (Winter 1974-1975).

73. The Boston Home and School Association is listed as a party in 388 F. Supp. 581. The Association's resistance to desegregation was acknowledged in 401 F. Supp. at 227, the court stating that "the association attempted to show that certain segregated schools had not heen affected by defendants' actions and therefore were not required to be desegregated in formulating a remedy," and that "the remedy should reach only those schools in the system as to which specific findings as to the effect of segregative actions had heen made."

74. The advisory structure is the Citywide Coordinating Council, and is composed of seven separate subcommittees: (1) Public Information; (2) Monitoring; (3) Community Liaison; (4) District Council Liaison; (5) Education Programs; (6) Puhlic Safety and Transportation; and (7) Executive Committee. 401 F. Supp. at 265-66.

75. *Id.* at 267.

76. *Id.*

77. *Id.* at 267-68.

desegregative measures at some schools, repair and construction of facilities, vocational and occupational programs, plans and support of participation by colleges and universities and business and cultural institutions. The growth of multi-racial ethnic parent involvement in the REPC's is a basis for great hope and promise in the Boston school system. The dedication and understanding of scores of individual members of CPAC and CDAC's is a valuable resource, second to none, for successful implementation of the Court's desegregation plan.[78]

Despite the court's justifiably optimistic remarks regarding citizen participation in the Boston schools, complete harmony among the various concerned groups has not yet been realized. Many Boston school administrators assert that their reluctant acceptance of elected, multiracial parent presence will last only so long as the court compels that acceptance.[79] Despite these unpleasant ambiguities, parents may now come and go in the Boston schools as a matter of right, so long as their presence does not disrupt the program of instruction. These changes do not assure equity in the schools, but they surely constitute great progress without which there would be no prospect for equity in the Boston public schools.

These, therefore, are some of the disparate elements that describe Boston's desegregation experience. Boston's racially segregated dual school system has been substantially dismantled, although employment of minority school personnel and minority pupil assignment to vocational education have progressed little from the predesegregation period. The court has effectively forbidden the School Committee from engaging in further acts of segregation. But what of black Boston's initial interest in improving teaching and learning in the Boston schools? Desegregation, in and of itself, is not after all a necessary occasion of instructional reform for black pupils. While desegregation does interrupt the more flagrant discriminatory school practices, it only creates the opportunity for instructional reform. What use may eventually be made of that opportunity remains to be seen.

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78. Memorandum on Citizen Participation (September 1, 1977) (copy on file with the *Vanderbilt Law Review*).

79. This conclusion derives from my interviews of seven principals in the Boston public schools. *See* note 66 *supra*.