A CASE STUDY OF NORTH CAROLINA DESEGREGATION ISSUES: INFLUENCE PATTERNS OF FEDERAL AND STATE COURTS AND STATE STATUTES

by

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CHAPTER I

INTRODUCTION

Law has guided and framed the educational system in the United States since the beginning of formal education in this country. The combination of constitutional, statutory, and case law principles provided the legal foundation on which the public schools are based. Law has continued to be one of the major forces that influences change in public education. This has been especially true in the area of desegregation.

HISTORICAL REVIEW

For over three hundred years almost all black Americans were denied the basic rights of American citizenship. This was illustrated in 1857, when the Supreme Court held that black Americans were considered inferior and, whether emancipated or not, had no rights or privileges except those granted them by the government and by persons who held power.[1]

After the Civil War, attempts to change the legal status of black Americans resulted in the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the

United States Constitution. Even with the adoption of these Amendments, black Americans did not immediately gain equality of legal status. Some state laws permitted segregation and others required it. Literacy requirements for voting, "white primaries," job discrimination, and other discriminatory practices were adopted to confine blacks to second-class citizenship. Beginning in 1896, the "separate but equal"[2] doctrine dominated the court rulings until the 1950's.

The Supreme Court held in the 1954 Brown decision[3] that separate schools were inherently unequal. Even though a decision by the Supreme Court is supposed to be the "law of the land," much political turmoil followed Brown:

> Governors and Presidents have struggled over its implementation. The Halls of Congress and state legislatures have witnessed inumerable hours of heated debate over its legislative implications. Educational administrators, teachers and parents have locked in continued dispute over its local implementation.[4]

Laws have been written, court decisions have been made and speeches have been given related to desegregation of public schools, yet, there are still many divergent opinions concerning what the law actually requires. This lack of understanding or lack of agreement has resulted in numerous court cases.

Few public schools in the nation are completely free from problems related to desegregation. One only needs to look at the amount of litigation in North Carolina to determine that that state has not escaped the political turmoil. More than 60 school desegregation cases have originated in North Carolina since 1954. In addition to judicial action, the State Legislature has also been involved in the segregation-desegregation process. Educators must be aware of the changing trends in the law, as well as existing legal principles, if they are to perform their duties in a lawful manner. E. C. Bolmeier states that:

> There can be no doubt as to the necessity for school officials to know school law. The administration of our schools' affairs is a gigantic undertaking fraught with numerous legal ramifications.[5]

STATEMENT OF THE PROBLEM

The problem of this study was to analyze the influence patterns among federal court decisions, state appellate court decisions, and state statutes pertaining to the desegregation of public schools in North Carolina.

PURPOSE OF THE STUDY

The purpose of this study was to trace historically the significant Supreme Court cases pertaining to desegre-

gation in the public schools, and to analyze desegregation problems peculiar to North Carolina which were related to constitutional, statutory, or judicial law.

SIGNIFICANCE OF THE STUDY

Desegregation is an important issue in almost all public school systems in the United States. Much desegregation which has been accomplished has occurred as a direct result of litigation and legislation. A study of influence patterns among federal and state court decisions and state statutes can be valuable to educators.

RELATED STUDIES

A search through the Comprehensive Dissertation Index, using desegregation, integration, segregation, legal, and law as descriptor words, revealed a number of studies that had been done on various aspects of racial desegregation, but none of the studies pertained to an analysis of influence patterns which developed among the courts and state statutes.

METHODOLOGY

The research method used in this study consists of an analysis of the law through an examination of pertinent cases and statutes. The procedure used has primarily been

adopted from Morris L. Cohen's book, Legal Research in a Nutshell.[6]

The General Statutes of North Carolina were searched for laws related to desegregation of the public schools. The descriptive word index method was used to locate statutes that were relevant to this topic. The statute name and legal concept methods were used when necessary. Each statute was reviewed to determine the requirements, which were related to school desegregation, that were established by the law.

Primary emphasis was placed on an analysis of case law. The development of North Carolina law related to segregation-desegregation was compared to trends which were detected in Supreme Court decisions. The case name and legal concept methods were used to find cases when needed, but the primary case-finding method used in this study was the descriptive word method. The case-finding methods were applied to the following sources:

(1) The American Digest System
(2) American Jurisprudence
(3) Corpus Juris Secundum
(4) Words and Phrases

The American Digest System was used to obtain a list of cases relative to the topic of this study. The cases were then located in the National Reporter System and the court opinions were briefed. The cases included

in this study were found in the Supreme Court Reporter, the Federal Supplement, the Southeastern Reporter, the North Carolina Reports, and the North Carolina Court of Appeals Reports. These publications contained cases decided in the United States Supreme Court, the Federal Circuit Court of Appeals, the Federal District Courts, and the Appellate Courts of North Carolina. Pertinent cases which were reported in the American Law Reports were also located in that source and the annotations of the cases were studied.

The appropriate Shepard's Citations were used to determine the present status of the cases and statutes. In addition to establishing whether a case or statute had been affirmed, overturned, or modified, Shepard's Citations provided research leads to periodical articles and attorney general opinions. Cases or statutes in which the present one (case or statute) had been cited were also listed.

A study of Corpus Juris Secundum and American Jurisprudence served to check the completeness of the list of cases obtained from the American Digest System. Other periodicals and books were also searched for information pertinent to this study.

Each case included in this study was briefed according to the following format:

1. Title of case with citations, date, and the judge or judges.
2. Situation
   a. Factual situation
   b. Issues
   c. Cause of action
3. Decision
4. Official court opinion relative to points of law.

The cases were then arranged chronologically and an attempt was made to detect trends in the court decisions. The development of North Carolina law was compared to trends which were detected in the Supreme Court decisions during specified periods of time. The influence patterns among federal and state courts and state statutes were analyzed.

DELIMITATIONS

The study was delimited to the development of law in North Carolina as it paralleled the trend which developed in United States Supreme Court decisions pertaining to desegregation of public schools. The study did not include the simultaneous development of law in other states. References were made to court decisions in other states only as they applied directly to North Carolina litigation.

The study was further delimited because no attempt

was made to evaluate the educational worth of any changes which had occurred, nor was there any attempt to detect actual changes in the racial composition of the schools.

EXPLANATION OF THE JUDICIAL SYSTEMS

The North Carolina Judicial System

The Judicial Article of the North Carolina Constitution was completely revised in 1962. The amendment provided for a unified "General Court of Justice" which consisted of the appellate division (Supreme Court), a Superior Court division, and a District Court division. The creation of an intermediate Court of Appeals, between the Supreme Court and the superior courts, was authorized by a later amendment in 1965 and the court was established in 1967. The purpose of the intermediate Court of Appeals was to alleviate the heavy case load of the Supreme Court.[7]

Civil action in North Carolina begins when someone files a complaint in the proper court. The court in which a complaint must initially be filed is determined by the nature of the complaint. If the amount of money involved in a civil case is less than five thousand dollars ($5,000), district courts have original jurisdiction.[8] North Carolina district courts have not played an important role in desegregation cases.

Superior Courts have jurisdiction in cases concerning the enforcement of any statute, ordinance, or regulation. Cases in which claims of constitutional rights have been stated are also under the jurisdiction of the superior courts.[9] Most desegregation cases would be of the types just described and would, therefore, be within the jurisdiction of the superior courts. However, in the area of civil rights, many litigants choose to transfer their case to a federal district court because they usually get faster action.[10]

A final judgment of a superior court, or a temporary judgment which affects a substantial right, may be appealed to the Court of Appeals. If a case commands significant public interest or involves an issue which is important to the State, the State Supreme Court may choose to review it either before or after the Court of Appeals has decided the case. The Court may decide to review the case on its own discretion or at the motion of either party. If "discretionary review" is not granted, a dissatisfied litigant may still appeal the Court of Appeals' decision to the State Supreme Court.[11]

The State Supreme Court accepts cases on appeal which involve either state or federal constitutional questions. If the question is strictly a state issue the State Supreme Court's decision is final, and it is the

last resort for a litigant. A state court may hear either state or federal questions but a federal court will not interfere with a case that involves purely state issues.[12] A case which does involve a federal question may be appealed directly from the State Supreme Court to the United States Supreme Court.

The opinions of the State Supreme Court are printed in bound volumes known as the North Carolina Reports. The Reports have the same legal effect as acts of the General Assembly. A court reporter also prepares an official synopsis of the opinions of the Court of Appeals, indexes these opinions, and prepares them for publication in the North Carolina Court of Appeals Report.[13]

The Federal Judicial System

In addition to cases litigated in the judicial system of North Carolina, this study was concerned with litigation in the federal courts that has affected the development of law in North Carolina. For the purpose of this study the explanation of the federal judicial system will be limited to the United States District Courts, the United States Courts of Appeals, and the United States Supreme Court. These constitutional courts were created under Article III, the judiciary article of the United States Constitution. Actually, the Supreme Court was the

only court established by Article III, Section 1, but provisions were made for Congress to establish inferior courts as they saw fit. The two lower courts were established by the Judiciary Act of 1789. Under Article III, Section 2, of the Constitution, the jurisdiction of the federal courts is limited to actual cases. In the absence of an actual case, involving litigants of opposing points of view, who bring to court a genuine conflict of interest, the federal courts have no jurisdiction.[14]

The 88 district courts, serving the 50 states and the District of Columbia, make up the trial courts of the federal system within the United States. Their jurisdiction extends to the initial trial of almost all civil and criminal cases arising under the vast realm of federal jurisdiction. Usually a lone district court judge presides over a trial. However, in some cases of particular importance Congress has, by statute, provided for adjudication by three-judge district courts. The three-judge courts usually consist of two district judges and one circuit judge. Cases required to be heard by three-judge district courts are usually those seeking to restrain, by an injunction, the enforcement, operation, or execution of federal statutes, state statutes, or orders of state administrative agencies on grounds of unconstitutionality. Cases involving orders by the Interstate Commerce Com-

mission are also heard by a three-judge district court.[15]

Immediately above the district courts, there are 11 United States (Circuit) Courts of Appeals. These are appellate courts only. With the exception of those few cases that are permitted to bypass it enroute to the Supreme Court, a circuit court hears all appeals from below. Cases are conducted before the court of appeals on the basis of the record made in the lower court. New evidence can not be presented before this appellate tribunal, just as it can not be introduced in the appellate cases reaching the Supreme Court. The purpose of the courts of appeals is to reduce the case load of the Supreme Court.[16]

At the apex of the federal judicial system is the United States Supreme Court. The Supreme Court has both original and appellate jurisdiction. However, cases originating in the Court are rare, thus, the main function of the Supreme Court is appellate. Appellate cases with which this study was concerned came to the Supreme Court from three different sources: (1) a state court of last resort; (2) the United States Courts of Appeals; and (3) the United States District Courts.[17]

Appellate cases reach the Supreme Court in one of three ways: (1) on appeal; (2) on certiorari; or (3) by

certification.[18] No cases used in this study reached the Court by certification, therefore, it will not be discussed here.

In an instance of a writ of appeal an aggrieved party has a statutory right to carry a case to the Supreme Court which, in theory, must review it. However, the Supreme Court retains the discretionary power to reject an appeal on the grounds that no substantial question is involved. Cases are appealable to the Supreme Court from a state court of last resort when: (1) the state court has declared a federal law unconstitutional; or (2) the state court has upheld a state law or a provision of the state constitution against the challenge that it conflicts with a federal law or the federal constitution. Cases may be appealed from the United States Courts of Appeals when: (1) a state law or a provision of the state constitution has been struck down due to a conflict with a federal law or a provision of the federal Constitution; or (2) a federal law has been declared unconstitutional, provided the United States is a party to the suit. Cases are appealable from the United States District Courts when: (1) a federal statute has been declared unconstitutional, provided the United States is a party to the suit; (2) the United States is a party to a civil suit under the interstate commerce laws; or (3) a three-judge district

court has denied or granted interlocutory or permanent injunction. The largest number of Supreme Court cases come from a state court of last resort or from a special three-judge district court. Many desegregation cases have reached the Supreme Court through the latter route.[19]

A litigant who has no right to appeal an adverse decision to the Supreme Court may petition the Court to grant him a writ of certiorari. The grant of certiorari signifies that the Supreme Court is willing to review the case and it directs the lower court to send up a record in the case for review. Certiorari will not be granted unless the Court detects an issue of substantial significance or it happens to be especially interested in the case. Two situations in which the Supreme Court might grant certiorari from the United States Courts of Appeals are: (1) when a decision involves the application or interpretation of a federal law or the federal Constitution; or (2) where the circuit court has upheld a state law or a provision of a state constitution against a challenge that it conflicts with a federal law or the federal Constitution. Certiorari may also be granted from a state court in cases where a substantial federal question has been properly raised.[20]

Once a case has been officially decided by the Supreme Court, the case is binding on all lower courts.

The decisions of the Supreme Court are recorded and published in a series of volumes known as the United States Reports. The Reports are the only official record of the Court.[21]

OVERVIEW OF THE FOLLOWING CHAPTERS

This study has been divided into seven chapters based on a trend in Supreme Court decisions. The content of the chapters are stated below as a guide to the reader.

Chapter II includes a brief review of Negro history as it related to education in North Carolina and a review of significant court cases leading to the 1954 Brown decision. Also included in this chapter was a review of the Brown decisions as well as other significant federal cases which were litigated during the period from 1954 through 1963. Emphasis was placed on North Carolina's reaction to the Brown decisions.

The Court's increasing impatience with continued resistance to desegregation was illustrated in Chapter III by a review of court decisions from 1964 through 1967. A discussion of the 1964 Civil Rights Act and its implications was also included in this chapter.

Supreme Court cases decided from 1968 through 1970 were discussed in Chapter IV to show the change in the Court's attitude from "with all deliberate speed" to

desegregate "now". Other state and federal court decisions which originated in North Carolina during that period were also discussed.

Cases litigated during 1971 and 1972 were discussed in Chapter V.

Chapter VI includes a review of Supreme Court cases which were decided from 1973 through 1974 with a discussion concerning the split which had developed in the Supreme Court pertaining to school desegregation cases.

Chapter VII contains a summary and the conclusions reached through this study.

FOOTNOTES

CHAPTER I

1. Dred Scott vs. Sanford, 19 Howard 393 (1857).

2. Plessy vs. Ferguson, 163 U.S. 577 (1896).

3. Brown vs. Board of Education of Topeka, 347 U.S. 483 (1954).

4. Kern Alexander, Ray Corns, and Walter McCann, Public School Law (St. Paul: West Publishing Co., 1969), p. 636.

5. E. C. Bolmeier, "Directions in School Law," School Board Journal, CXXXIX (September, 1959), 33.

6. Morris L. Cohen, Legal Research in a Nutshell (2nd ed.; St. Paul: West Publishing Co., 1971.

7. Report by the Governor's Committee on Law and Order, North Carolina's System of Crime Prevention and Criminal Justice, 1973-74.

8. Michael R. Smith, Law and the North Carolina Teacher (Danville: The Interstate Printers and Publishers, Inc., 1975), pp. 24-25.

9. Ibid., p. 25.

10. Ibid.

11. Ibid., p. 27.

12. Ibid.

13. Report by the Governor's Committee on Law and Order, North Carolina's System of Crime Prevention and Criminal Justice, 1973-74.

14. Henry J. Abraham, The Judicial Process (2d ed.; New York: Oxford University Press, 1968), pp. 155-156.

15. Ibid., pp. 162-163.

16. Ibid., pp. 167-168.

17. Ibid., pp. 173-174.

18. Ibid., p. 182.

19. Ibid., pp. 176, 182-183.

20. Ibid., pp. 176-180, 183.

21. Ibid., p. 225.

CHAPTER II

HISTORICAL AND LEGAL BACKGROUND

Background information was included in this study to familiarize the reader with trends as they developed chronologically. This familiarization would enable the reader to better understand the influence patterns which developed among federal courts, state courts and state statutory law from 1964 through 1974. A review of early education in North Carolina was included to show the position of Negroes in regard to education prior to 1896. The following sections, "Separate-But-Equal," "Transition from Separate-But-Equal to Brown," and "Separate Educational Facilities Are Inherently Unequal" provide a brief history of the legal status of the Negroes in the public schools prior to 1964. "North Carolina's Reaction to Brown" was included to show the influence patterns which developed among federal courts, state courts and state statutes from 1954 to 1964.

EARLY EDUCATION

In 1620, a school was established for Indians and Negroes in Virginia, but it was destroyed in the Indian

Wars. There is no record of any other Negroes being formally educated until 1701, when it was reported that a teacher sent by an English missionary society had taught 20 Negroes to read. In Georgia, in 1747, slave owners were encouraged to educate the young Negroes and to teach Christian ideas to the older children.[1] However, in the middle of the 1700's Georgia passed a law which forbade the teaching of slaves to read and write. Later other states adopted similar statutory provisions; and some states even prohibited the teaching of free Negroes. North Carolina did not pass legislation which prohibited the private teaching of free Negroes, but public opinion, especially after 1830, refused to countenance such procedures.[2] Educational opportunities of free Negroes in ante-bellum North Carolina were few. If it were not for the apprenticeship system the educational achievement of free Negroes would have been even lower than that which was achieved.[3]

Until 1830, the decision to educate slaves in North Carolina was left entirely to the discretion of their master. There was a high rate of illiteracy among the higher economic levels, therefore there was little motivation to provide educational opportunities for slaves. The majority of the slaves who could read and

write usually learned to do so at Sunday school. Most education which slaves received was limited to serving as an apprentice in order to learn a skill to be used on a plantation.[4] However, some whites deliberately undertook to provide education for slaves and free Negroes. Presbyterians, Methodists and Quakers were engaged in the education of slaves and free Negroes. As early as 1771 the Quakers were teaching slaves to read and write. In 1816 they opened a school two days a week for three months for Negroes.[5]

In 1800, a bill was introduced in the North Carolina General Assembly to prevent all persons from teaching slaves to read or write, but the bill was defeated. It was not until abolition literature was found circulating among some Negroes, in 1830, that a bill was passed to prohibit the teaching of slaves to read and write.[6] In addition to forbidding slave owners to teach slaves, the law also prohibited slaves to teach slaves, and it also prohibited the giving or selling of books or pamphlets to slaves.[7] Due to the laws which were passed in 1831 and 1832 free Negroes recruited from the slave ranks, after 1832, had received almost no opportunity to become literate. They added almost nothing to the intellectual development of the free Negroes in North Carolina.[8]

Until the abolitionist movement, the attitudes in the North, pertaining to education of the Negro, were similar to the attitudes in the South. Prior to the Civil War, if Negroes received any rudiments of education, it was usually on a segregated basis depending on the desire of white slave owners or white leadership in the area.[9] In 1849, the first court case involving the right of a black student to attend an all white school in Boston, Massachusetts was dismissed due to a lack of constitutional legality. It was not until 1868 that the Fourteenth Amendment to the United States Constitution was passed providing a potential tool for fighting discrimination in education.[10]

The idea of public education, even for white children, developed slowly in North Carolina, though it began early and grew steadily. During the colonial period, wealthy children received education within the home, and then were sent outside the colony for advanced training. Poor children, especially orphans and illegitimate children, received education through the agencies of indentured servitude and the apprenticeship system. Early education in North Carolina was closely associated with churches. Most teachers were clergymen, lay readers, or candidates for the ministry. The pioneer educational agency in North Carolina was the Society for the Propogation of the

Gospel.[11] During the colonial period most small farmers were too busy clearing land, tilling soil, and trying to earn a living to give much consideration to education, formal or otherwise. However, some planters were concerned about education. As early as 1716, Governor Eden sent word to England that planters would be willing to pay most of the salaries of teachers if the Society of the Propogation of the Gospel could furnish them.[12]

In 1736, Governor Johnston urged the legislature to take some positive action concerning public education. Although the Colonial Assembly recognized that there was a need for public education, no immediate action was taken. A bill, to establish free schools, was introduced in the Colonial Assembly in 1749 and again in 1752 but was defeated each time. In 1754 money was appropriated for education but it was then used for military purposes.[13] The first significant step in the growth of the idea of public education in North Carolina was the adoption of Article XLI of the State Constitution of 1776, which provided:

> That a school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the Masters, paid by the public, as may enable them to instruct at low prices, and all useful learning shall be duly encouraged and promoted, in one or more Universities.[14]

Even with these provisions, the state was slow in establishing a University and even slower in setting up a public school system. The University was chartered in 1789 and organized six years later, graduating its first class in 1798.

North Carolina retained its reputation for ignorance and lack of progressiveness as the nineteenth century progressed. From 1802 until the establishment of public schools in 1839, scarcely a year passed without some mention of public schools in the Legislature. Every governor, except two, from 1802 until 1838 recommended the establishment of public schools. Archibald Murphy, a state senator, was the first North Carolina statesman to envision a universal educational system for all white children regardless of academic or financial ability. Between 1815 and 1818 he proposed a system of schools to be supported by generous state support. Murphy's plan provided for a broad course of studies for the University, a state school for the deaf and dumb, ten regional academies and two or more primary schools in every county. Murphy's proposal was defeated by the Legislature but he had started a movement which was carried on by the advocates of schools.[15]

With the exception of an 1825 act, which created a literary fund, there was no significant legislation

enacted for public education from the time the University was chartered until the passage of the Common School Law in 1839.[16] The law did not require the establishment of public schools; it only provided that each county hold an election to determine if a majority of the voters were in favor of taxing themselves for the purpose of establishing common schools in their county. The act also provided that money raised through taxation would be matched from the literary fund at a two to one ratio.[17]

The Literary Act and the Common School Law of 1839 improved the educational opportunities for the white children of North Carolina. By 1860, according to Calvin H. Wiley, State Superintendent of Common Schools, North Carolina had developed the best system of public instruction in the South.[18] However, the Negro was prohibited, by law, from participation in the state school system prior to the Civil War.[19]

Educational opportunities for Negroes increased during the Civil War. Opposition to Negro education decreased in the North, and in the South, Union armies established schools for Negroes who were released from slavery. The Freedman's Bureau, which was created by Congress in 1865, cooperated with religious and philanthropic societies to provide for the education of Negroes. The American Missionary Society, as well as several church

bodies, furnished funds and teachers for Negro education.[20]

Most of the schools which were established to educate Negroes, during and after the Civil War, were segregated. In the South, segregated education had the sanction of state and local laws. In some border states, permissive segregation was written into the statutes. Segregated schools also developed in some Northern states but their state laws usually did not make it mandatory.[21]

Provisions for the education of Negroes seemed a logical step after emancipation and the Civil War. However, the free public school systems in many Southern states suffered greatly during the war and North Carolina's schools did not completely escape the setback. Even though the State Superintendent of Common Schools, Calvin H. Wiley, was able to prevent the literary fund from being used for war purposes, the school system deteriorated during the war. The education of white children continued in skeleton form, with the number of schools and enrollment greatly reduced.[22] During their brief tenure of power from 1865 to 1868, the Democratic Conservatives abolished the office of State Superintendent of Common Schools, refused to make state appropriations for schools, and threw the responsibility for public education upon localities. Although towns and counties had the power to levy taxes for schools, few of them did. There

was no appreciable achievement in public education, for white or Negro children, in North Carolina from 1865 to 1868.[23]

The radical Republican Party came to power in 1868 and immediately began to work to meet the requirements which Congress had spelled out as requisits for North Carolina's readmission to the Union. The radicals had a striking interest in education. The two requisits to readmission which had the greatest influence on education were the ratification of the Fourteenth Amendment to the United States Constitution and the adoption of the North Carolina Constitution of 1868.

Part of the 1868 Constitution dealt with education, and stated:

> Article I. Sec. 27. The people have a right to the privilege of education, and it is the duty of the state to guard and maintain that right.
>
> Article IX. Sec. 1. Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools and the means of education shall forever be encouraged.
>
> Sec. 2. The General Assembly at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years.

> Sec. 3. Each County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least four months in every year; and if Commissioners of any County shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.
>
> Sec. 17. The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability, shall attend the Public Schools, during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.[24]

The State now had mandatory and thorough provisions for schools. Although there were attempts by conservative members of the Constitutional Convention to provide for separate schools for the two races, the Constitution remained silent on the subject. The problem was left for the General Assembly.[25]

The 1868 Legislature immediately began work on education legislation through a Committee on Education. Governor Holden recommended the immediate establishment of a general and uniform system of free public schools. He also urged that provisions be made for separate schools for the two races, but stated that the character of the schools or the provisions to support them should differ in no way. After much discussion and name calling by committee members concerning the issue on separation of the

races, the school bill was enacted on April 12, 1869. The law provided for the administration of the public school system, established the minimum school term of four months, provided for the examination and certification of teachers, prescribed courses of study and textbooks, required that seventy-five percent of the state and county capitation tax be used for support of the county schools, and provided for separate schools for whites and Negroes.[26]

The constitutional and legislative provisions for education, enacted in 1868 and 1869, provided the framework of a school system adequate for both races. However, elaborate educational statutes, alone, were not enough to begin and maintain an adequate system of schools. In addition to a lack of genuine interest in education, the new status of the Negro also complicated the situation. The State not only had to rebuild and advance the educational system for whites; it also had to develop a system for Negroes. The State's already limited resources were now forced to be even more sparsely distributed.

To make matters even worse the administration of the school law was in the hands of the State Superintendent of Public Instruction, S.S. Ashley, a carpetbagger from Massachusetts and an advocate of mixed schools. His

assistant, J.W. Hood, was a Negro carpetbagger who was appointed by the State Board of Education, in 1869, and immediately began superintending Negro education. Ashley and Hood created suspicion and a lack of public confidence in the public education system.[27] The possibility of mixed schools was confusing and alarming to the people of the state. Although the school law provided for separate schools, the Constitution was silent on the subject, and there was a constant dread that mixed schools might be forced on the people.[28] Many townships failed to provide schools in accordance with the law. Meager records indicate that, in 1870, only 49,999 children were enrolled in public schools, nearly half of whom were Negroes, though in separate schools.[29]

Although the law of 1869 required the county commissioners to maintain schools at least four months in each year and the Constitution gave them the power to levy taxes in order to raise the money needed to operate the schools, there was another clause in the Constitution which prohibited taxes to be levied, without a vote of the people, except for necessary expenses. The Constitution in one place gave the commissioners the right and responsibility to levy additional taxes for education; but in another clause it forbade them to do so. The conflict came before the North Carolina State Supreme Court in

1870.[30] The Court ruled that a tax for schools was not a necessary expense and, therefore, the constitutional limitation of state and county taxation would have to be observed unless the people voted to tax themselves.[31] This decision proved to be destructive to the school system because the people would not vote to tax themselves. The law was rendered virtually ineffective.[32]

Educational statutes in 1871 provided for more liberal school support and the tax rate was increased in 1873, but there was still an insufficient amount of money available to the schools. In 1885, the Supreme Court of North Carolina again held, in Barksdale vs. Commissioners,[33] that education was not a necessary expense and therefore the constitutional limitations on taxation would have to be observed.[34] Thus, on two occasions when the Supreme Court was called on to resolve a conflict between two constitutional provisions, it sacrificed the educational provisions for those on taxation.[35] The Lane and Barksdale decisions remained undisturbed until 1907, and illiteracy in North Carolina was extremely high during this period. In that year the Supreme Court of North Carolina held, in Collie vs. Commissioners,[36] that the county commissioners had the right to levy special taxes, if such taxes were necessary to maintain the four-months school term required by the Constitution.[37]

Progress was slow in the public school system during the quarter of century prior to 1900. Even though there was not enough money to operate one adequate school system, the people of North Carolina insisted that at least two separate systems be maintained. Article IX Section 2 of the North Carolina Constitution was amended by the constitutional convention of 1875 to provide for the establishment and maintenance of separate but equal educational facilities for the Negro and white children of the state.[38] Following this revision there was no question of the separation of races in the schools, but the question of equal educational opportunities was another matter.[39]

School officials, who controlled school funds before 1885, wanted to be impartial. Inequalities between Negroes and white schools in North Carolina were slight when compared to some other Southern states.[40] In January, 1877, the newly elected governor, Zebulon B. Vance, asked the General Assembly to deal justly and equitably with all school children of the state and to make no discrimination in the matter of public school education. Serious efforts were made to equalize the schools for the first three years following Vance's election; however, by 1880, the promises of 1876-1877 were cast aside.[41] In that year the Legislature authorized

the town of Goldsboro to establish graded schools by an act that declared the taxes raised from property and polls of white persons would be used exclusively for white schools and the taxes from property and polls of colored persons would be used exclusively for schools for colored persons.[42] The act passed the Legislature but the tax referendum was defeated in a popular vote. However, in 1881, a similar act was passed by the Legislature and approved by popular vote in Goldsboro. This idea spread rapidly to other communities in the state.[43] On March 8, 1883 the Legislature authorized any school district in the state to vote taxes to be distributed by race.[44]

The high point of the educational limitations imposed upon post-civil war Negroes in North Carolina was reached with the passage of the 1885 school law. The school law, which was passed March 11, 1885, gave the justice of peace and the county commissioners the right to appoint the members of the county board of education. The act also authorized the board of education to apportion two-thirds of the school fund in proportion to the whole number of children between the ages of six and twenty-one years. The remaining one-third was to be apportioned in such a manner as to equalize school facilities

in all local districts without discrimination in favor of or to the prejudice of either race.[45] The law eliminated most Negroes from boards of education. Without Negro representation, many of the boards worked to further only the educational interest of the white children of their respective county.[46]

Only through liberal interpretations of the 1885 law by the North Carolina Supreme Court were Negroes able to retain some of the educational privileges and rights they had enjoyed during reconstruction years. The State Supreme Court's commitment to safeguard the Negroes' privilege to acquire a public school education at the expense of all tax-paying citizens was demonstrated by an 1886 decision.[47] The Supreme Court, in Puitt vs. Commissioners of Gaston County,[48] declared that a law which allows school monies to be divided on race lines was unconstitutional in that it violated Article IX section 2 of the North Carolina Constitution which prohibited discrimination in favor of or to the prejudice of either race. The Court also pointed out that Negroes owned very little taxable property, but that their need for education was perhaps greater than that of the white children.[49] Had it not been for the Supreme Court of North Carolina the educational privileges afforded Negroes prior to 1900 would have been even less than they

were.[50]

The election of Charles Aycock as governor in 1901 marked the beginning of a new era for public schools in North Carolina. Aycock had turned the gubernatorial campaign of 1900 into a crusade for public education; and he pledged his administration to the promotion of this cause. Aycock's leadership, combined with general economic prosperity and a new awareness of the intellectual backwardness in the state, resulted in phenomenal educational development. The interest in public schools, which was begun during Aycock's administration has continued to present day North Carolina. Although, prior to 1954, improvements in Negro public schools followed a pattern similar to that of the white schools, the Negro schools were inferior to white schools in every respect. The separation of the races in the schools was no question, but the dual system was expensive and the "equal" part of the "separate-but-equal" doctrine was often forgotten.[51]

SEPARATE BUT EQUAL

North Carolina was not alone in its struggle to try to develop and maintain an adequate school system for white children and at the same time to provide educational opportunities for Negroes. While it was the State Supreme Court that continuously supported the Negroes'

right to an education in North Carolina during the second half of the nineteenth century, other courts, including the United States Supreme Court, were not as sympathetic to the Negroes' cause. As mentioned previously, the first case in which the right to maintain separate schools was challenged was Roberts vs. City of Boston, Massachusetts in 1849. In this case a Negro girl challenged a local ordinance which provided for separate education of the races. The court dismissed the case due to a lack of constitutional legality; thereby, upholding the right of the city to operate separate schools.[52] This apparently was the beginning of the separate-but-equal doctrine.

The total subordination of Negroes in America, prior to the Civil War, was illustrated by the United States Supreme Court's 1857 decision in Dred Scott vs. Sanford.[53] Dred Scott was a slave living in Missouri with his master. He had previously lived in Illinois, where slavery was prohibited by the Missouri Compromise of 1820. When Scott returned to Missouri, he sued for his freedom on the grounds that his residency in Illinois had made him a free man. Dred Scott's case became so involved over great constitutional issues that his personal fortunes were forgotten. The Court invalidated the Missouri Compromise as an unconstitutional restriction

of the property rights of slaveowners which were guaranteed against federal infringement under the due process clause of the Fifth Amendment to the United States Constitution. The Court held that black Americans were:

> ... considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.[54]

The Dred Scott decision established a principle of law which denied the status of citizenship to Negroes.

Following the Civil War there were attempts to make dramatic changes in the legal status of Negroes through civil rights acts and Constitutional Amendments. The Thirteenth Amendment, which was ratified in 1865, terminated slavery; but the South circumvented the freedom of the ex-slaves by enacting laws to control them.[55] Congress enacted the Civil Rights Act of 1866 to destroy the discrimination against the Negro that existed in the laws of many southern states and to put the Thirteenth Amendment into effect. With the exception of Indians, who were not taxed, the 1866 Act granted all privileges of citizenship without regard to race or color.

The constitutionality of the 1866 Civil Rights Bill had been questioned by some congressmen during debate. President Andrew Johnson had vetoed the bill be-

cause he believed it to be unconstitutional, but congress passed the Bill over his veto. The disagreement pertaining to the constitutionality of the Act was an invitation to test it in the courts. The Joint Committee on Reconstruction, anticipating an attack on the constitutionality of the Civil Rights Act of 1866; formulated a set of resolutions, on April 3, 1866, which ultimately became the Fourteenth Amendment to the Constitution of the United States.[56] The Fourteenth Amendment, ratified in 1868, guaranteed due process and equal protection of the laws to all persons as well as prohibiting the abridgment of immunities or privileges of citizens of the United States.[57] This amendment settled the question of the legality of the Civil Rights Act of 1866.

The Civil Rights Act of 1875 was an attempt by Congress to clarify the rights guaranteed by the 1866 Civil Rights Act and the Fourteenth Amendment. The 1875 Act prohibited discrimination by railroads, steamboats, public conveyances, hotels, restaurants, licensed theaters, juries, and church organizations; however, there was no mention of education. In the 1883 Civil Rights Cases,[58] the United States Supreme Court declared the 1875 act unconstitutional on the ground that the Fourteenth Amendment, upon which authority the statute rested, only limited state-enforced discrimination and did not

give the federal government the power to prohibit discrimination on the part of individuals. The Court also held that the Thirteenth Amendment was protection against the re-establishment of slavery and did not empower Congress to regulate social discriminations.[59] With the Reconstruction laws invalidated by these decisions, the Southern states attempted to define the rights of the Negroes and at the same time to limit them. The new laws required segregation of the races in such places as railroad cars, theaters, waiting-rooms, at water fountains, and in parks. Most schools had remained segregated throughout the reconstruction era, and therefore, were probably least affected by the new segregation laws.

The Supreme Court decision in the 1883 Civil Rights Cases indicated that the federal government could not protect the Negro against discrimination by private individuals, but it seemed that state imposed discrimination would be prohibited by the Fourteenth Amendment. However, in 1896, the Supreme Court gave approval to state-made sanctions which discriminated by race or color in the famous Plessy vs. Ferguson decision.[60] In this case Homer Adolph Plessy, one-eighth Negro and seven-eights white, refused to ride in the "colored" coach of a railroad train. This was a violation of a Louisiana statute which required equal but separate accommodations accord-

ing to race. Plessy challenged the statute on the ground that it violated his rights guaranteed by the Thirteenth and Fourteenth Amendments. Plessy's pleas were denied by the lower courts.

The United States Supreme Court refused to hear arguments on the Thirteenth Amendment, but did listen to arguments on the Fourteenth Amendment. Plessy asserted that as a citizen of the United States he was entitled to every right, privilege and immunity secured by the white citizens of the United States and that these had been denied him. The Supreme Court, in upholding the constitutionality of the Louisiana statute, stated that the purpose of the Fourteenth Amendment was to enforce the equality of the two races before the law, but it was not intended to abolish distinctions based on color, nor was it intended to enforce social, as distinguished from political, equality. In rejecting Plessy's argument that the separation of races stamps a badge of inferiority on the colored race, the Court stated

> ... /i/f this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.[61]

Following this line of reasoning, Plessy could suffer no damage as a result of mere separation so long as the facilities provided for him were equal to those provided for the whites. The Supreme Court held that it was

generally, if not universally, recognized that state legislatures could establish laws permitting or even requiring the separation of the races. The Court stated that

> The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.[62]

Roberts vs. City of Boston was not considered strictly a precedent but it was considered as evidence of the customs and traditions of the American people.[63] The Court did not recognize that Roberts had been decided before the adoption of the Fourteenth Amendment.

The lone dissenting justice, John M. Harlan, stated that, in the area of civil rights, all citizens are equal before the law. He asserted that the Constitution is color-blind, and does not tolerate classes among citizens. Justice Harlan believed that the Plessy decision would, in time, be as pernicious as the Dred Scott decision.[64]

Following the Plessy decision, the separate-but-equal formula became the law of the land. Although the case did not involve schools, the Court's side remark pertaining to segregated school systems indicated the Court's acceptance of the separate-but-equal doctrine for

schools. The constitutionality of separate-but-equal schools was not considered by the Supreme Court for more than 50 years, although the Supreme Court did hear several school segregation cases during that period of time.

The Supreme Court heard its first school segregation case in 1899, only three years after Plessy. In Cummings vs. County School Board (1899)[65] the Negro plaintiffs asked for an injunction closing the high school for white children until a high school for Negroes was opened. The Negro high school had been closed due to a lack of funds. The plaintiffs originally contended that, under the separate-but-equal doctrine, complete failure to provide a high school for one race was an obvious violation. Later in oral argument, the plaintiffs asserted for the first time that state-maintained separate schools were unconstitutional. The Court did not consider the latter argument because the issue was not raised in the original pleadings. The Court ruled that schools maintained by state taxation was a matter belonging to the states and the federal government could not justifiably interfere with the management of the schools without a "clear and unmistakable" violation of rights secured by the Constitution. Following the closing of the Negro high school the money that had been used to support that school was used to provide primary and elementary education for Negro

children, therefore, no race discrimination was involved. Thus, the Court did not give any consideration to the denial of equal protection of the laws. The Court refused to grant an injunction closing the white high school because this would not help the Negro cause and would hurt the educational opportunities of the white children. The Court said the Negro plaintiffs had asked for the wrong relief.[66] The Georgia Supreme Court ruled in favor of the board of education and the United States Supreme Court held that this was a state matter, thus affirming the state court's decision.[67] In its first education case, the Supreme Court not only avoided passing on the validity of separate-but-equal, but also failed to indicate any appropriate standards for measuring equality.[68]

In 1908, the Supreme Court again avoided direct consideration of the separate-but-equal doctrine. In Berea College vs. Commonwealth of Kentucky[69] the Court had under analysis a state statute prohibiting whites and Negroes from being taught in any private school unless that school maintained separate buildings at least 25 miles apart. The Supreme Court upheld the state statute on the narrow ground that the right to grant charters to corporations rests entirely in the discretion of the state and that the charter (which would include the one held by Berea College) was subject to reasonable regula-

tions of the legislature which granted the charter.[70] The Supreme Court's decision allowed the Kentucky statute to stand without the Court having to reconsider the separate-but-equal doctrine.[71]

The Court did not rule on the separate-but-equal question in the Cummings or Berea College cases. Plessy vs. Ferguson pertained only to transportation, but the Court had referred to the common practice of public school segregation to support its conclusion. This dictum, with the exception of some lower courts' decisions, stood practically by itself in the support of segregated schools until 1927. In that year the third school segregation case, Gong Lum vs. Rice,[72] came before the Supreme Court. In this case a Chinese girl, Martha Lum, objected to being assigned to a colored school. The plaintiff prayed for a writ of mandamus against the defendants to compel them to stop discriminating against her because of race and to give her the rights and privileges which were provided to other children in the Rosedale High School.[73] The Court again stated that the education of the people in state maintained schools was a state matter and that the federal government could not interfere unless there was a "clear and unmistakable" violation of constitutional rights. The Court held that a Chinese-American pupil could be classified as colored and, therefore, could be

compelled to attend a Negro school if the state chose to do so, thereby upholding the segregation laws of Mississippi.[74]

TRANSITION FROM SEPARATE-BUT-EQUAL TO BROWN

Several cases decided by the United States Supreme Court and one important decision which was made by the highest court in Maryland indicated that, if "separate-but-equal" facilities were not available, students should be admitted to the existing facilities upon petition. These first inroads against legally sanctioned segregation were made at the graduate level.

In 1935, Donald Murray was refused admission to the University of Maryland Law School solely because of his race. Maryland did not maintain a law school for Negroes, but Murray had been offered a scholarship, provided by the state of Maryland, to attend any law school outside the state which would accept him. He claimed the right to attend the state supported law school in Maryland. In Pearson vs. Murray[75] the Maryland Court of Appeals considered two issues pertaining to the separate-but-equal doctrine. The first of these issues related to the measure of equality and the second was concerned with the proper remedy.

The court held that Murray could not receive an education in another state equal to that which he would receive in Maryland for the purpose of practicing law in Maryland.[76] On the issue of proper remedy, the court ruled that since equal treatment could only be furnished in the one existing law school, Murray had to be admitted to the Maryland Law School. The court did not find the establishment of a law school for Negroes to be the proper remedy.[77]

The Murray case was cited as a precedent by the United States Supreme Court in a similar case, Gaines vs. Canada[78] in 1938. Loyd Gaines was denied admission to the law school at the University of Missouri. Although Missouri did not provide equal facilities within the state, there were laws providing for the payment of tuition for Negroes to attend equivalent facilities in adjacent states. The issue before the Court was whether Missouri, by providing Negroes the opportunity for legal education in another state, had met the requirements of the equal protection clause of the Fourteenth Amendment. The Court stated that the basic consideration was not what opportunities other states provided, but what opportunities Missouri itself furnished white students and denied Negroes solely because of their race. The Court held that the equal protection clause required the state to furnish,

within its borders, educational facilities equal to those provided the whites.[79] The Court ruled that Gaines was entitled to be admitted to the University of Missouri Law School in the absence of other equal facilities for his law training within the state.[80] This made it clear that payment of tuition to out-of-state schools did not satisfy the constitutional requirements; however, the decision did permit a separate law school for Negroes in Missouri.

Ten years after Gaines, a very similar case, Sipuel vs. Oklahoma,[81] came before the Supreme Court. Sipuel, a Negro girl who was qualified to receive the legal education offered by the state, had been denied admission to the School of Law at the University of Oklahoma solely due to her race. The University law school was the only institution for legal education supported by the state. The Supreme Court held that the equal protection clause required the state to provide Sipuel a legal education if and when it did so for any other group.[82] Oklahoma complied by admitting Sipuel to the already existent state university.[83]

Following the Sipuel decision, a three judge district court ordered the University of Oklahoma to admit G. W. McLaurin as a candidate for a doctorate in education. Although McLaurin was admitted, he was re-

quired by a state statute to sit in a seat in a row for colored students; he was assigned to a special table in the library; and he was assigned to a separate table in the cafeteria.[84] McLaurin filed a complaint alleging that the action deprived him of the equal protection of the laws. The United States Supreme Court, in McLaurin vs. Oklahoma State Regents,[85] pointed out that there was a great difference - "a constitutional difference" - between state imposed restrictions which prohibited the intellectual commingling of students, and the mere refusal of individuals to commingle when the state had imposed no restrictions.[86] The Court held that the state actions deprived McLaurin of the equal protection of the laws as guaranteed by the Fourteenth Amendment. The Court stated that McLaurin, having been admitted to a state-supported graduate school, must be given the same treatment as students of other races.[87] Even in this case, the Court's conclusion was based on the inequality of opportunity under the total circumstances rather than upon segregation alone. The Court was able to render its decision without saying that segregation, itself, was a denial of the equal protection of the laws.[88]

On the same day that the McLaurin case was decided, the Supreme Court also rendered judgment in Sweatt vs. Painter.[89] In this case, Herman Sweatt was denied

admission to the University of Texas Law School solely because of his race. After Sweatt began legal proceedings, the State of Texas established a new law school for Negroes, but Sweatt refused to enroll. He argued that the new Negro law school was not equal to the law school for whites; and therefore, he should be admitted to the University of Texas Law School. The United States Supreme Court found the University of Texas Law School to be superior to the Negro law school, not only in tangible factors, but also in immeasurable qualities such as reputation of the faculty, traditions, and prestige.[90] The Court held that the equal protection clause of the Fourteenth Amendment required that Sweatt be admitted to the University of Texas Law School.[91] In this case the Court again refused to reconsider the constitutionality of the separate-but-equal doctrine; but it did point out that things other than tangible factors should be considered in determining what constitutes equal schools.

A trend was developing in the decisions of the Supreme Court, in the higher education cases, which could be applied to elementary and secondary schools. If McLaurin's segregation within a school was a denial of equal protection then it is conceivable that separate schools would result in the same deprivation of constitutional rights. If the inequality of unmeasurable factors

such as those mentioned in Sweatt resulted in a denial of the equal protection of the laws, then it seemed logical to assume that such a denial in the elementary and secondary schools would result in the same denial of equal protection. Only one additional step, in the thinking of the Court, was needed for it to decide that segregation, in itself, was unequal. That step was taken by the Supreme Court in Brown vs. Board of Education.[92]

SEPARATE EDUCATIONAL FACILITIES ARE INHERENTLY UNEQUAL

The "separate-but-equal" issue was brought squarely before the United States Supreme Court in five cases which reached the Court simultaneously.[93] Although the cases had different facts and conditions, they all involved a common legal question; therefore, the Court chose to consolidate them (with the exception of Bolling vs. Sharpe) for consideration. A discussion of each of these cases is appropriate.

The Brown vs. Board of Education of Topeka[94] case originated in Kansas. The plaintiffs were elementary school age Negro children who sought an injunction prohibiting the enforcement of a Kansas statute which permitted, but did not require, the city of Topeka to maintain separate facilities for Negro and white students. Although the

federal district court found that segregation in public schools had a detrimental effect upon Negro children, the plaintiffs were denied admittance to the white schools because the school facilities for Negroes and whites were substantially equal.[95]

In Briggs vs. Elliott,[96] which originated in South Carolina, the elementary and high school age Negro plaintiffs brought action in the district court to contest state constitutional and statutory provisions which required racially segregated public schools. The court found the Negro schools to be inferior to the white schools and ordered the defendants to equalize the facilities. The district court upheld the validity of the state provisions and denied the plaintiffs admission to the white schools during the equalization process. Following the district court ruling, substantial equality of school facilities was achieved.

In the Virginia case, Davis vs. County School Board of Prince Edward County,[97] the high school age Negro plaintiffs also contested state constitutional and statutory provisions which required the segregation of Negroes and whites in public schools. The district court found the Negro educational facilities to be inferior to those provided for white children. The defendants were ordered to equalize the facilities. However, as in the

South Carolina case, the court upheld the validity of the state provisions to have separate schools and denied the plaintiffs admission to the white schools during the period of equalization.

In Gebhart vs. Belton[98] the elementary and high school age Negro plaintiffs brought action in the Delaware Court of Chancery to stop enforcement of state constitutional and statutory provisions which required the segregation of Negroes and whites in public schools. The Chancellor ruled for the plaintiffs and ordered their immediate admission to the white schools on the ground that the physical facilities and conditions provided for black students were inferior to those provided for white children. The Chancellor also noted that segregation, itself, results in an inferior education for Negroes, but did not base his decision on that ground. The Supreme Court of Delaware upheld the Chancellor's ruling, however, the Court intimated that a modification of the decree might be obtained after the Negro schools were made equal to the white schools. The defendants, in this case, requested certiorari to the United States Supreme Court and it was granted.[99]

In each of these segregation cases the plaintiffs had been denied attendance to white schools by laws which either required or permitted racial segregation. The

plaintiffs claimed that the segregation denied them equal protection of the laws as guaranteed by the Fourteenth Amendment. In each of the cases, other than Gebhart vs. Belton,[100] the lower court denied the requested relief to the plaintiffs on the separate-but-equal doctrine established in Plessy vs. Ferguson.[101] In the Delaware case, the court followed the Plessy doctrine but ordered the Negro plaintiffs to be admitted to the white schools because of the inferiority of the Negro schools. The plaintiffs, in these segregation cases, claimed they were being deprived of the equal protection of the laws because segregated public schools were not equal and could not be made equal. After hearing arguments and re-arguments over two terms, the Supreme Court reached a decision on May 17, 1954. Mr. Chief Justice Warren delivered the opinion of the Court. He gave a brief historical summary of the separate-but-equal doctrine and the Fourteenth Amendment. Then, in discussing the importance of education, he said that it was possibly the most important function of state and local governments and that, once a state chose to provide educational opportunities, every citizen had a right to them on equal terms.[102] The Chief Justice then stated:

> /W/e come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe it does.[103]

Using the Sweatt and McLaurin cases as background, Warren further stated:

> We conclude that in the field of public education the doctrine of "separate-but-equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated.../are/ deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.[104]

With this disposition it was not necessary for the Court to discuss whether such segregation also violated the due process clause of the Fourteenth Amendment.

The Supreme Court did, however, consider the due process clause of the Fifth Amendment in a companion case arising in the District of Columbia, which was decided on the same day as the Brown case. Bolling vs. Sharpe[105] was heard as a separate case because the Fourteenth Amendment applied only to the states and did not pertain to the District of Columbia. The Fifth Amendment does not contain an equal protection clause as does the Fourteenth Amendment, but the Court held that racial segregation in the public schools was so unjustifiable that it violated the due process clause of the Fifth Amendment.

The decisions in the segregation cases struck down the constitutionality of the separate-but-equal doctrine, but implementing this decision was another matter. Realizing that implementation of the new doctrine might be difficult, the Court ordered the segregation cases to be returned to the docket for re-argument. The Attorney General of the United States and the Attorneys General of all states which required or permitted racially segregated schools were invited to file briefs with the Court. The United States, and the states of Texas, Oklahoma, North Carolina, Maryland, Florida, and Arkansas presented their views and participated in the oral argument.

The principles which had been adjudicated on May 17, 1954 were not debated. The questions to be considered in reargument were as follows:

> 4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
>
> (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),
   (a) should this Court formulate detailed decrees in these cases;
   (b) if so, what specific issues should the decrees reach;
   (c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
   (d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?[106]

The final decree in all of the five segregation cases was issued on May 31, 1955. The Court recognized that implementation of the new doctrine would require the solution of various local school problems. It placed the primary responsibility for solving these problems on school authorities and the federal district courts were assigned the task of determining whether the school officials were acting in good faith. The Supreme Court then gave some broad principles to guide the lower courts in regard to implementation. Although the district courts could take public interest into consideration in eliminating obstacles which prevented the implementation of a non-segregated school system, the Court said that the constitutional principles could not yield simply because

of disagreement with them. The courts were to require a "prompt and reasonable" start toward the elimination of racially segregated school systems. However, once such a start was made the courts could allow additional time for the ruling to be carried out. The burden to show the need for additional time was to rest upon the school officials, who must be acting in good faith to comply with the Court's ruling at the earliest practicable date. The district courts were also assigned the task of considering the adequacy of desegregation plans which were submitted by school authorities.[107]

All of the lower court decisions in the segregation cases, with the exception of the Delaware case, were reversed and remanded to the district courts for further proceedings in the interest of implementation consistent with the Supreme Court's opinion. The Delaware decision was affirmed but remanded to the Supreme Court of Delaware for such implementation proceedings as that Court deemed necessary in light of the Supreme Court's opinion. The defendants in these cases were to move "with all deliberate speed" to admit the plaintiffs to racially non-segregated schools.[108]

The Supreme Court through its desire to soften the blow to tradition and to take into account varying local conditions, passed the problem back to the district courts

and set the stage for a decade of litigation. Lower federal courts were waiting for the Supreme Court's decision in Brown. At the time of the Brown decision, there were cases in the lower courts pertaining to the constitutionality of segregated schools.[109] Those cases, which were in appellate courts, were generally remanded to the federal district courts for action consistent with the Supreme Court's Brown decision.

REVIEW OF OTHER SUPREME COURT LITIGATION FROM 1954 TO 1964

For eight years after its 1955 Brown decision, the Supreme Court refused to review any case in which questions were raised concerning the validity of pupil placement regulations. Neither did the Court review, during this period of time, any case pertaining to the appropriateness of applying the doctrine of exhaustion of administrative remedies to frustrate suits seeking to claim the right of a unitary school education. However, in 1958, the Court did convene a special session to consider a case in which the local school board sought permission to postpone a court approved desegregation plan due to extreme public hostility.

In Cooper vs. Aaron,[110] the Supreme Court found that the hostility was engendered by the actions of the

governor and legislature of Arkansas when they attempted to block the implementation of the desegregation plan. The Court held that extreme public hostility was not sufficient reason for the School Board of Little Rock, Arkansas to suspend its plan for desegregating the public schools. In its opinion, the Court said that the rulings, in the Brown decisions, were the law of the land and that they must be obeyed by all, especially the state legislature and state officials. It stated that the powers of the state could not be used to exclude Negroes from schools where there was state participation through any "arrangement, management, funds, or property."[111]

In 1962, a case came to the Supreme Court on appeal from a decision of the United States District Court for the Eastern District of Louisiana.[112] The District Court had declared that a Louisiana statute, which provided that the public school system of any parish could be closed by a vote of the electors, was unconstitutional. The act provided that, after the schools were closed, the board could lease or sell any school building, but it required extensive state control and financial aid to the alleged private schools. The District Court stated that the statute required such extensive state participation, that, in operating the program, the state would still be providing public education. The lower court held that the

act was designed to deny the Negro plaintiffs their constitutional rights to attend desegregated schools and, therefore, violated the equal protection clause of the Fourteenth Amendment. In St. Helena Parish School Board vs. Hall the Supreme Court affirmed the District Court's decision without comment.[113]

In Goss vs. Board of Education of the City of Knoxville, Tennessee,[114] in 1963, the Supreme Court held that the recognition of race as the sole criterion for granting transfers, which operate only in the direction of schools in which the transferee's race is in the majority, was just as unconstitutional as its use for original admission. The Court showed its impatience with the development of desegregation, in the public schools, when it pointed out that nine years had passed since its first Brown decision and that the context in which it must interpret language, such as "all deliberate speed" and "good faith compliance at the earliest practicable date," had been significantly altered.[115]

The Court still had not provided any guidelines as to what sort of desegregation plans the lower courts were to order. The failure of the Supreme Court to clarify what sort of plans the Constitution required, resulted in the initiation of many desegregation suits in the lower courts from 1954 to 1964. Many state legislatures were

also very active during this period of time.

NORTH CAROLINA'S REACTION TO BROWN

Legislative

Beginning in September, 1954, plans were made to effect some degree of desegregation in the schools of West Virginia, Arkansas, Maryland, and the District of Columbia. Georgia, South Carolina, and Mississippi made it clear that they would attempt to keep the races segregated in their respective states. North Carolina opposed the Brown decision in ways similar to those of deep southern states, but in more subdued tones. Along with Alabama, Florida, Tennessee, Louisiana, and Virginia, North Carolina attempted to develop some method whereby the Court's ruling could be circumvented. North Carolina recognized the Supreme Court's decision as being the law of the land; but no positive action was taken to desegregate the schools. The state's efforts were spent in devising ways to circumvent the Court's decision.

The Institute of Government, upon the request of North Carolina's Governor Umstead, submitted a proposal for preserving the substance of separate schools within the framework of the Court's decision. Three possible courses of action, which were open to the state, were outlined in the report. They were:

1. It can take the course that the Supreme Court has made its decision - let it enforce it; and meet the Court's efforts to enforce it with attitudes ranging from passive resistance to open defiance.

2. It can take the course that the Supreme Court has laid down the law, swallow it without question, and proceed in the direction of mixed schools without delay and in unthinking acquiescence.

3. It can take the course of playing for time in which to study plans of action, making haste slowly enough to avoid the provocation litigation and strife which might be a consequence of precipitate and unthinking acquiescence, and yet make haste fast enough to come within the law and keep the schools and keep the peace.[116]

Thomas J. Pearsall, chairman of the Special Advisory Committee which Governor Umstead appointed to help find solutions to the problems created by the Supreme Court's decision, recognized the difficulty of attempting to preserve the dual system and at the same time to work within the framework of the law. Pearsall's committee recommended to play for time and make haste slowly, which, in effect, was the third course of action outlined by the Institute of Government.[117]

The 1955 General Assembly enacted two school measures; one, "An Act to Provide for the Enrollment of Pupil's in Public Schools" and two, "An Act Terminating the Contracts of All Principals and Teachers in the Public Schools of North Carolina as of the End of the 1954-55 School Term." The first measure was an attempt to cir-

cumvent the Supreme Court's Brown decision. The purpose of the second act was to avoid possible lawsuits in the event that some school districts were changed or eliminated.

The Pupil Placement Act, which became known as the Pearsall Plan, delegated the authority for the enrollment of pupils, in the public schools, to local boards of education. It is quoted as follows:

> 1 The General Assembly of North Carolina do enact: Section I. The county and city boards of education are hereby authorized and directed to provide for the enrollment in a public school within their respective administrative units of each child residing within such administrative unit qualified under the laws of the State for admission to a public school and applying for enrollment in or admission to a public school in such administrative unit. Except as otherwise provided in this Act, the authority of each such board of education in the matter of enrollment of pupils in the public schools within such administrative unit shall be full and complete, and its decision as to the enrollment of any pupil in any such school shall be final. No pupil shall be enrolled in, admitted to, or entitled or permitted to attend any public school in such administrative unit other than the public school in which such child may be enrolled pursuant to the rules, regulations and decisions of such board of education.
>
> Section 2. In the exercise of the authority conferred by Section I of this Act upon the county or city boards of education, each such board shall provide for the enrollment of pupils in the respective public schools located within such county or city administrative unit so as to provide for the orderly and efficient administration of such public schools, the effective instruction of the pupils therein enrolled, and the health,

safety, and general welfare of such pupils. In the exercise of such authority such board may adopt such reasonable rules and regulations as in the opinion of the board shall best accomplish such purposes.

Section 3. The parent or guardian of any child, or the person standing in loco parentis to any child, who shall apply to the appropriate public school official for the enrollment of any such child in or the admission of such child to any public school within the county or city administrative unit in which such child resides, and whose application for such enrollment or admission shall be denied, may pursuant to rules and regulations established by the county or city board of education apply to such board for enrollment in or admission to such school, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by such board. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that such child is entitled to be enrolled in such school, or if the board shall find that the enrollment of such child in such school will be for the best interests of such child, and will not interefere with the proper administration of such school, or with the proper instruction of the pupils then enrolled, the board shall direct that such child to be enrolled in and admitted to such school.

Section 4. Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the Superior Court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the applica-

> tion and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education be set aside, then the court shall enter its order so providing and adjusting that such child is entitled to attend, and in such cases such child shall be admitted to such school by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by an interested party or by the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions.
>
> Section 5. All laws and clauses of laws in conflict with this Act are hereby repealed.
>
> Section 6. This Act shall be in full force and effect from and after its ratification.[118]

The real teeth in the Pupil Placement Act were in Sections 3 and 4, which outlined in detail the administrative procedure which applicants must follow, including the route through the courts, with the board of education able to appeal from the court decision. This procedure placed the initiative and the burdens of expensive litigation on the Negro requesting an assignment to a previously all-white school. These delaying tactics proved to be effective. The Pupil Placement Act and the act providing for the termination of the contracts of teachers and principals were enacted during the period between the 1954 Brown decision and the final decree on May 31, 1955.

After the Supreme Court's final decree in Brown II, a special session of the North Carolina General Assembly was called, in July, 1956, to consider plans for meeting

the problems created by the Court's decision. The legislation which was recommended to the special session of the General Assembly by Governor Hodges consisted of seven bills and a resolution. First, a bill which recommended an amendment to Article IX of the Constitution of North Carolina; second, a bill setting up the machinery for holding the election in which the people would vote on the amendment; third, a bill which provided for educational expense grants; fourth, a bill which set up the system of local option; fifth, a bill modifying the compulsory attendance law; sixth, a bill authorizing appropriations from the Contingency and Emergency Fund for education expense grants; seventh, a bill amending the 1955 assignment act; and also a resolution condemning and protesting the usurpation of power by the United States Supreme Court.[119]

The special session of the General Assembly wrote each of the bills into law and adjourned in four days. The amendment to the North Carolina Constitution which was approved by the North Carolina voters, added a section to authorize educational expense grants and the local option. The portion of the Constitution which required the separation of races in public schools was not deleted, but the Supreme Court's decision had rendered that part of the State's Constitution unconstitutional.

Within the local option system, a city or county

board of education could call for an election to close one or more schools in the district. If a school were closed, the students, who had been entitled to attend that school, were not entitled to attend another public school but they were eligible for an educational expense grant.[120] The bill pertaining to educational expense grants made a grant available to any child of any race who chose to attend a nonsectarian school when no public school was available in his district. A student, who had been assigned to a school where a student of another race was enrolled, was also eligible for an educational expense grant if he chose to attend a private nonsectarian school.[121]

North Carolina's official stand on the school desegregation issue was illustrated by the legislation which was enacted in 1955 and 1956. The legislation, including the constitutional amendment, safety valve measures, and "An Act to Provide for the Enrollment of Pupils in Public Schools," is generally known as "The Pupil Assignment Act" or the "Pearsall Plan".[122]

In addition to delegating complete and final authority, over pupil assignments, to local boards of education, the Pupil Assignment Act prevented the State from being made a defendant in law suits growing out of pupil assignments. It also outlined administrative procedures which were required to effect a pupil transfer as well as

the procedures for an appeal. On its face, the law was constitutional and it proved to be successful in delaying desegregation. Two points of law which were important to the success of the Pupil Assignment Act are: (1) administrative procedures must be exhausted before relief may be sought through the courts, and (2) the Pupil Assignment Act requires individual rather than class action.

Litigation Regarding Statutes

The Pupil Assignment Act gained validity and dignity early. In an action which was begun prior to the Brown decision, the Negro plaintiffs asked for injunctive relief against discrimination and for educational facilities equal to those provided for whites.[123] The Fourth Circuit Court of Appeals, after waiting for the Supreme Court's final decree in Brown, remanded the case to the Western District Court of North Carolina. The District Court dismissed the action on the ground that the decision, in Brown, made the request for equal facilities an improper relief. On appeal, the United States Court of Appeals for the Fourth Circuit held that, although the requirement of separate-but-equal facilities was improper relief, the plaintiffs may be entitled to the injunctive and declaratory relief which they sought. However, the Appellate Court refused to intervene until the plaintiffs

had exhausted all administrative remedies available to them. The case was remanded to the District Court to be considered in view of the Brown decision and in view of the administrative remedies provided for in the Pupil Assignment Act.[124]

In compliance with the District Court directive, some of the plaintiffs in the Carson vs. McDowell case began proceedings in the state courts as required by the North Carolina Pupil Assignment Act.[125] The Superior Court of McDowell County, Patton, Special Judge, held that the North Carolina Pupil Assignment Act required individual rather than class action. As required by the administrative procedures of the Act, the petitioners appealed to the State Supreme Court. The Supreme Court upheld the Superior Court's decision and restated the fact that class-action suits were not authorized under the North Carolina Pupil Assignment Act.[126] Two of the plaintiffs joined a similar suit in the federal courts.[127]

In the United States District Court for the Western District of North Carolina, the plaintiffs filed a supplemental complaint in which they again sought injunctive relief and declaratory judgment as to their right to attend the county schools without complying with the requirements of the Pupil Assignment Act. The Court required the plaintiffs to exhaust the administrative

remedies provided for in the state statute before allowing them to file the complaint. The plaintiffs asked the Fourth Circuit Court of Appeals for a writ of mandamus to require the District Court to vacate its order and hear the case as though the Pupil Assignment Act did not exist. The Appellate Court refused to issue a writ of mandamus.[128] The United States Supreme Court refused to grant certiorari, thus putting an end to the question of the constitutionality of the Pupil Assignment Act.[129]

The Carson case was important because it upheld the constitutionality of the Pupil Assignment Act, assumed the act to be administered constitutionally, held that it was within the power of the state to establish administrative procedures such as those established by the Act, and acknowledged the requirement for individual action under the statute. The part of the Pupil Assignment Act which prescribed judicial channels of an appeal from the decision of school boards was held to be invalid.[130]

The first post-Brown litigation initiated, in North Carolina, by Negroes, for admission to a previously all-white institution, other than graduate schools, involved the University of North Carolina rather than the public schools. Three Negro youths, who possessed the necessary qualifications, made application to the undergraduate school of the University of North Carolina. They

were denied admission to the University solely because of their race. The Negroes, who initiated a class-action suit in the United States District Court for the Middle District of North Carolina, sought a declaratory judgment that orders of the Board of Trustees, which denied admission to the University of North Carolina solely due to race, was a violation of the equal protection clause of the Fourteenth Amendment. The plaintiffs also sought an injunction restraining the University from denying Negroes admission to the undergraduate school solely because of their color or race. They cited the Brown decision to support their complaint.[131]

The defendants argued that the Brown decision pertained only to lower level public schools and did not affect undergraduate schools on the college level. They also claimed that, if the suit were sustained as a class action, it would deprive the Board of Trustees of their power to rule upon the qualifications of applicants.[132] The District Court rejected the arguments of the defendants and ruled in favor of the plaintiffs as well as all Negroes who subsequently might apply for admission to the University.[133]

The success of the class action in the Frasier case may have had some influence on lawyers for Negro litigants, who filed each case pertaining to pupil assign-

ment in the public schools, as a class action. A case which illustrates the point is Covington vs. Edwards.[134] In this case, the Negro plaintiffs did not apply to the Montgomery County Board of Education for reassignment to a school. Instead, a class-action suit was filed, on July 29, 1955, by thirteen adults for the forty-five minor Negro plaintiffs, seeking an injunction forbidding the County Board of Education to assign Negroes to particular schools because of their race and directing the defendants to present a plan of desegregation of the races in the schools.[135]

The United States District Court, Middle District of North Carolina, ruled against the plaintiffs. An attempt was made to amend the bill of complaint to include the State Board of Education and the Superintendent of Public Instruction of the State as defendants. The lower court rejected the motion. The plaintiffs appealed the decision to the Fourth Circuit Court of Appeals.[136]

In upholding the District Court's decision, the Appellate Court pointed out that the plaintiffs had not applied for reassignment and therefore, they had not complied with the provisions of the Pupil Assignment Act. The Court held that, under the North Carolina statute, the county board was entitled to consider each application on its individual merit as long as it did so without un-

necessary delay; therefore, a class-action suit was not appropriate. The Court stated that this did not prohibit the joining of a number of applicants in the same suit if each applicant could show that the county board had discriminated against him because of his race.[137]

The Appellate Court also upheld the District Court's decision to reject the motion, to amend the complaint to include the State Board of Education and the State Superintendent as defendants. The Court pointed out that the Pupil Assignment Act placed the authority in the county board of education to make assignments and enrollment of pupils and did not include the State Board of Education in those matters; therefore, nothing could be gained by joining the State officials as additional defendants.[138]

A case similar to Covington was Jeffers vs. Whitley,[139] which originated in Caswell County, in 1956, and was finally decided by the United States Court of Appeals, Fourth Circuit in 1962. In 1956, the parents of forty-three school children brought a class-action suit against Caswell County school officials alleging that they had been denied admission to previously all-white schools solely because of their race. The plaintiffs sought a general order requiring the Caswell County School Board to reorganize the schools and to operate them on a non-

segregated basis. The District Court for the Middle District of North Carolina ruled that the plaintiffs had not exhausted the administrative remedies provided under the Pupil Assignment Act and that the plaintiffs would have to apply for transfers on an individual basis.[140]

Supplemental pleadings were filed in 1960 alleging that some of the individual plaintiffs had applied for transfers, that the applications had been denied and that administrative remedies had been exhausted. On August 4, 1961 the District Court stated that evidence strongly indicated that some of the plaintiffs were denied reassignment solely on the basis of race, but all relief was withheld because they sought general rather than individual relief. The plaintiffs were given another opportunity to apply for transfers on an individual basis. Some of the plaintiffs filed new applications and were promptly denied transfers by the Board. It was not until 1962, after it was shown that the plaintiffs had exhausted their administrative remedies and that the reassignment had been denied due to race, that the Fourth Circuit Court of Appeals ruled for the plaintiffs. The Court stated that school officials must act in good faith and that the administrative process should not be used to circumvent the law.[141]

The legality of bonds also came before the courts in 1956. A bond issue had been approved, in 1952, by the

voters of Anson County North Carolina for the purpose of building segregated schools. A suit was filed, which alleged that the bonds were invalid in view of the Supreme Court's decision in Brown. The North Carolina Supreme Court held, in Constantian vs. Anson County,[142] that North Carolina's segregation laws had been invalidated by the Brown decision but the provisions of other statutes related to public education were still valid. The sale of bonds was allowed. In a side remark, the State Supreme Court stated that it did not agree with the decision in Brown but it would have to recognize it as the law of the land until it was changed.[143]

In 1958, a different type of desegregation case came before the Supreme Court of North Carolina. Winston-Salem, Charlotte, and Greensboro had voluntarily desegregated their school districts by assigning twelve Negro pupils to previously all-white schools. Although their assignments were only a token beginning,they came without a court order and on the initiative of Negro pupils who made individual requests for reassignment under the provisions of the Pupil Assignment Act. The voluntary desegregation of the Greensboro schools did not meet the approval of all people. In 1957, parents of some white pupils, who attended schools to which Negroes had been assigned, requested the Greensboro Board of Education to

transfer the Negro pupils from the previously all-white schools. The Board denied the request and the parents initiated action in the courts seeking an injunction prohibiting the assignment of Negro pupils to white schools in Greensboro. The case reached the Supreme Court of North Carolina in 1958. The Supreme Court ruled that, if a parent was not satisfied with the assignment of another pupil to a school, his remedy was to apply for reassignment for his child, not to appeal the assignment of the other pupil.[144]

While some schools in the Western Piedmont section were being desegregated, the Raleigh Board of Education refused to approve a Negro pupil's application to be reassigned to an all-white school, even though the applicant lived closer to the school to which he requested transfer.[145] The parents were requested to attend the Board meeting at which the application was denied but they did not attend. The parents appealed the Board's decision and asked for a hearing. Although the parents did not attend the hearing they were represented by an attorney. The pupil's application was again rejected.

The pupil brought suit in the United States District Court for the Eastern District of North Carolina seeking declaratory and injunctive relief. In Holt vs. Raleigh City Board of Education,[146] the Court held that

the plaintiffs should have appeared personally at the hearing, which had been called at their request, and that they had not exhausted their administrative remedies under the Pupil Assignment Act. The Court gave the plaintiffs ten days to file a motion requesting that the case be retained on the Court's docket until they had an opportunity to exhaust administrative remedies. The plaintiffs did not file a motion; consequently, the case was dismissed. Instead of filing a motion, as the Court requested, the plaintiffs appealed the decision to the United States Court of Appeals, Fourth Circuit, which affirmed the lower court decision. The United States Supreme Court refused to hear the case, thus putting an end to the matter.[147] Although the District Court had indicated that, once he had exhausted the administrative remedies, the minor plaintiff would be assigned to the white school as he had requested, the plaintiffs ignored the opportunity offered by the Court and appealed to a higher court which had consistently ruled against plaintiffs who had not exhausted administrative remedies.

Litigation Regarding Desegregation Plans

Despite repeated failure, Negro plaintiffs continued to file class-action suits and continued to attack the constitutionality of the Pupil Assignment Act. The

suit, which was filed in 1958 in McKissick vs. Durham City Board of Education,[148] was a class-action suit challenging the constitutionality of the Pupil Assignment Act. The plaintiffs, in this case, sought a general order requiring a plan which would desegregate the Durham City Schools. Judge Stanley pointed out that the Pupil Assignment Act had been repeatedly held, by various courts, to be constitutional. He also stated that the plaintiffs' rights must be asserted individually, rather than as a class or group. Although the case was dismissed, for failure of plaintiffs to exhaust administrative remedies, the Court remarked that a different conclusion could easily have been reached had the plaintiffs exhausted their administrative remedies before applying to the courts for relief.[149]

In view of the consistency of the federal courts' rulings upholding the Pupil Assignment Act, North Carolina appeared to have developed an effective method of circumventing the Supreme Court's 1954 Brown decision. However, in 1960, the first tangible success in the Negroes' legal fight, to desegregate the public schools in North Carolina, came in Griffith vs. Board of Education of Yancey County.[150] Yancey County operated two high schools and seven elementary schools. All of these schools were operated exclusively for white children. All Negro stu-

dents were transported to schools in Asheville, for the 1958-1959 school year, which resulted in a daily round-trip of approximately eighty miles. The greatest distance traveled by any white student, in the county, was approximately fifty miles. The procedure outlined in the North Carolina Pupil Assignment Act had not been used to assign students.

At the end of the 1958-1959 school year, each of the minor plaintiffs filed individual applications seeking a transfer to the proper Yancey County school. The Yancey County Board of Education denied each request for re-assignment and again assigned the Negro students to schools in Buncombe County. Each plaintiff requested and was granted a hearing on the denial of their application. After the hearing the various requests for transfers were again denied. The plaintiffs then initiated an action against the Yancey County Board of Education and the County Superintendent of Schools, seeking declaratory and injunctive relief.

In August 1960, in Griffith vs. Board of Education of Yancey County,[151] the United States District Court for the Western District of North Carolina found that, after the action had been initiated, the defendants had constructed a two-room school and all Negro pupils in the

county were assigned to it regardless of age or grade level. The Court found the assignment to be based on race and ordered that, within thirty days, the high school pupils be assigned to one or both of the two high schools operated in Yancey County. Thus, six years after the Supreme Court's decision in Brown, court ordered desegregation came to North Carolina. In reaching this decision, the Court also noted that the plaintiffs had a legal right to the enjoyment of the opportunities offered by the county in which they lived and the Board of Education could not justify requiring them to resort to opportunities elsewhere.[152]

In addition to ordering the transfer of the high school aged Negro plaintiffs to the appropriate high school, the Court ordered the Board to assign, by name, the Negro plaintiffs attending elementary schools. Judge Warlick instructed the Board to give consideration to the distance involved, efficient administration, effective instruction and the health, safety and general welfare of all pupils. The Board was required to submit a list of the assignments to the Court within thirty days.[153] With the exception of the time limit, the court order, in essence, instructed the Board to follow the procedures outlined in the North Carolina Pupil Assignment Act in assigning the elementary students.

A Negro student, who lived near the uncrowded Negro elementary school, requested reassignment to one of the white elementary schools in Yancey County in 1962. The request was denied by the Board and the student initiated legal action seeking injunctive relief. Although the Court denied the motion, it directed the School Board to prepare plans, by September, 1963, whereby better utilization of its school facilities would be accomplished. In September, the District Court found that the Board of Education had made no effort to utilize its facilities more efficiently and no plan had been submitted. The Court then ordered the Yancey County Board of Education to present a desegregation plan for the total elementary school system by the end of the fall semester of 1963.[154]

The courts' growing impatience with the school boards' continued reluctance to end segregation in the public schools was illustrated in McCoy vs. Greensboro City Board of Education[155] in 1960. The Greensboro City Board of Education, upon the initiation of legal action by Negro citizens, had adopted a resolution combining an all-black and an all-white elementary school, thus establishing the right of the Negro plaintiffs to attend the previously all-white school. However, the Board then approved the transfers of all white students and teachers to another elementary school in the system. This resulted in the

Caldwell School, which had been all-white in the 1958-1959 school year, becoming all-black in the 1959-1960 school year. The United States District Court for the Middle District of North Carolina failed to rule for the Negro plaintiffs but the Court of Appeals for the Fourth Circuit refused to uphold the conduct of the Board. The Court of Appeals ruled that the Board of Education could not circumvent desegregation of a school by approving the requests of the Negro pupils and then, by administrative action, converting the school, to which the pupils had been assigned, to an all-Negro school. The Court also pointed out that the administrative remedies need not be exhausted if they are inherently inadequate or are applied in such a manner that the petitioners rights are denied.[156]

On August 4, 1961, another Negro plaintiff was successful in an action seeking declaratory and injunctive relief in the United States District Court for the Middle District of North Carolina.[157] After it was shown, in Vickers vs. Chapel Hill City Board of Education,[158] that the plaintiff had exhausted his administrative remedies and that the denial of his application for transfer to an all-white school had been based on his race, Judge Stanley ordered that the plaintiff be admitted to the previously

all-white school for the 1961-1962 school term. Stanley was the same district judge whose decision, in McCoy, had been reversed by the Fourth Circuit Court of Appeals, in 1960.

In Morrow vs. Mecklenburg County Board of Education[159] the Negro plaintiffs, who sought to enjoin the Board of Education from refusing to assign them to certain schools within the Board's jurisdiction, were denied relief in the United States District Court for the Western District of North Carolina, in 1961. The action pertained to applications for reassignment which had been denied for the school years 1957-1958 and 1958-1959. Judge Warlick stated that, during this period of time, it was only natural that the Board approach the matter with extreme caution. He pointed out that the United States Supreme Court in its 1954 Brown decision had said that one of the factors to be considered by the trial court in resolving the question of desegregation was the interest of the people affected in the community.[160] Judge Warlick also noted that, in 1958, the Supreme Court had stated that mere opposition, alone, was not a sufficient reason to postpone integration,[161] however, in ruling for the Board, Warlick chose to use the Court's statement in Brown to support his decision.[162] Judge Warlick emphasized that the Board had denied the Negroes' applications for the

1957-1958 and 1958-1959 school years and since that time it had admitted Negroes to previously all-white schools. It is not possible for one to determine whether he would have reached the same conclusion if the applications had been refused for the same reasons in 1961.

In 1960, the Durham City Board of Education found itself in the position of having voluntarily desegregated its schools and at the same time becoming involved in a legal action initiated by the applicants who had been denied reassignment. Two cases which were initiated, in 1960, were consolidated into a single record and trial. In Wheeler vs. Durham City Board of Education,[163] the Negro litigants sought an injunction against the continued assignment of pupils to schools on the basis of their race and against imposing criteria upon Negro students seeking reassignment that were not applied to white pupils seeking transfers.

On July 20, 1961, the District Court for the Middle District of North Carolina found that some practices of the Durham City Board of Education were discriminatory, but relief was denied to all plaintiffs who had not exhausted their administrative remedies. Judge Stanley ordered the Board to re-examine the applica-

tions of the plaintiffs who had exhausted their administrative remedies. Of the 133 applications which were re-examined, the Board denied all but eight. In its supplemental opinion of April 11, 1962, the District Court refused to grant any further relief and dismissed the case on the ground that the plaintiffs were still seeking a general order of desegregation rather than reassignment to a particular school.[164] The decision was appealed by the Negro plaintiffs.

On appeal, the United States Court of Appeals, Fourth Circuit, found that the Durham City Board of Education continued to use dual attendance zones in assigning first grade children to racially segregated schools and judicial relief was granted. The Court ruled that the Board's action constituted an unconstitutional discriminatory administration of the Pupil Assignment Act. The Court held that the plaintiffs were entitled to an order for their admission to the school to which they had applied for the 1962-1963 school term. It also held that the plaintiffs were entitled to a declaratory judgment that the defendants had administered the Pupil Assignment Act in an unconstitutional manner and to an injunction against the continuance of the Board's discriminatory practices. The Court stated that the injunction would control all future assignment of pupils until the Board had

submitted a suitable plan to the District Court. The plan, the Court said, would have to provide for immediate steps toward the elimination of the discriminatory practices in accordance with a specified time table.[165]

By retaining jurisdiction in Wheeler vs. Durham City Board of Education[166] and by controlling the future assignment of students through the injunction, the District Court took away from the Durham City Board of Education, the authority over pupil assignment which had been delegated to it by the General Assembly of North Carolina under the Pupil Assignment Act. This decision, which was decided by the appellate court on the same day as Jeffers vs. Whitley,[167] was the most far reaching decision on school desegregation in North Carolina. It placed the Durham City Board of Education in the position of administering a school system over which it had limited control.

ANALYSIS AND SUMMARY OF INFLUENCE PATTERNS: 1954 TO 1964

The United States Supreme Court's reluctance to outline specific desegregation requirements, in Brown, resulted in much litigation and legislative action. In reaction to the Brown decision the General Assembly of North Carolina developed a plan to circumvent the law. The North Carolina Pupil Assignment Act proved to be an effective method of delaying the desegregation of the

TABLE I

CASES FILED IN FEDERAL COURTS 1954-1963

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Brown v. Board of Education of Topeka	May 17, 1954	Public Schools Segregated by Law			Ruled for Negro plaintiffs
Bolling v. Sharpe	May 17, 1954	Public Schools Segregated by Law			Ruled for Negro plaintiffs
Brown v. Board of Education of Topeka	May 31, 1955	Implementation of the 1954 Brown decision			Public schools segregated by law were to be de-segregated with "all deliberate speed".
Frasier v. Board of Trustees of University of North Carolina	Sept. 16, 1955	Admission to Undergraduate School	D.C. M.D. N.C. Ruled for Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Carson v. Board of Education of McDowell County	Dec. 1, 1955	Pupil Assignment	D.C. W.D. N.C. Dismissed action	Remanded to district court to be considered after administrative remedies were exhausted	
Carson v. Warlick	Nov. 14, 1956	Pupil Assignment and constitutionality of Pupil Assignment Act	D.C. W.D. N.C. Ruled for Board of Education and upheld Pupil Assignment Act	Upheld District Court	
Holt v. Raleigh City Board of Education	Aug. 29, 1958	Pupil Assignment	D.C. E.D. N.C. Ruled against Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Cooper v. Aaron	Sept. 29, 1958	Delay of desegregation plan because of public hostility			Ruled that extreme public hostility not sufficient reason to suspend plan
Covington v. Edwards	Mar. 19, 1959	Pupil Assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs	Affirmed district court's decision	
McKissick v. Durham City Board of Education	Sept. 4, 1959	Pupil Assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Griffith v. Board of Education of Yancey County	Sept. 12, 1960	Pupil Assignment	D.C. W.D. N.C. Found that administrative remedies had been exhausted and ruled for Negro plaintiffs		
McCoy v. Greensboro City Board of Education	Nov. 14, 1960	Pupil Assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs	Reversed district court decision and ruled for Negro plaintiffs	
Morrow v. Mecklenburg County Board of Education	June 15, 1961	Pupil Assignment	D.C. W.D. N.C. Ruled against Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Vickers v. Chapel Hill City Board of Education	August 4, 1961	Pupil Assignment	D.C. M.D. N.C. Ruled for the Negro plaintiff		
St. Helena Parish School Board v. Hall	Feb. 19, 1962	Constitutionality of Louisiana Act providing for the closing of public school systems to avoid desegregation			Held that Act was unconstitutional
Wheeler v. Durham City Board of Education	Oct. 12, 1962	Pupil Assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs	Reversed decision of district court and ruled for Negro plaintiffs	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Jeffers v. Whitley	Oct. 12, 1962	Pupil Assignment	D.C. M.D. N.C. Ruled for some of the Negro plaintiffs and against others	Ruled that the district court should have ordered that the applications of all the Negro plaintiffs be approved	
Goss v. Board of Education of the City of Knoxville, Tennessee	June 3, 1963	Constitutionality of a minority-to-majority transfer policy			Held that the Board's policy was unconstitutional

*D.C.M.D.N.C. = District Court Middle District Of North Carolina

D.C.E.D.N.C. = District Court Eastern District Of North Carolina

D.C.W.D.N.C. = District Court Western District Of North Carolina

TABLE II

CASES FILED IN NORTH CAROLINA STATE COURTS 1954-1963

Case	Date	Issue	Superior Court	North Carolina Court of Appeals	North Carolina Supreme Court
Joyner v. McDowell County Board of Education	May 23, 1956	Pupil Assignment	Ruled for Board of Education		Upheld Superior Court
Constantian v. Anson County	June 6, 1956	Sale of bonds for desegregated schools	Ruled against white plaintiff - sale of bonds was allowed		Upheld Superior Court
Applications for Reassignment of Pupils	Jan. 10, 1958	White parents challenged assignment of Negro pupils to white schools	Ruled for Board of Education - against white parents		Upheld Superior Court

North Carolina public schools. Although the Act required individual rather than class action, Negro litigants and their lawyers insisted on initiating class-action suits. This resulted in many of the Negro litigants being denied judicial relief because they failed to exhaust the administrative remedies which were provided under the Pupil Assignment Act.

In 1955, the United States District Court for the Western District of North Carolina did rule for the Negro plaintiffs in a class-action suit in which they argued that orders of the Board of Trustees of the University of North Carolina, which denied admission to the University solely due to race, was a violation of the equal protection clause of the Fourteenth Amendment. This decision may have had some influence on lawyers for Negro litigants who tried to litigate each case involving public school assignments as a class action.

For eight years after its final decree in Brown, the Supreme Court remained silent on the question of the validity of pupil placement regulations in North Carolina. During this period federal and state courts in North Carolina allowed school officials to delay the desegregation of the public schools. The lower courts consistently ruled against Negro plaintiffs who had not exhausted the

administrative remedies provided under the North Carolina Pupil Assignment Act. Class-action suits were not permitted.

In 1955, the United States Court of Appeals for the Fourth Circuit remanded a desegregation case to the District Court for the Western District of North Carolina. The District Court was directed to consider the case in view of the Brown decision and in view of the North Carolina Pupil Assignment Act.[168] In compliance with the District Court directive, some of the plaintiffs in Carson vs. McDowell County Board of Education began proceedings in the state courts as required by the Pupil Assignment Act. Ignoring the District Court directive, other plaintiffs filed a supplemental complaint in the federal courts.

The suit initiated in the state courts reached the North Carolina State Supreme Court. The State Supreme Court refused to grant relief to the Negro plaintiffs on the ground that class-action suits were not authorized under the Pupil Assignment Act.[169] The plaintiffs, who filed the supplemental complaint in the federal district court, sought injunctive and declaratory judgment as to their right to attend the county public schools without complying with the Pupil Assignment Act.[170] The District Court for

the Western District of North Carolina required the plaintiffs to exhaust their administrative remedies before allowing them to file the complaint. The plaintiffs asked the Fourth Circuit Court of Appeals for a writ of mandamus to require the District Court to vacate its order and hear the case as though the Pupil Assignment Act did not exist. The Appellate Court refused to issue a writ of mandamus. The Court stated that a class proceeding before the school board was not sufficient under the North Carolina statute and that applicants would not be in a position to say that administrative remedies had been exhausted until the administrative procedure before the board had been followed in accordance with the interpretation placed upon the statute by the State Supreme Court.

The Appellate Court did rule that the appeals to the courts, which the statute provided, were judicial, not administrative remedies and that after the administrative remedies before the school board had been exhausted, relief could be sought in the federal courts at once without pursuing state court remedies. With the exception of the prescribed judicial channels of an appeal, the Appellate Court held that the Pupil Assignment Act was constitutional on its face. The United States Supreme Court refused to grant certiorari, thus putting an end to the question of the constitutionality of the Pupil Assignment

Act. With the approval of the North Carolina State Supreme Court and the United States Court of Appeals for the Fourth Circuit the Pupil Assignment Act had a definite influence on desegregation cases which originated in North Carolina.

In 1956, the North Carolina State Supreme Court, in Constantian vs. Anson County,[171] ruled that the State's requirement of segregated schools had been invalidated by the Brown decision. In a side remark, the Court stated that it did not agree with the decision in Brown but would have to recognize it as the law of the land until it was changed. In another case, which was decided in 1958, the State Supreme Court said that a parent, who was not satisfied with the assignment of another pupil to a school, should apply for reassignment of his child instead of appealing the assignment of the other pupil.[172]

The District Court for the Eastern District of North Carolina found that the plaintiffs in Holt vs. Raleigh City Board of Education (1958)[173] had not exhausted their administrative remedies. The Court gave the plaintiffs ten days to file a motion requesting that the case be retained on the Court's docket until they had an opportunity to exhaust administrative remedies. Instead of filing a motion, as the Court requested, the plaintiffs

appealed the decision to the United States Court of Appeals, Fourth Circuit, which had consistently ruled against plaintiffs who had not exhausted administrative remedies. The Appellate Court affirmed the lower court's decision and the United States Supreme Court refused to hear the case.

Although the United States Supreme Court remained silent on the question of the validity of pupil placement regulations it did convene a special session, in 1958, to consider an Arkansas case in which the local school board sought permission to postpone a court approved desegregation plan due to extreme public hostility.[174] In Cooper vs. Aaron,[175] the Court ruled that extreme public hostility was not sufficient reason to suspend the court approved desegregation plan, the Court stated that the powers of the state could not be used to exclude Negroes from schools where there was state participation through any "arrangement, management, or properity".[176]

North Carolina's Pupil Assignment Act was not considered, on its face, to be designed to frustrate desegregation efforts. In 1959, the Fourth Circuit Court of Appeals refused to grant relief to Negro litigants, in Covington vs. Edwards,[177] because they had not exhausted the administrative remedies provided under the Pupil

Assignment Act. In the same year, in McKissick vs. Durham City Board of Education,[178] the District Court for the Middle District of North Carolina also ruled against Negro plaintiffs who had not exhausted their administrative remedies, but the Court stated that a different conclusion could have been reached if the plaintiffs had exhausted their remedies. In 1960, Negro litigants were successful in a case which originated in Yancey County, North Carolina. Citing State of Missouri ex. rel. Gaines vs. Canada,[179] the District Court for the Western District of North Carolina stated that the Negro plaintiffs, in Griffith vs. Board of Education of Yancey County,[180] had a legal right to the enjoyment of the opportunities in the county of their residence and the Yancey County Board of Education could not justify requiring them to resort to opportunities elsewhere.

In McCoy vs. Greensboro City Board of Education,[181] the District Court for the Middle District of North Carolina ruled against the Negro plaintiffs where the Negro applicants had been granted transfers to a previously all-white school and then all white students and teachers were granted transfers out of the school. In reversing the lower court decision, in 1960, the Fourth Circuit Court of Appeals stated that the Board's action was not only contrary to the Brown decision but was also contrary to the

lower courts' decisions which upheld the North Carolina Pupil Assignment Act. In 1961, the District Court for the Middle District of North Carolina also ruled for the Negro plaintiffs, in Vickers vs. Chapel Hill City Board of Education,[182] after it found that they had exhausted their administrative remedies and that they had been denied admittance to an all-white school on account of their race.

Jeffers vs. Whitley,[183] which originated in Caswell County in 1956, was finally decided by the Fourth Circuit Court of Appeals in 1962. The District Court originally refused to grant relief to the Negro plaintiffs, in this case, because they had not exhausted the administrative remedies provided under the Pupil Assignment Act. In August, 1961, the District Court found that some of the plaintiffs had been denied reassignment solely on the basis of their race, but all relief was denied because they had failed to exhaust their administrative remdies. In December, 1961, the District Court ruled that some of the plaintiffs had exhausted their administrative remedies and ordered the plaintiffs, who had been denied reassignment solely because of race, to be granted their applications for reassignment. The District Court denied other plaintiffs relief because they had not exhausted their administrative remedies. In 1962, the Fourth Circuit Court of Appeals found that the school administrators had used the

administrative processes to frustrate the Negro plaintiffs' enjoyment of legal rights. The Appellate Court held that failure of the plaintiffs to exhaust administrative remedies was not a reason for denial of their applications because the remedy, as administered, was inadequate and discriminatory. The Court ordered that, until the Caswell County Board of Education developed a suitable desegregation plan, all applications for reassignment to a school where the applicant's race was in the minority must be granted.[184]

On the same day that Jeffers vs. Whitely was decided, the Fourth Circuit Court of Appeals also decided Wheeler vs. Durham.[185] In this case the Court also found that the school officials had administered the Pupil Assignment Act in an unconstitutional manner because they had based pupil assignment on race. The Court issued an injunction against the continuance of the board's discriminatory practice. The injunction controlled all future assignments of pupils until the board submitted a suitable desegregation plan to the District Court.

In 1963, in its final school desegregation decision during this period, the Supreme Court gave an indication of what the courts would require in desegregation cases during the period from 1964 through 1967. In Goss vs. Board of Education of the City of Knoxville, Tennessee,[186]

the Court ruled that the recognition of race as an absolute criterian for granting transfers, which operated only in the direction of schools in which the transferee's race was in the majority, was just as unconstitutional as its use for original admission or subsequent assignment to public schools. Although the Court still did not issue any guidelines as to what sort of desegregation plans the lower courts were to require, it did give some indication as to what was expected. The Supreme Court stated that nine years had passed since its first Brown decision and the context in which it must interpret language, such as "all deliberate speed" and "good faith compliance at the earliest practicable date," had been significantly altered.

Most influence patterns which were evident during the period from 1954 to 1964 developed primarily between the United States Supreme Court and the North Carolina State Legislature and between the State Legislature and the State Supreme Court and lower federal courts. As a result of the Brown decision, legislation was enacted in the North Carolina General Assembly which influenced state court and lower federal court decisions. The State Supreme Court, the federal district courts in North Carolina and the United States Court of Appeals for the Fourth Circuit refused to rule for Negro plaintiffs until they had exhausted the administrative remedies provided under the

state statute. Of course, the United States Supreme Court's decision in Brown had a direct influence on the decisions of the lower courts. In addition to the direct influence on the lower courts, the Supreme Court's reluctance to issue specific guidelines also influenced the lower courts to be more lenient in their desegregation decisions. Although the Supreme Court's decision in Goss vs. Board of Education of the City of Knoxville, Tennessee[187] was not reflected in any lower court decision during this period, the Court's language, in this case, was indicative of the attitude of the courts during the period from 1964 through 1967.

CHAPTER II

FOOTNOTES

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CHAPTER III

DEVELOPMENT OF LAW FROM 1964 THROUGH 1967

The United States Supreme Court's impatience with delaying tactics, employed by state and school officials, which was evident in its 1963 opinion in Goss vs. Board of Education of the City of Knoxville, Tennessee,[1] became more obvious during the period from 1964 through 1967. The Court's impatience was reflected in decisions of the lower federal courts during this period. As the lower federal courts began to rule for Negro plaintiffs in pupil desegregation cases, Negro litigants expanded their suits in order to challenge the maintenance of segregated faculties. In addition to the more stringent position held by the Supreme Court, the Civil Rights Act of 1964 provided the courts with new support for their desegregation decisions.

UNITED STATES SUPREME COURT LITIGATION: 1964-1967

In May of 1964, the United States Supreme Court ruled that closing the Prince Edward County Schools, while all other public schools in Virginia remained open,

denied the Negro petitioners and other children of Prince Edward County the equal protection of the laws guaranteed by the Fourteenth Amendment.[2] The litigation, in Griffin vs. County School Board of Prince Edward County, had begun in 1951; the case was one of the segregation cases which the Supreme Court had consolidated with the Brown case in its 1954 decision. After the Supreme Court's decision in Brown, efforts to desegregate Prince Edward County's schools met with resistance. In an attempt to avoid school desegregation, the General Assembly of Virginia enacted legislation which provided for the closing of any school which was desegregated. This legislation was repealed, in 1959, after the Supreme Court of Appeals of Virginia had ruled that it violated the Virginia Constitution, but a new tuition grant program was enacted.

In June, 1959 the United States Court of Appeals for the Fourth Circuit directed the federal district court to issue an order requiring the schools of Prince Edward County to be desegregated. The Supervisors of Prince Edward County refused to levy any school taxes for the 1959-1960 school year and the county's schools failed to open in the fall of 1959. They had not reopened at the time this case came before the Supreme Court in 1964. Every other county in Virginia had continued to operate

public schools. A private group built its own plant and operated private schools for white children in Prince Edward County. After the 1959-1960 school year, the major source of financial support for the white private schools came indirectly from state and county tuition grants. Although Negro children were also eligible for tuition grants, there were no private schools for them to attend.

In 1961, the Negro plaintiffs filed an amended complaint, in the action, seeking to enjoin the defendants from refusing to open a system of free public schools in Prince Edward County and to enjoin payment of public funds to help support private schools which denied admission to students on account of their race. Eventually the case came before the United States Supreme Court in 1964. The Supreme Court held that, if an order prohibiting the closing of the Prince Edward County public schools was required to assure that the constitutional rights of the petitioners would no longer be denied them, it was within the power of the district court to issue such an order.

In delivering the opinion of the Supreme Court, Mr. Justice Black stated that the time for mere "deliberate speed" had run out and that that phrase could no longer be used to justify denying school children of Prince Edward County their constitutional right to an

education equal to that offered by public schools in other counties in Virginia. The Court stated that relief needed to be quick and effective.[3]

In Griffin, the Court clearly stated that grants of additional time to effect desegregation were no longer appropriate. On the same day that Griffin was decided, the Supreme Court remanded back to the district court the case of Calhoun vs. Latimer,[4] in which the plaintiffs complained that the rate of desegregation, which had occurred as a result of a court approved desegregation plan, was too slow. Although the District Court for the Northern District of Georgia found that, after the plan had been in operation for two years, approximately 50 Negroes had enrolled in white schools out of a school population of 46,000 Negroes, the rate of desegregation was approved. However, the lower court did restrict school officials from using criteria such as achievement test scores as a requirement for assignment or transfer of Negro applicants unless those same criteria were used for white applicants. The United States Court of Appeals for the Fifth Circuit affirmed the lower courts decision. The United States Supreme Court granted certiorari.

The Supreme Court vacated the judgment and remanded the case to the district court in order that the school board's resolution, pertaining to transfers, could be ap-

praised in a proper evidentiary hearing. The resolution had been adopted after the case had been argued before the District Court. In remanding the case to the District Court, the Supreme Court instructed the lower court to test the entire Atlanta desegregation plan by the considerations discussed in Goss[5] and Griffin.[6] Referring to Goss, the Court again pointed out that over nine years had passed since the first Brown decision and that the context, in which language such as "good faith compliance at the earliest practicable date" and "all deliberate speed" must be interpreted and applied to desegregation plans, had been altered significantly.[7] Despite the Griffin decision and its re-emphasis in Calhoun vs. Latimer, the mandate of the Brown decision continued to be frustrated.

Faculty Desegregation

During 1964, courts usually refused to consider the issue of faculty desegregation until substantial progress had been made in pupil desegregation.[8] In 1965, the courts continued to delay faculty desegregation until the pupil plan was well under way.[9] However, in that year, the United States Supreme Court made it clear, in two cases, that the lower courts should consider the desegregation of faculty and administrative personnel, and that

delay was not a proper remedy.[10]

In the first case, Bradley vs. School Board, City of Richmond,[11] the plaintiffs contended that faculty allocation on a racial basis rendered the desegregation plan inadequate under the principles set forth in Brown. The District Court for the Eastern District of Virginia had approved the desegregation plans and the Negro litigants appealed. The United States Court of Appeals for the Fourth Circuit refused to rule on the merits of the case because no evidentiary hearing had been held on the issue. The Appellate Court said that it was within the discretion of the District Court to determine if and when such a hearing would be held. The Court of Appeals stated that there was no need to consider the possible relation of reassignment of teachers to the protection of the constitutional rights of pupils until direct measures were employed to eliminate all direct discrimination in the assignment of pupils. The United States Supreme Court granted certiorari.

In holding that the Negro petitioners were entitled to a full evidentiary hearing upon their contention, the Supreme Court stated that there was no merit to the suggestion that a relation between faculty allocation on a racial basis and the adequacy of the desegregation plans was entirely speculative. Neither could the Court agree

with postponing the hearings. In remanding the case to the District Court for an evidentiary hearing the Supreme Court stated that more than ten years had passed since it had ordered the desegregation of public school facilities "with all deliberate speed" and that "delays in desegregating school systems /were/ no longer tolerable".[12]

In Rogers vs. Paul,[13] the second Supreme Court case which involved faculty desegregation, the Court remanded the case to the district court for a full evidentiary hearing on faculty desegregation. The lower courts had delayed consideration until pupil desegregation had been completed. The Supreme Court stated that students, who were not yet in desegregated grades, had sufficient interest to challenge racial allocation of faculty.

The rate of desegregation under the pupil desegregation plan was also considered by the Court in Rogers. The plan, which had been in operation since 1957, provided for desegregation at a rate of one grade per year. The Supreme Court said that the rate of pupil desegregation was too slow and ruled that the Negro pupils, not yet desegregated, were entitled to immediate relief. The Court again pointed out that delays in desegregating schools could not be permitted.[14]

During the period from 1964 through 1967, it was evident that the Supreme Court was growing tired of the

delays in desegregating school systems. The Court clearly stated that the time for mere deliberate speed had run out. The Court directed the lower federal courts to broaden and stiffen their school desegregation requirements. The Supreme Court held that faculty segregation was to be considered as part of the mandate in Brown and the lower courts were ordered to grant full hearings on contentions that faculty allocations were racially based. The Court had grown tired of the pupil by pupil, case by case approach to desegregating school systems.

LITIGATION WHICH ORIGINATED IN NORTH CAROLINA

The school desegregation cases decided during the period from 1954 through 1963 pertained only to pupil desegregation, whereas most cases which originated in North Carolina and were decided by the federal courts, during the period from 1964 through 1967, included requests for relief from both, racially based faculty assignments and racially based pupil assignments. Two cases reported during this period, however, pertained only to pupil desegregation.[15] In Nesbit vs. Statesville City Board of Education[16](1965) the United States Court of Appeals for the Fourth Circuit said that the district court's approval of a desegregation plan, which provided for a three-year

progression in which half of the grades were opened to minority transfers the first year, might have been within the restricted discretion of the district court. The plan was not specific about the assignment of new pupils coming into the system above the first grade level and the Board's counsel had referred to the continued use of dual attendance zones, which the Appellate Court stated had no place in a freedom of choice system. Because of these uncertainties the Appellate Court stated that it could not determine the correctness of the district court's conclusion until they were resolved in a further hearing. In remanding the case to the District Court for the Middle District of North Carolina, the Court of Appeals warned the lower court that, although it still had some discretion in allowing delays in the full implementation of a desegregation plan, so much time had passed since the Brown decision that extended delays were not likely to receive approval anywhere.[17]

In Felder vs. Harnett County Board of Education,[18] the Fourth Circuit Court of Appeals affirmed the decision of the District Court for the Eastern District of North Carolina which held that the North Carolina Pupil Assignment Act had been applied in an unconstitutional manner. The Harnett County Board of Education had published notices of pre-school clinics in the spring of each year without

instructions as to which particular school any child should be taken. Each child was initially enrolled in the school at which he was presented for the clinic and was reassigned to that school each year thereafter. The Board had not made any provisions for transfers. The District Court ordered the Board to admit the Negro plaintiffs to the school of their choice until some other nondiscriminatory plan was adopted, and to advise all pupils and parents of a free choice at the time of initial assignment and at such reasonable intervals thereafter as the Court might approve. The Court also ordered the Board to abandon all burdensome or discriminatory practices and procedures. The Court's decision, in this case, was similar to other decisions during this period in that it required immediate relief.[19]

After eliminating a delay in the desegregation of high school students, the United States Court of Appeals for the Fourth Circuit ruled, in Bowditch vs. Buncombe County Board of Education,[20] that a desegregation plan, which had been adopted by the Buncombe County Board of Education in 1963, was acceptable. As modified, the plan provided that every first grade pupil would be assigned to the school nearest his home and transfers would be routinely granted to any pupil upon his request. The plaintiffs complained that the district court did not order a

general reassignment of teachers and administrators on a nonracial basis. The Court of Appeals referred to its decision in Bradley vs. School Board, City of Richmond,[21] which was decided on the same day as this case, to support its opinion that the district court was justified in not considering the plaintiffs' request until direct measures were employed to eliminate all direct discrimination in the assignment of pupils.[22]

The District Court for the Western District of North Carolina did consider a case, in 1965, in which the plaintiffs claimed that a reduction in the number of Negro teachers, employed by the Morganton City Board of Education, was a result of racial discrimination.[23] As a result of the implementation of a desegregation plan, the number of Negro students to be taught in the Morganton City Schools was greatly reduced for the 1965-1966 school year. Twenty-six Negro teachers had been employed by the Board for the 1964-1965 school year, but the Board proposed to employ only twelve Negro teachers for the following year. The District Court stated, in Buford vs. Morganton City Board of Education,[24] that the burden of proof was on the Negro plaintiffs to satisfy the Court, from the evidence, that a particular teacher had failed to be re-employed because of race. The Court pointed out that, under North Carolina law, the Board could decline to re-employ a

teacher for any reason or no reason at all as long as that employment was not denied for a reason prohibited by law or the Constitution. The Court accepted the testimony of the superintendent of the Morganton City Schools, in which he stated that, without exception, he had recommended for employment those persons whom he thought best qualified without regard to race. Based on the superintendent's testimony, and the plaintiffs' failure to prove the contrary, the District Court held that the Negro teachers in the Morganton system were carefully considered for jobs in the entire system and, therefore, the plaintiffs were in no position to complain.[25]

The United States Supreme Court held, in Bradley vs. School Board, City of Richmond,[26] that Negro plaintiffs were entitled to a full evidentiary hearing upon their contention that faculty allocation on an alleged racial basis rendered desegregation plans inadequate under the principles set forth in Brown. After the Supreme Court's ruling in Bradley, on November 15, 1965, every North Carolina desegregation case, which came before the federal courts during this period, either included a request for relief from racially based faculty assignments or challenged a board's failure to renew a Negro teacher's contract.

The decision of the Halifax County Board of Education to not renew the contract of a Negro teacher for the

1963-1964 school year was challenged before the District Court for the Eastern District of North Carolina in Johnson vs. Branch.[27] Prior to her participation in civil rights activities, the Negro plaintiff had taught for nearly twelve years. The principal had graded her, in all fields, as excellent or above average for the 1962-1963 school year. In March, after she became involved in the civil rights movement, the plaintiff received a letter from her principal listing seven infractions which he asked her to correct. None of the infractions involved the quality of her classroom work. In early April, the plaintiff received a second letter in which the principal informed her that he had seen improvement and that, if she continued to show improvement, he would recommend her for re-employment. The principal did recommend that the plaintiff be re-employed, but the District Committee refused to renew her contract.

The plaintiff brought suit in the District Court alleging that her contract had not been renewed for reasons which were either arbitrary and capricious or because she had exercised her Constitutional right to protest racial discrimination. The District Court agreed with the plaintiff that the infractions, listed by the principal, were not in themselves justification for failure to re-employ her. However, the District Court ruled

for the School Board because it found that the plaintiff's civil rights activities had consumed so much of her time that they interfered with her extracurricular activities at school.

The United States Court of Appeals for the Fourth Circuit reversed the District Court's decision and stated that, if the grounds invoked by the Board were not sufficient to justify its failure to renew the plaintiff's contract, the District Court did not have the power to affirm the administrative action by substituting what it considered to be a more adequate basis. The Court of Appeals held that, even if the Board had used the plaintiff's civil rights activities as a reason for not re-employing her, it would not justify refusal to renew her contract unless the activities interfered with her classroom performance. The Appellate Court ruled that the action of the School Board was arbitrary and capricious and ordered that the plaintiff's contract be renewed for the 1966-1967 school year.[28]

On the same day that the Fourth Circuit Court of Appeals reversed the District Court's decision in the Halifax County case,[29] it also reversed a ruling of the District Court for the Western District of North Carolina in Chambers vs. Hendersonville City Board of Education.[30]

The Chambers case pertained to racially based faculty selection. As a result of court ordered desegregation, there was a decrease in the number of Negro pupils enrolled in the Hendersonville school system for the 1965-1966 school year. The number of teachers, in the system, was reduced by five. Every white teacher, who indicated the desire, was re-employed and fourteen new white teachers were employed. However, only eight of the twenty-four Negro teachers were offered re-employment. The Negro teachers brought action before the District Court seeking an injunction against racially discriminatory policies and practices of the Hendersonville City School Board. The Court concluded that the facts, in the case, did not infer that the Board had discriminated against the plaintiffs because of their race and, therefore, the plaintiffs had the burden of proving that each individual teacher was not re-employed for discriminatory reasons. The District Court for the Western District of North Carolina held that the plaintiffs had failed to prove that the School Board had acted discriminatorily and the action was dismissed.

The United States Court of Appeals for the Fourth Circuit reversed the District Court's decision and held that the Board's conduct involved four errors of law.[31] First, the principle set forth in Brown[32] prohibited the consideration of race in faculty selection just as it did

in pupil placement. Thus the loss of Negro students did not justify a corresponding reduction in Negro teachers. Second, the Negro teachers were public employees who could not be discriminated against, because of their race, with respect to their retention in the system. The Negro teachers should not have been required to stand comparison with new applicants unless the same requirements were applied to the white teachers. Third, the Board should have evaluated the Negro teachers' right to continued employment by comparison of their effectiveness with the other teachers in the system rather than in terms of the existing vacancies. The fourth error of law, which the Court held that the Board's conduct involved, was that, in view of the past history of racial discrimination in the school system, the reduction of Negro teachers did raise an inference of discrimination and, therefore, the burden to prove the contrary, by clear and convincing evidence, should have been borne by the School Board.[33]

The Court of Appeals held that the plaintiffs were entitled to an order requiring the Board to set up definite objective standards for the employment and retention of teachers and to apply them to all teachers in a non-discriminatory manner. The Appellate Court also instructed the District Court to issue an order requiring the Board to offer re-employment to all the plaintiffs, who could

meet the minimum standards set by the Board, for the 1966-1967 school year.[34]

Wheeler vs. Durham City Board of Education[35] came before the United States Court of Appeals for the Fourth Circuit again in 1966. As a result of a court order, the Durham City Board of Education had tendered a "Permanent Plan for Desegregation of the Durham City Schools", on October 15, 1965, in which students had unrestricted freedom of choice. The Negro litigants accepted the pupil assignment provision, but found fault with the plan as a whole because it did not provide for the elimination of teacher allocations on the basis of race. The District Court for the Western District of North Carolina approved the plan and also ruled that the plaintiffs were not entitled to an order requiring the employment and assignment of teachers without regard to race. The Court based its refusal of the order on its opinion that the plaintiffs had failed to prove their allegation that there was any substantial relationship between the employment and assignment of teachers on the basis of race and the plan proposed by the Board for the enrollment and assignment of pupils.

In reversing the District Court's decision, the Fourth Circuit Court of Appeals held that no proof of relationship between faculty allocation and pupil assignment was required because the removal of race considerations

from faculty selection and allocation was an inseparable and indispensable command within the abolition of pupil segregation in public schools as set forth in Brown. After finding that race was a determinant in faculty allocations, the Appellate Court vacated the District Court's order and held that vacant teacher positions, in the future, should be opened to all applicants, and each filled by the best qualified applicant regardless of race. The Court also stated that the order should encourage transfer of the present faculty members to schools in which pupils were predominantly of a race other than that of the teachers being transferred.[36]

In keeping with the trend in the United States Supreme Court's rulings, during this period, the District Court for the Western District of North Carolina, in Swann vs. Charlotte-Mecklenburg Board of Education,[37] required the Board to substitute the word "immediate" for "ultimate" in its plan pertaining to desegregation of teachers and administrative personnel. After this modification the Board's desegregation plan, which was based on single attendance zones, was approved by the District Court. The plaintiffs claimed that the plan had not resulted in a sufficient mixture of the races and sought further relief in the United States Court of Appeals for the Fourth Circuit.

The Appellate Court approved the boundaries established by the Board and stated that there was no constitutional requirement that the Board act with the "conscious purpose of achieving the maximum mixture of races in the schools". The Court held that so long as the boundaries were not drawn for the purpose of maintaining racial segregation, there was no constitutional requirement that the Board had to completely counteract all of the effects of segregated housing patterns.[38]

In 1967, Wall vs. Stanley County Board of Education[39] came before the United States Court of Appeals for the Fourth Circuit. This was another North Carolina case which involved a school board's failure to re-employ a Negro teacher because the enrollment in the Negro schools, in the county, had decreased. The implementation of a freedom-of-choice plan, by the Stanley County Board of Education, in the Spring of 1965, resulted in a large shift of the pupil enrollment from the Negro schools to the predominantly white schools. The Board adopted no provision to govern the assignment of teachers who were affected by the shift in the pupil enrollment. The Board considered that the transfer of Negro pupils from a Negro school to a predominantly white school diminished the need for Negro teachers in the Negro school and increased the need for white teachers in the predominantly

white schools.

As a result of the shift in the pupil enrollment, Mrs. Wall, a Negro teacher with thirteen years of teaching experience, was not re-employed. She sought relief in the District Court for the Middle District of North Carolina. Although the District Court found that, if the teacher spaces at the Negro school had not been reduced, the plaintiff would have been re-employed for the 1965-1966 school year, she was denied relief. The case was appealed to the Fourth Circuit Court of Appeals. The Appellate Court reversed the lower court's decision because the plaintiff had not been allowed to compete for a teaching position, in the system, on the basis of her merit and qualifications as a teacher. The Court found that the plaintiff had not been considered in comparison with other applicants solely because of her race. The Court of Appeals instructed the District Court to order the Board to put Mrs. Wall on the roster of teaching applicants for the 1967-1968 school year and to require that she be considered for employment objectively in comparison with all teachers, without regard to her race. The Court also stated that, if the plaintiff were denied re-employment, the Board would carry the burden of justifying its conduct by clear and convincing evidence because of its prior discrimination against her.[40]

The District Court for the Eastern District of North Carolina considered the simultaneous elimination of pupil and faculty segregation in Teel vs. Pitt County Board of Education, in 1967.[41] The Negro plaintiffs alleged that the court approved freeom-of-choice plan had failed to provide a substantial increase in pupil desegregation and that the Pitt County Board of Education had failed to employ teachers on a non-racial basis. The District Court held that the Board's desegregation plan was basically sound in form and policy, but there had been deficiencies in its implementation. The Court stated that the problem in the operation of the plan was that it began with an initial racial assignment, and pupils, who did not indicate a choice of transfer, were automatically assigned to the same school which they attended the previous year. This tended to perpetuate a basically segregated school system. The Court ruled that the automatic reassignment provision would have to be eliminated if any form of freedom of choice was to remain in effect. The District Court directed the Board of Education to assign pupils, who did not indicate a choice, to the school nearest their home. The transportation routes were to be geared to the schools served and not to the races of the children transported. If any application for transfer was denied, the Board had to provide a state-

ment of the reason. Although the Court approved the freedom-of-choice plan, it encouraged the Board to consider an alternative. The Court suggested that the Board assign pupils to geographic attendance zones established without regard to race.[42]

Pertaining to faculty segregation, the Court found that the Board had continued an unwritten policy and practice of assigning Negro teachers to "Negro schools" and white teachers to "white schools". The Court held that faculty desegregation went hand-in-hand with the abolition of pupil segregation in public schools and that the Board had an affirmative duty, under the Constitution, to eliminate faculty segregation. The Court pointed out that, even under an acceptable plan, there may be a small number of schools populated predominantly by students of one race due to non-racial circumstances, but the practice of hiring white teachers for "white schools" and Negro teachers for "Negro schools" had to end. The District Court stated, however, that it did not intend, nor did it read the law to require, involuntary reassignment of teachers to achieve racial blending of faculties in each school. Judge Larkins maintained that faculty desegregation could and must be accomplished without the use of racial criteria, because equal protection of the law must work in both directions to be equal. The School Board was

directed to use non-racial criteria in hiring new teachers and to encourage transfers by present members of the faculty to schools in which the pupils were predominantly of another race.[43]

The District Court for the Eastern District of North Carolina quickly stiffened its requirements for school desegregation. Approximately two weeks after Judge Larkins' decision in Teel vs. Pitt County Board of Education[44] the Court ordered the Franklin County Board of Education to take immediate affirmative steps to accomplish substantial faculty desegregation for the 1967-1968 school year.[45] In Coppedge vs. Franklin County Board of Education,[46] Judge Butler held that if the assignment of teachers on a voluntary basis did not result in significant faculty desegregation of every school in the system, the Board was to assign white and non-white teachers so that two or more teachers of the minority race were on each school faculty. The Court stated that the ultimate objective was that each faculty contain the same percentage of non-white teachers as there was in the entire system.

The District Court also ordered the Franklin County Board of Education to submit a desegregation plan by October 15, 1967. The plan was to provide for the assignment, at the earliest practicable date, of all pupils based on a unitary system of non-racial geographic at-

tendance zones. There was to be no gerrymandering for any purpose. The Court stated that at least ten percent of the Negro students, in the system, were to attend predominantly white schools for the 1967-1968 school year and the Board was ordered to adopt a schedule of steps to be taken to accomplish a totally desegregated school system.[47]

In his opinion, in Coppedge, Judge Butler referred to the Fifth Circuit Court of Appeals' 1966 ruling in United States vs. Jefferson County Board of Education.[48] In Jefferson, the Fifth Circuit Court of Appeals had recognized that no particular racial balance was required in a school district, but it did say that the use of some sort of yardstick or objective percentage guide in reviewing the effectiveness of a desegregation plan was reasonable.

During the period from 1964 through 1967, the federal courts in North Carolina, while ordering an end to segregated faculties, generally left the procedures up to the local boards of education with the suggestion that, as replacements were made, teachers could be assigned on a basis to end segregated faculties. With the exception of the District Court in Coppedge vs. Franklin County Board of Education,[49] involuntary reassignment was rejected by the courts.

Two cases, which were related to the desegregation of the public schools, came before the North Carolina State Supreme Court during this period.[50] In 1966, in Dilday vs. Beaufort County Board of Education,[51] the legality of the expenditure of bonds came before the courts again. The voters of Beaufort County had approved a bond issue for the purpose of erecting several school buildings. Prior to the election, the Beaufort County Board of Education had distributed information stating that a portion of the bond money would be used to construct an addition at a Negro high school and to build a new central consolidated white high school. After this information was distributed, the Civil Rights Act of 1964 became law. The Board then adopted a plan of compliance with Title VI of the Civil Rights Act. One aspect of the plan called for the construction of a central high school which would serve all children regardless of race. The Board proposed to add the bond money allocated for the construction of the addition at the Negro high school to the money allocated to build the central, consolidated white high school for the purpose of constructing the new consolidated, desegregated high school.

The white plaintiffs filed suit in the Superior Court of Beaufort County seeking to enjoin the County Board of Education from expending bond money for the pur-

pose of constructing the centrally located desegregated high school. They contended that the School Board did not have the authority to expend any of the bond money for the purpose of consolidating the Negro high schools with the white high schools. The Superior Court ruled for the School Board and the plaintiffs appealed to the North Carolina State Supreme Court. The Supreme Court pointed out that, although North Carolina law provided that proceeds from the sale of bonds could be used only for the purpose specified in the order authorizing the bonds, it did not prohibit a legal transfer of funds from one project to another within the general purpose for which the bonds were issued. However, the Court held that the county commissioners would have to approve the transfer before it could be made. Before the commissioners could approve the transfer, they were required to find that the law would not permit the original purpose to be accomplished and that the proposed expenditure was not excessive and was necessary to maintain the constitutional school term.

The State Supreme Court pointed out that the School Board was not faced with an ordinary problem due to the fact that Title VI of the Civil Rights Act of 1964 would not allow them to maintain a new segregated school. The Court stated that the only choice to be made was whether the money would be expended on three desegregated high

schools or on one consolidated desegregated high school. The State Supreme Court held that, if the commissioners officially approved the School Board's request for reallocation of the funds, the people of Beaufort County would not be in a position to complain.[52]

The second case, which came before the North Carolina State Supreme Court during this period, was Huggins vs. Wake County Board of Education.[53] That case pertained to a reorganization plan which had been proposed by the Wake County Board of Education. In order to comply with the guidelines issued by the United States Commissioner of Education, the Board of Education had adopted a resolution providing for the assignment of all pupils in the ninth grade to West Cary High School, formerly an all-black school, and all pupils in the tenth, eleventh, and twelfth grades to Cary High School, formerly an all-white school. A suit was initiated in the Superior Court of Wake County by white plaintiffs who sought an order requiring the School Board to operate both schools, with grades nine through twelve, for the benefit of pupils living in the Cary attendance area. The plaintiffs alleged that the proposed reorganization was "in effect a de facto consolidation" of the two high schools, which was not within the authority of the Board. The Board claimed that their action was only an assignment of pupils within the same

school attendance area and that there was no consolidation of the two schools.

The Superior Court found that, under the conditions and circumstances with which it had to operate, the Board had acted in good faith and had not abused its discretionary power. The Court held that the Board, in its discretion, could regulate and locate the grades in buildings and facilities as it deemed proper and the court should not substitute its judgment for that of the Board. The plaintiffs appealed to the North Carolina State Supreme Court. The State Supreme Court found no error in the finding or conclusion of the Superior Court and the lower court's decision was affirmed.[54]

THE CIVIL RIGHTS ACT OF 1964

The Civil Rights Act of 1964 was the strongest civil rights legislation since the Reconstruction Acts of 1866 and 1875. It was an act:

> To enforce the constitutional right to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.[55]

There were eleven titles included in the Civil Rights Act of 1964 which pertained to political, economic, and social functions. The Act attempted to regulate the relationship between individuals by statute. In the Civil Rights Cases of 1883[56] the United States Supreme Court had invalidated the section of the Civil Rights Act of 1875 which provided that all persons were entitled to the equal enjoyment of the accomodations, advantages, facilities, and privileges of inns, public conveyances, theatres, and other places of public amusement. The Court had ruled that the Fourteenth Amendment, on which the 1875 Act was based, prohibited discrimination by states, but not by individuals. It was held that Congress did not have the power, under the Fourteenth Amendment, to prohibit individual invasions of individual rights. The public accomodations sections of the 1964 Civil Rights Act included provisions similar to the ones which had been declared unconstitutional in 1883. Although the Civil Rights Acts of 1866 and 1875 omitted education because it was considered to be a state responsibility, the Civil Rights Act of 1964 included provisions pertaining to it.

The portions of the 1964 Civil Rights Act, which had a direct influence on education, were Title IV and Title VI. Title IV of the Act pertained to desegregation of the public schools. Title IV, Sections 402-407 made

provisions for (1) suits by the Attorney General of the United States, (2) operation of training institutes, (3) grants to school boards to pay for training programs, (4) technical assistance to school boards, and (5) a survey and a report to the President and to Congress by the Commissioner of Education.

Title VI, Section 601 of the Act, provided that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[57]

All agencies of the federal government, which were empowered to extend federal financial assistance to any program or activity, were required, by Section 602 of the Act, to issue regulations to bring the provisions of Section 601 into effect. Title IV of the Act was designed to accelerate desegregation in the classrooms, and Title VI required that there be no discrimination in any program which received federal funds.

In compliance with Title VI, Section 602 of the Civil Rights Act of 1964, the United States Department of Health, Education, and Welfare published regulations designed to effectuate the provision of Section 601. Based upon those regulations, the Office of Education issued its first set of generally applicable standards implement-

ing Title VI in the area of school desegregation on April 29, 1965. The "guidelines" provided three methods by which a school district could qualify for federal financial assistance. A school district was eligible for financial assistance if (1) it was fully desegregated, (2) it was subject to a final desegregation order of a court of the United States and provided an assurance that it would comply with such order, including any future modification of such order, or (3) it submitted a plan of desegregation of the school system, which the Commissioner of Education determined was adequate to accomplish the purpose of the Civil Rights Act of 1964. The guidelines permitted a school district under court order to qualify for financial assistance by complying with the order, even if the standards imposed by the court were less demanding than those imposed by the Department of Health, Education, and Welfare upon districts submitting voluntary plans. When the 1965 guidelines were issued, many of the existing desegregation orders imposed standards far short of the standards which the guidelines imposed on districts submitting voluntary plans.[58]

Two important questions, with which the Office of Education standards dealt, were the pace of desegregation and the method of student assignment. The public school systems were to make a substantial start toward desegre-

gation by September 1965, and eliminate all racial segregation by the fall of 1967. School systems were given three options with respect to the assignment of students: (1) assignment on the basis of unitary, non-racial geographic attendance areas; (2) assignment on the basis of a choice freely exercised by the pupil and his parents (freedom of choice); or (3) assignment on the basis of a combination of these two principles. In 1966, the Office of Education set forth additional criteria whereby the Commissioner could determine whether a desegregation plan based on free choice was operating fairly or effectively. The effectiveness of a plan was determined by the actual number of students transfering from a segregated to a desegregated school.[59]

Another basic requirement, which the 1966 guidelines set forth for all voluntary desegregation plans, pertained to faculty desegregation. In addition to prohibiting discharges based on race, the guidelines specified that, where a staff vacancy resulted from desegregation, it could not be filled by a person from outside the system unless school officials could show that no displaced staff member was qualified to fill the vacancy. It also provided that the qualifications of all staff members in the system had to be evaluated in selecting the person to be released.[60]

"Good faith" was a requirement to be considered in determining whether a plan was operating satisfactorily. A substantial "good faith" start was one in which at least four grades were desegregated by September, 1965, and (1) assignment of new pupils was not based on race, (2) no public funds were used to maintain segregation by sending pupils outside their district, (3) students originally assigned on a discriminatory basis were given transfer rights, and (4) efforts were made to desegregate faculties.[61]

The guidelines issued by the Office of Education in 1965 and revised in 1966 received credibility in the courts early. The Fifth Circuit Court of Appeals stated, in its 1966 opinion in United States vs. Jefferson County Board of Education,[62] that the guidelines presented the best system available for uniform application, and the best aid to the courts in evaluating the validity of a school desegregation plan and the progress made under that plan. The Court stated that the guidelines were within the scope of the congressional and executive policies embodied in the Civil Rights Act of 1964 and that courts in the Fifth Circuit should give great weight to them. The Court held that the standards of court-supervised desegregation should not be lower than the standards required by the Department of Health, Education, and Welfare. Al-

though the Fifth Circuit Court of Appeals recognized that no particular racial balance was required in a school district, it did say that the use of some sort of yardstick or objective percentage guide in reviewing the effectiveness of a desegregation plan was reasonable. The Court stated that the percentage requirements in the guidelines, which suggested that systems using free choice for at least two years should expect fifteen to eighteen percent of the pupil population to have selected desegregated schools, were modest.[63]

The opinion of the Fifth Circuit Court of Appeals, in Jefferson, marked the beginning of a trend for federal courts to consider percentages in formulating remedies in de jure segregation cases. In 1967, in Coppedge vs. Franklin County Board of Education,[64] the District Court for the Eastern District of North Carolina referred to Jefferson in requiring that at least ten percent of the Negro students, in Franklin County, attend predominantly white schools for the 1967-1968 school year. The District Court also stated that the ultimate objective of its order, pertaining to faculty desegregation, was that each faculty contain the same percentage of non-white teachers as there was in the entire system.

As evidenced in Jefferson and Coppedge, the action taken by Congress in the school desegregation arena was accompanied by a similar surge of renewed energy in the courts. However, the new surge of energy in the courts occurred to a greater extent after 1967 than it did during the period from 1964 through 1967. During this period, the Supreme Court decided only two school desegregation cases after the Civil Rights Act of 1964 became law. In the cases, which were decided after the enactment of the 1964 Civil Rights Act, the federal courts broadened and stiffened their school desegregation requirements. They began to make intensive inquiries into whether plans for desegregation would actually result in the implementation of the Brown decision. The courts came to realize that, even when school officials were willing to promote desegregation, an adverse community could render the best intentioned plans ineffective.

ANALYSIS AND SUMMARY OF INFLUENCE PATTERNS: 1964-1967

The United States Supreme Court's statement in Goss,[65] in 1963, provided an indication of what the courts would require in desegregating school systems during the period from 1964 through 1967. In 1964, the Supreme Court clearly stated, in Griffin,[66] that the time

TABLE III

CASES FILED IN FEDERAL COURTS 1964-1967

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Griffin v. County School Board of Prince Edward County	May 25, 1964	Closing of schools to avoid desegregation		Ruled in favor of the Board	Reversed ruling of the court of appeals
Calhoun v. Latimer	May 25, 1964	Free-transfer policy			Remanded to district to be considered in light of Goss and Griffin
Bowditch v. Buncombe County Board of Education	Apr. 7, 1965	Pupil assignment plan delayed desegregation and teacher assignments	D.C. W.D. N.C. Approved plan after modification. Refused to consider teacher assignments	Approved plan after further modification. Upheld district court's refusal to consider teacher assignments	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Nesbit v. Statesville City Board of Education	Apr. 7, 1965	Freedom-of-choice pupil assignment plan	D.C. W.D. N.C. Approved plan	Remanded with warning against extended delays	
Felder v. Harnett County Board of Education	Jul. 30, 1965	Pupil assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs	Affirmed district court's decision	
Buford v. Morganton City Board of Education	Aug. 12, 1965	Teacher employment and assignment	D.C. W.D. N.C. Ruled for Board		
Bradley v. School Board, City of Richmond	Nov. 15, 1965	Faculty assignment		Approved desegregation plans without considering faculty assignment	Vacated court of appeals judgment and ordered hearing on faculty assignment

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Rogers v. Paul	Dec. 6, 1965	Grade-per-year desegregation plan and faculty assignment			Ruled that plan was too slow. Instructed district court to consider faculty assignment
Johnson v. Branch	Jun. 6, 1966	Failure to renew Negro teacher's contract	D.C. E.D. N.C. Ruled for the Board	Reversed the decision of the district court	
Chambers v. Hendersonville City Board of Education	Jun. 6, 1966	Failure to re-employ Negro teachers	D.C. W.D. N.C. Ruled for Board	Reversed the decision of the district court	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Wheeler v. Durham City Board of Education	Jul. 5, 1966	Pupil assignment and teacher assignment	D.C. W.D. N.C. Approved pupil assignment plan. Dismissed teacher assignment complaint	Affirmed district court decision pertaining to pupil assignment plan but reversed the lower court's decision pertaining to teacher assignment	
Swann v. Charlotte-Mecklenburg Board of Education	Oct. 24, 1966	Pupil and teacher assignment	D.C. W.D. N.C. Ruled against Negro plaintiffs	Affirmed district court's decision	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Wall v. Stanley County Board of Education	May 19, 1967	Failure to re-employ Negro teacher	D.C. W.D. N.C. Ruled for Board	Reversed the decision of the district court	
Teel v. Pitt County Board of Education	Aug. 4, 1967	Freedom-of-choice pupil assignment plan and teacher assignment	D.C. E.D. N.C. Approved pupil assignment after modification but ruled for Negro plaintiffs pertaining to teacher assignment		
Coppedge v. Franklin County Board of Education	Aug. 21, 1967	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs		

TABLE IV

CASES FILED IN NORTH CAROLINA STATE COURTS 1964-1967

Case	Date	Issue	Superior Court	North Carolina Court of Appeals	North Carolina Supreme Court
Dilday v. Beaufort County Board of Education	Jun. 16, 1966	Spending bond money for consolidated, desegregated high school	Ruled against white plaintiffs-expenditure was allowed		*Reversed superior court decision
Huggins v. Wake County Board of Education	Nov. 22, 1967	Reorganization of grade-structure in schools to accomplish desegregation	Ruled against white plaintiffs		Upheld decision of the superior court

*State Supreme Court enjoined Beaufort County from spending bond money for a consolidated, desegregated high school because the county commissioners had failed to follow the proper procedures. The Court stated that the expenditure would be allowed once the procedures had been followed.

for mere "deliberate speed" had run out. The Court stated that relief from discriminatory practices needed to be quick and effective. On the same day that the Supreme Court decided Griffin, it also remanded another desegregation case to a federal district court in Georgia to be considered in view of the language discussed in Goss and Griffin. It was clear that the Supreme Court intended the lower courts, throughout the nation, to require more speed in desegregating public school systems.

During this period, the Supreme Court's impatience with delaying tactics, which was evident in its decision in Griffin, was reflected more in the decisions of the United States Court of Appeals for the Fourth Circuit and the District Court for the Eastern District of North Carolina than it was in the decisions of the other federal courts in North Carolina. In remanding Nesbit vs. Statesville City Board of Education[67] to the District Court for the Western District of North Carolina, in 1965, the Fourth Circuit Court of Appeals warned the lower court that extended delays in the implementation of a desegregation plan were not likely to be approved. In that same year, in Felder vs. Harnett County Board of Education,[68] the Appellate Court affirmed a decision of the District Court for the Eastern District of North Carolina in which

the lower court had ordered that Negro plaintiffs, in Harnett County, be granted immediate relief from the discriminatory practices of the county board of education, pertaining to the assignment of pupils. Before affirming a decision of the District Court for the Western District of North Carolina, in which the lower court had approved a desegregation plan adopted by the Buncombe County Board of Education, the Fourth Circuit Court of Appeals eliminated the delays in the plan and ordered that it be implemented immediately.[69] In 1967, the District Court for the Eastern District of North Carolina held, in Teel vs. Pitt County Board of Education,[70] that the county's desegregation plan was basically sound in form and principle, but that there had been deficiencies in its implementation. The Board was ordered to make corrections in the operation of the plan before it was approved by the Court. Although the Court approved the freedom-of-choice plan, it suggested that an alternative, which the Board might want to consider, would be to assign pupils according to geographic attendance zones established without regard to race. In the same year, in Coppedge vs. Franklin County Board of Education,[71] the District Court for the Eastern District of North Carolina ordered the Board to submit a desegregation plan which would result in at least ten percent of the Negro students, in Franklin County, attending predomin-

antly white schools for the 1967-1968 school year. The District Court also stated that the ultimate objective of its order, pertaining to faculty desegregation, was that each faculty contain the same percentage of non-white teachers as there was in the entire system.

In its decision, in Coppedge, the District Court referred to the Fifth Circuit Court of Appeals' 1966 opinion in United States vs. Jefferson County Board of Education.[72] The Fifth Circuit Court's decision, in Jefferson, was influenced by the guidelines issued by the Office of Education, which were based on the Civil Rights Act of 1964. This was a beginning of a trend in which federal courts considered percentages or racial balance in formulating remedies in desegregation cases. That trend would continue through 1974.

During 1964, the federal district courts and the United States Court of Appeals for the Fourth Circuit refused to consider the complaints of Negro plaintiffs, pertaining to faculty desegregation, until direct measures were employed to eliminate all direct discrimination in the assignment of pupils. The pattern was continued until the United States Supreme Court stated, in 1965, that the lower courts should consider the desegregation of faculty and administrative personnel, and that delay was not a proper remedy.[73] Prior to the Supreme Court's ruling in

Bradley the lower federal courts in North Carolina had used the Fourth Circuit Court of Appeals decision, in that case, to justify their refusal to consider faculty desegregation. After the Supreme Court ruled that lower federal courts should consider allegations pertaining to faculty desegregation and that delays in desegregating school systems, including faculties, were no longer tolerable, the Fourth Circuit Court of Appeals began to stiffen its desegregation requirements. However, the federal district courts in North Carolina continued to rule for school boards in cases pertaining to faculty desegregation.[74]

The United States Court of Appeals for the Fourth Circuit consistently reversed the decisions of the federal district courts in North Carolina in which the lower courts continued to refuse to grant relief to Negro plaintiffs who complained of racially based faculty allocations and assignments. Finally, in Wheeler vs. Durham City Board of Education,[75] the Appellate Court stated that no proof of relationship between faculty allocation and pupil assignment was needed because the removal of race considerations from faculty selection and allocation was an inseparable and indispensable command within the abolition of pupil segregation in public schools as set forth in Brown. Following this decision, the federal district

courts in North Carolina stiffened their requirements pertaining to faculty desegregation.[76]

During the period from 1964 through 1967, the direct influence of the United States Supreme Court's decisions on the United States Court of Appeals for the Fourth Circuit was evident. However, the Supreme Court's influence on the decisions of the federal district courts in North Carolina was not as obvious. The district courts' decisions seemed to be influenced more directly by the decisions of the Fourth Circuit Court of Appeals than by the Supreme Court's rulings. Although the Civil Rights Act of 1964 was not directly reflected in any federal court decision pertaining to the desegregation of the public schools in North Carolina, it indirectly influenced the ruling of the District Court for the Eastern District of North Carolina in Coppedge vs. Franklin County Board of Education.[77] In addition to its influence in Coppedge, the Act had a direct influence on the two North Carolina State Supreme Court decisions.[78] In each case, the Court approved the action of the county board of education because it recognized that the board was operating under unusual circumstances created by the Civil Rights Act of 1964. No influence patterns developed between the State Supreme Court and the federal courts dur-

ing this period. The most evident influence pattern, which developed from 1964 through 1967, was the influence which the Supreme Court's impatience with delaying tactics had on the lower federal court decisions pertaining to student and faculty desegregation. This influence would continue to be evident in the period from 1968 through 1970.

CHAPTER III

FOOTNOTES

1. Goss v. Board of Education of City of Knoxville, Tennessee, 373 U.S. 683 (1963).

2. Griffin v. County School Board of Prince Edward County, 377 U.S. 220 (1964).

3. Ibid.

4. Calhoun v. Latimer, 377 U.S. 263 (1964).

5. Goss v. Board of Education of City of Knoxville, Tennessee, 373 U.S. 683 (1963).

6. Griffin v. County School Board of Prince Edward County, 377 U.S. 220 (1964).

7. Calhoun v. Latimer, 377 U.S. 263 (1964).

8. Rogers v. Paul, 345 F. 2d 117 Bradley v. School Board, City of Richmond, 345 F. 2d 310 (1965).

9. Bowditch v. Buncombe County Board of Education, 345 F. 2d 329 (1965). Chambers v. Hendersonville City Board of Education, 245 F. Supp. 759 (1966).

10. Rogers v. Paul, 345 F. 2d 117, Bradley v. School Board, City of Richmond, 345 F. 2d 310 (1965).

11. Bradley v. School Board, City of Richmond, 382 U.S. 105 (1965).

12. Ibid.

13. Rogers v. Paul, 382 U.S. 198 (1965).

14. Ibid.

15. Nesbit v. Statesville City Board of Education, 345 F. 2d 333 (1965). Felder v. Harnett County Board of Education, 349 F. 2d 366 (1965).

16. Nesbit v. Statesville City Board of Education, 345 F. 2d 333 (1965).

17. Ibid.

18. Felder v. Harnett County Board of Education, 349 F. 2d 366 (1965).

19. Ibid.

20. Bowditch v. Buncombe County Board of Education, 345 F. 2d 329 (1965).

21. Bradley v. School Board, City of Richmond, 345 F. 2d 310 (1965).

22. Bowditch v. Buncombe County Board of Education, 345 F. 2d 329 (1965).

23. Buford v. Morganton City Board of Education, 244 F. Supp. 437 (1965).

24. Ibid.

25. Ibid.

26. Bradley v. School Board, City of Richmond, 382 U.S. 105 (1965).

27. Johnson v. Branch, 364 F. 2d 177 (1966).

28. Ibid.

29. Ibid.

30. Chambers v. Hendersonville City Board of Education, 364 F. 2d 189 (1966).

31. Ibid.

32. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

33. Chambers v. Hendersonville City Board of Education, 364 F. 2d 189 (1966).

34. Ibid.

35. Wheeler v. Durham City Board of Education, 363 F. 2d 738 (1966).

36. Ibid.

37. Swann v. Charlotte-Mecklenburg Board of Education, 369 F. 2d 29 (1966).

38. Ibid.

39. Wall v. Stanley County Board of Education, 378 F. 2d 275 (1967).

40. Ibid.

41. Teel v. Pitt County Board of Education, 272 F. Supp. 703 (1967).

42. Ibid.

43. Ibid.

44. Ibid.

45. Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

46. Ibid.

47. Ibid.

48. United States v. Jefferson County Board of Education, 372 F. 2d 836 (1966).

49. Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

50. Dilday v. Beaufort County Board of Education, 267 N.C. 438 (1966). Huggins v. Wake County Board of Education, 272 N.C. 33 (1967).

51. Dilday v. Beaufort County Board of Education, 267 N.C. 438 (1966).

52. Ibid.

53. Huggins v. Wake County Board of Education, 272 N.C. 33 (1967).

54. Ibid.

55. Public Law 88-352, 78 Stat. 241 (1964).

56. Civil Rights Cases, 109 U.S. 3 (1883).

57. Public Law 88-352 (1964).

58. Report of the United States Commission on Civil Rights, Southern School Desegregation 1966-1967 (Washington: U.S. Government Printing Office, 1967), pp. 10-11.

59. Ibid., p. 13.

60. Ibid., p. 14.

61. Southern School News, Vol. 11, No. 11 (May, 1965), pp. 1-9.

62. United States v. Jefferson County Board of Education, 372 F. 2d 836 (1966).

63. Ibid.

64. Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

65. Goss v. Board of Education of the City of Knoxville, Tennessee, 373 U.S. 683 (1963).

66. Griffin v. County School Board of Prince Edward County, 377 U.S. 220 (1964).

67. Nesbit v. Statesville City Board of Education, 345 F. 2d 333 (1965).

68. Felder v. Harnett County Board of Education, 349 F. 2d 329 (1965).

69. Bowditch v. Buncombe County Board of Education, 345 F. 2d 329 (1965).

70. Teel v. Pitt County Board of Education, 272 F. Supp. 703 (1967).

71. Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

72. United States v. Jefferson County Board of Education, 372 F. 2d 836 (1966).

73. Bradley v. School Board, City of Richmond, 382 U.S. 105 (1965).

74. Johnson v. Branch, 364 F. 2d 177 (1966). Chambers v. Hendersonville City Board of Education, 364 F. 2d 189 (1966). Wheeler v. Durham City Board of Education, 363 F. 2d 738 (1966).

75. Wheeler v. Durham City Board of Education, 363 F. 2d 738 (1966).

76. Swann v. Charlotte-Mecklenburg Board of Education, 369 F. 2d 29 (1966). Teel v. Pitt County Board of Education, 272 F. Supp. 703 (1967). Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

77. Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

78. Dilday v. Beaufort County Board of Education, 267 N.C. 438 (1966). Huggins v. Wake County Board of Education, 272 N.C. 33 (1967).

CHAPTER IV

COURT ATTEMPTS TO STOP DELAYING TACTICS: 1968-1970

In the 1960's, the combined actions of the Chief Executive, the Justice Department, and Congress resulted in new responsiveness to equal educational opportunity and a renewed attack upon discrimination in the dual systems of the South. The new surge of Congressional energy in the school desegregation arena influenced a similar burst of renewed energy in the courts. Following the enactment of the Civil Rights Act of 1964 and the adoption of the guidelines by the Office of Education to implement Title VI, federal courts began to make intensive inquiries into whether plans for desegregation would lead to the implementation of the Brown decision.[1]

United States Supreme Court Litigation: 1968-1970

The Supreme Court has rendered three unanimous, pivotal desegregation decisions, (1) its 1954 Brown decision, (2) the decision in Green vs. County School Board of New Kent County, Virginia,[2] and (3) its 1971 decision in Swann vs. Charlotte-Mecklenburg Board of Education.[3]

In Green, which was decided on May 27, 1968, the Court's attitude was marked by a growing impatience with the evasive tactics used by school boards to undermine its authority. In that case, the Supreme Court was presented with a classic de jure segregation fact situation. New Kent is a rural eastern county in Virginia. In 1968, it had approximately 1300 public school pupils of which 740 were black and 550 were white. Prior to 1965, only two public schools were maintained by the county, one of which was all black and the other one all white. The racial identification of the system's schools was complete, extending not just to the composition of student bodies, but to every facet of school operations, including faculty, staff, transportation, extracurricular activities and facilities. Five months after action was initiated in the district court, in 1965, the county adopted a freedom-of-choice plan in order to remain eligible for federal financial aid under Title VI of the Civil Rights Act of 1964. The plan resulted in no white transfers and only fifteen percent Negro transfers. After the plan was filed, the district court denied the Negro plaintiffs relief and granted leave to the New Kent County School Board to submit an amendment to the plan with respect to employment and assignment of teachers and staff on a racially non-discriminatory basis. After the amendment

was filed, the district court approved the freedom-of-choice plan. The United States Court of Appeals for the Fourth Circuit affirmed the district court's approval of the plan, but remanded the case to the lower court for entry of an order requiring a more specific and comprehensive plan pertaining to faculty desegregation. The United States Supreme Court granted certiorari.

The question before the Supreme Court was whether, in view of the Board's history of maintaining a segregated school system, its adoption of a freedom-of-choice plan constituted adequate compliance with the Board's responsibility to achieve a system of determining admission of students to the public schools on a non-racial basis. In ruling for the Negro plaintiffs in Green,[4] the Court held that the adoption of a free-choice plan would not, in itself, satisfy the legal obligation to desegregate. The test of any desegregation plan was to be the extent of desegregation it achieved. School boards, which had operated state-compelled dual systems, were charged with the affirmative duty to take whatever steps necessary to convert to a unitary system in which racial discrimination would be eliminated "root and branch".[5] It was pointed out that over ten years had passed since Brown II[6] and that a plan which failed to provide meaningful assurance of the prompt and effective disestablishment of a dual

system was no longer tolerable. The Court departed from the "all deliberate speed" formula of Brown II to hold that:

> The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.[7]

The Supreme Court did not rule that freedom of choice had no place in an effective plan, but it did say that if there were available other ways, such as zoning, which promised a speedier and more effective conversion to a unitary, non-racial school system, freedom of choice would be considered unacceptable. The Court found that the New Kent County plan had operated simply to burden Negro children and their parents with a responsibility which Brown II placed squarely on the School Board. The Supreme Court held that the Board should be required to develop a new plan which promised realistically to convert promptly to a unitary system of desegregated schools. It should also be pointed out that de facto segregation, as practiced in the North, was not covered by the Court's decision in Green. The decision did, however, set the standard that freedom-of-choice or any other desegregation plan had to lead progressively to the establishment of a unitary school system.[8]

A second desegregation case, which was decided by

the United States Supreme Court, on May 27, 1968, was Raney vs. Board of Education of the Gould School District.[9] The facts in Raney were similar to those in Green; the School Board operated two totally segregated schools that were only two blocks apart. In 1965, the Board adopted a freedom-of-choice plan in order to be eligible for federal aid. The results of the plan were the same as in Green - no white pupils requested to attend the all-black school and only fifteen percent of the blacks chose to attend the white school. In ruling that the plan was inadequate, the Supreme Court stressed that the responsibility of eliminating the dual system rested with the School Board, not with parents and pupils. The Supreme Court directed the district court to retain jurisdiction of the case until achievement of a unitary, non-racial school system was established and in operation.[10]

The third desegregation ruling handed down by the Supreme Court, on May 27, 1968, also pertained to the adequacy of an existing desegregation plan. The original suit, in Monroe vs. Board of Commissioners of the City of Jackson, Tennessee,[11] was begun, in 1963, when a group of Negro parents and children brought action in a federal district court seeking an order requiring the city of Jackson to desegregate its school system. After a series of legal actions, a desegregation plan was approved and

implemented. The plan was based on geographic zoning with a free transfer provision. The students were required to register in their assigned attendance zone area, but were then allowed to transfer to any school outside their zone where space was available.

The transfer provision allowed resegregation of the races which offset the desegregation achieved by the zone system. The white students generally exercised their right to transfer out of the predominantly Negro schools, leaving only Negroes in attendance. Most Negroes transferred out of the former white schools, leaving only a small percentage of Negroes enrolled in those schools. Throughout the proceedings, the district court held that the United States Constitution did not require compulsory desegregation but rather forbade compulsory segregation by race. With the exception of an issue pertaining to faculty desegregation, the United States Court of Appeals for the Sixth Circuit affirmed the district court's approval of the desegregation plan and the United States Supreme Court granted certiorari.

The Supreme Court held that the geographic zoning plan, with its free transfer provision, was invalid because it failed to bring about a unitary, nonracial school system. The Court stated that the school board had the duty to eliminate the dual system, and the plan, as it had

been operated, failed to do that. The Supreme Court held that, if all-Negro schools existed or if only a few Negroes had enrolled in white schools, or if no substantial desegregation of facilities and school activities had occurred, then the desegregation plan did not meet the standards as established in Green.[12] The Court stressed that it did not say that free transfer had no place in a desegregation plan. It pointed out, however, that in order for free transfer to be acceptable, it had to further, rather than delay, the conversion to a unitary, nonracial, nondiscriminatory school system.[13]

On June 2, 1969, a case pertaining to faculty desegregation was decided by the United States Supreme Court. The litigation, in United States vs. Montgomery County Board of Education,[14] was begun, in 1964, to obtain desegregation of the Montgomery County, Alabama, public schools. In 1964, the district court required the desegregation of certain grades, and followed this with yearly proceedings. The 1968 court order included faculty and staff desegregation and provided that the School Board had to move toward a goal whereby the ratio of white to Negro faculty members was substantially the same as it was throughout the system. The School Board appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit.

The Court of Appeals affirmed the order of the district court, but modified that part of the order which contained the ratio pattern of faculty desegregation. In striking down the parts of the order requiring fixed mathematical ratios, the Fifth Circuit Court held that numerical ratios should be eliminated and that compliance of the order should not be tested solely by the achievement of specified ratios. The United States Supreme Court granted certiorari.

The question before the Supreme Court pertained to that part of the 1968 district court order which dealt with faculty and staff desegregation, a goal that the Supreme Court had held, in Bradley vs. School Board,[15] in 1965, to be an important aspect in achieving a public school system free from racial discrimination. The Court, in the Montgomery case,[16] recognized that the district court's order had been adopted in the spirit of the Supreme Court's opinion in Green,[17] in that the order promised realistically to work "now". In reversing the judgment of the Court of Appeals and remanding the case with directions that the district court's decision be affirmed, the Court stated that the modifications ordered by the Court of Appeals would take from the order some of its capacity to expedite, by means of specific commands, the accomplishment of a completely unified, unitary, non-

discriminatory school system.[18] The Supreme Court stated that the use of mathematical ratios, as starting points in desegregation, were justifiable as a remedy for past racial assignments. However, the Court did not say that racially balanced faculties were constitutionally or legally required.

The Supreme Court actually abandoned the "all deliberate speed" formula in Green; however, it did not formally rule that it was constitutionally unacceptable until the fall of 1969. The action, in Alexander vs. Holmes County Board of Education[19] was originated by a group of Negro children and their parents, who brought suit in a federal district court in Mississippi, seeking an injunction forbidding the county school officials to continue to operate a segregated school system. As a result of an order of the district court, the Holmes County Board of Education submitted a desegregation plan in August 1965, which provided for pupils to be assigned to grades and schools without regard to race. The plan was approved by the district court. The case was one of 44 similar cases consolidated in an appeal to the United States Court of Appeals for the Fifth Circuit, in August of 1968. The Appellate Court stated in its original order that, if there were all-Negro schools or only a small fraction of Negroes enrolled in white schools or no sub-

stantial desegregation of faculties and school activities, then the desegregation plan did not satisfy the constitutional standards established in Green. The district courts were instructed to evaluate the existing plans as to their adequacy in converting dual systems to unitary systems whereby racial discrimination would be eliminated. In August of 1969, the Court of Appeals, in consultation with the Department of Justice and Department of Health, Education, and Welfare, suspended their previous order and postponed the date for submission of new desegregation plans until December 1, 1969.

On certiorari, the United States Supreme Court held that the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools, under a standard of allowing "all deliberate speed" for desegregation, was no longer permissible under the Constitution. Citing Green[20] and Griffin,[21] the Supreme Court stated that,

> /u/nder explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.[22]

The Court defined a unitary system to be one in which no person was excluded from any school because of race. Although the Court abandoned the "all deliberate speed" formula, it did little to fashion a new standard. The

Court did state, however, that an appeal proceeding would not justify delay in the conversion to a unitary system. The Court of Appeals' order was to be complied with, in all respects, while objections or amendments to the plan were considered by the courts.[23]

A case came before the Supreme Court, in December 1969, in which a district court in Oklahoma had approved the school board's proposal to revise school attendance boundaries in order to further desegregation of some schools in Oklahoma City. The district court's order, in Dowell vs. Board of Education of Oklahoma City Public Schools,[24] also required the School Board to submit a plan for the complete desegregation of the entire school system. The United States Court of Appeals for the Tenth Circuit vacated the district court's approval of the Board's proposal on the ground that consideration of the proposal was inappropriate, at that time, and should await the lower court's consideration and adoption of a comprehensive plan for the complete desegregation of the entire school system. On certiorari, the United States Supreme Court held that the Court of Appeals should have permitted the implementation of the proposal pending argument and decision of the appeal. The case was remanded to the Court of Appeals with instructions that it be decided consistently with the Supreme Court's opinion in

Alexander.[25]

Soon after the Alexander decision, interpretation of the requirement of an immediate end to dual school systems produced the first divisions on the Supreme Court in an implementation case (see Appendix B). In 1969, in Carter vs. West Feliciana Parish School Board,[26] the district court rejected Department of Health, Education and Welfare plans which called for "terminal desegregation" of several Louisiana school districts during the 1969-1970 school year. In December 1969, after the Alexander case had been decided by the Supreme Court in October of that year, the United States Court of Appeals for the Fifth Circuit reversed the district court's order and directed complete faculty desegregation and adoption of plans for conversion to unitary systems by February 1, 1970. The Court of Appeals allowed a delay in pupil desegregation until September 1970. Negro plaintiffs sought relief in the United States Supreme Court. In January 1970, a divided Supreme Court ruled that the Court of Appeals had misconstrued the decision in Alexander insofar as the lower court approved deferral of student desegregation beyond February 1, 1970. The majority of the Court believed that the "at once" holding in Alexander required immediate desegregation and even an eight week delay, as advocated by Justice Harlan and

Justice White in their separate concurring opinion, was not permissible. In a dissenting opinion, Chief Justice Burger and Justice Stewart stated that, since the Court of Appeals had required total desegregation for the upcoming school year, its judgment should not have been set aside without argument and without consideration of the varying problems of individual school districts.[27] The majority of the Court believed that the dissenting justices were retreating from the "at once" holding in Alexander.[28]

In the final Supreme Court school desegregation decision during the period from 1968 through 1970, Chief Justice Burger, again, wrote a separate opinion. In Northcross vs. Board of Education of the Memphis, Tennessee, City Schools,[29] the district court had found that the existing and proposed plans did not have real prospects for dismantling the state-imposed dual system at the "earliest practicable date". The lower court ordered the Memphis School Board to file a revised plan which would result in a unitary system in which racial discrimination would be eliminated "root and branch". The Negro petitioners appealed to the Court of Appeals for the Sixth Circuit seeking a reversal of the district court's decision and an order requiring the adoption of a unitary system "now". In denying both motions, the Court of Appeals

stated that it was satisfied that the Board had, subject to complying with the district court order, converted to a unitary system within which no person was excluded because of race, and therefore, the principles set forth in Alexander were not applicable.

On certiorari, the United States Supreme Court held that the Court of Appeals had erred in substituting its finding that the Board was not operating a dual system, since the findings of the district court indicated that the dual system had not been dismantled under the 1966 plan and that the proposed plan did not have real prospects for dismantling it at the earliest practicable date. In ordering the case to be remanded to the district court, the Supreme Court directed the lower court to proceed promptly to consider the issue before it and to decide the case consistently with Alexander.[30] In a separate concurring opinion, Chief Justice Burger said that, if it were not for the Court being down to seven Justices, he would favor setting the case down for an expedited hearing. He stated:

> From what is before us in this case it is not clear what issues might be raised or developed on argument. As soon as possible, however, we ought to resolve some of the basic problems when they are appropriately presented, including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent

> school districts and zones may or must be altered as a constitutional matter; and to what extent transportation may or must be provided to achieve the ends sought by prior holdings of this Court.[31]

The issues mentioned by Chief Justice Burger, in Northcross,[32] would emerge the following year in Swann vs. Charlotte-Mecklenburg Board of Education.[33]

LITIGATION WHICH ORIGINATED IN NORTH CAROLINA

The new standard set forth in Green vs. County School Board[34] required that desegregation plans provide meaningful assurance of the prompt and effective elimination of school segregation. The criterion, with which to measure compliance with the Constitution's mandate, was to be its effectiveness in eliminating the dual school system. School boards were said to have the legal obligation to do all that was necessary to eradicate segregation "root and branch", and were bound by the Constitution to present a plan of school desegregation that promised "realistically to work now". During the period from 1968 through 1970, for the first time, lower federal courts were given guidelines containing objective standards for evaluating school board compliance. A school board was required to justify any course of action it selected on the ground that, among the various options available, the

one chosen offered the best potentiality for bringing about full desegregation at the earliest practicable time. Given the guidelines, the lower courts responded by holding a firmer position in scrutinizing desegregation plans.

Two North Carolina cases, which were decided in federal courts during the period from 1968 through 1970, did not reflect the Supreme Court's decisions in Green[35] or Alexander.[36] North Carolina Teachers Association vs. Asheboro City Board of Education[37] was decided by the United States Court of Appeals for the Fourth Circuit prior to the Supreme Court's decision in Green. In order to comply with the Civil Rights Act of 1964, the Asheboro City Board of Education adopted a desegregation plan in 1965. When an all-Negro union school was converted to a desegregated elementary school, pursuant to the desegregation plan, its faculty allotment was reduced from 24 to 14. Some of the formerly white schools had an increase in their teacher allotment, although the total allotment of teachers for the system was reduced, by three, for the 1965-1966 school year. There were 35 new teachers employed for that year. The Board of Education sent letters to nine Negro teachers, advising them that they would not be offered a contract after the 1964-1965 school year, but that their applications would be kept on file for consideration as vacancies arose. No white teachers received

the letter.

The Negro teachers initiated action in the District Court for the Middle District of North Carolina alleging that they had been denied due process and equal protection of the laws. After considering each plaintiff's situation individually, the District Court concluded that no one had been denied due process or equal protection and the case was dismissed. On appeal, the Fourth Circuit Court of Appeals held that the Negro plaintiffs had established a denial of due process and of equal protection of the laws and the decision of the District Court was reversed. Citing Chambers vs. Hendersonville City Board of Education,[38] the Court stated that when a system's needs change as a result of compliance with the laws, the equal protection clause would not permit the teachers, who were displaced, to be treated as new applicants, unless all teachers, including those to be retained, were required to meet the same test. The Court of Appeals held that, when the constitutional requirement of racial equality compelled the realignment of the allotment of teachers, that realignment could not serve as a vehicle for other forms of discrimination.[39]

Although Coppedge vs. Franklin County Board of Education[40] was decided by the Fourth Circuit Court of Appeals four days after the Supreme Court handed down its

decision in Green, there was no indication that the Supreme Court's decision had any influence on the Court of Appeals' ruling. In Coppedge, the District Court for the Eastern District of North Carolina found that, after a freedom-of-choice plan had been in operation three years, 98.5 percent of the Negro students in the county had remained in all-Negro schools. In 1967, the District Court ordered the Board of Education to submit a desegregation plan based on a unitary system of non-racial geographic attendance zones. At least ten percent of the Negro students were to attend predominantly white schools for the 1967-1968 school year and the Board was to set forth a schedule of steps to be taken to accomplish a totally desegregated school system. The District Court also stated that race should not be a factor in the employment, assignment, reassignment, promotion, demotion, or dismissal of professional staff members, except for the purpose of eliminating past discriminatory patterns. The Board was ordered to encourage teachers, already employed, to transfer to schools in which their race was in the minority. The Court stated that the ultimate objective was that each faculty contain the same percentage of non-white teachers as there was in the system.[41]

The Franklin County Board of Education appealed the decision of the District Court. In affirming the

lower court's decision, the Fourth Circuit Court of Appeals pointed out that numerous acts of violence and threats, directed against Negroes, had prevented true freedom in the exercise of the right of choice. The Court held that freedom of choice was an acceptable plan for the desegregation of a public school system only if the choice was free in actual practice. The Court of Appeals stated that, since the School Board had done nothing to insure freedom in the exercise of the right of choice or to modify its assignment plan, the District Court was correct in requiring the Board to adopt a new plan. The Appellate Court agreed that pupil choice should have no place in the new plan.[42]

In Coppedge, the courts struck down the freedom-of-choice plan because the choice, provided for Negro pupils, was not free in actual practice. Subsequent to the Supreme Court's decision in Green, the District Court for the Eastern District of North Carolina ruled that a freedom-of-choice plan, which was adopted by the Bertie County Board of Education, was inadequate because it had not resulted in a sufficient amount of desegregation. After finding the amount of progress in pupil desegregation to be less than that which was disapproved by the Supreme Court in Green vs. County School Board,[43] the District Court, in United States vs. Bertie County Board of

Education,[44] concluded that the freedom-of-choice plan had not operated to bring about substantial disestablishment of the dual system based on race. The faculties and staffs of Bertie County remained almost entirely segregated, with the effect that each school in the county was clearly identifiable by the composition of the faculty. The Court held that the Board had not taken adequate affirmative steps to accomplish substantial desegregation of faculties and staffs.

In reaching its conclusions in the Bertie County case, the Court reviewed the Supreme Court's decision in Brown I[45] and also pointed out that Brown II[46] placed the burden upon the school officials to bring about the transition to a racially nondiscriminatory school system. The District Court referred to Green vs. County School Board[47] to point out that delays in desegregating school systems were no longer tolerable and that, if there were available other ways which promised a speedier and more effective conversion to a unitary, nonracial school system, freedom-of-choice was not acceptable. Based on the opinions in Cooper vs. Aaron[48] and Coppedge vs. Franklin County Board of Education,[49] the Court held that conversion to a unitary system could neither be avoided nor postponed because of community attitudes. The Court stated that where racial residential patterns were the result of private

discrimination, the Board of Education had a constitutional obligation to develop a desegregation plan to counteract the effects of that discrimination. The District Court also held that the Board had an affirmative duty to do everything within its power to completely desegregate the faculties, even if it had to go so far as to dismiss teachers who were unwilling to transfer to a school in which their race was in the minority. The Board was also ordered to submit a desegregation plan, by January 1, 1969, providing for the complete desegregation of the Bertie County school system, with respect to pupil and faculty assignments, facilities, transportation, and other activities. There was to be no provision in the plan for freedom of choice.[50]

On the same day that the Bertie County case was decided by the District Court for the Eastern District of North Carolina, that same court handed down its decision in Boomer vs. Beaufort County Board of Education.[51] The facts in Boomer were similar to those in the Bertie County case - a freedom-of-choice plan, which had been adopted in order to comply with the Civil Rights Act of 1964, had not resulted in a sufficient amount of desegregation. Neither had there been any substantial desegregation of the faculties. After concluding that the Board of Education was maintaining a racially dual public school

system, the District Court held that freedom of choice was an unconstitutional and impermissible means for desegregating the Beaufort County Public Schools. The Court entered an order directing the Board to implement a plan consistent with the decision of the Supreme Court in Green.

The Beaufort County Board of Education was ordered to establish geographic attendance zones and to pair the schools. The Court went so far as to instruct the Board as to which schools should be paired together. The Board was also ordered to employ and assign teachers to the various schools in the system without consideration of race.[52]

A desegregation plan proposed by the Jones County Board of Education came before the District Court for the Eastern District of North Carolina for approval on July 23, 1968 in United States vs. Jones County Board of Education.[53] The plan, which was to be partially implemented during the 1968-1969 school year and completed by the 1969-1970 school year, provided that the entire system be reorganized by pairing schools, with the exception of two elementary schools. The two elementary schools were to be zoned because, due to their location, it was not practicable to pair them with other schools. The District Court approved the plan and permanently enjoined the

School Board from failing or refusing to implement the plan at the beginning of the 1968-1969 school year. In ordering the Board to desegregate the faculties, the Court used the same language that it had used in United States vs. Bertie County Board of Education.[54] The Court stated that, if any staff member was displaced as a result of desegregation, no vacancy could be filled through recruitment from outside the system unless no displaced staff member was qualified to fill the vacancy. The District Court also held that, if, as a result of desegregation, there was a reduction in the total staff in the system, the qualifications of all staff members in the system had to be evaluated without consideration of race in selecting the staff member to be released.[55]

As a result of an earlier court decision, which declared that Harnett County's freedom-of-choice plan was inadequate to accomplish a racially nondiscriminatory school system, the Harnett County Board of Education submitted a revised desegregation plan to the District Court for the Eastern District of North Carolina in August, 1968.[56] The plan called for the closing of the three all-Negro high schools in the county and the assignment of those students to predominantly white high schools. All elementary school children were to be assigned to the school nearest their home. In Felder vs. Harnett County

Board of Education,[57] the District Court found the proposed plan to be inadequate because it only provided for the involuntary assignment of Negro students to predominantly white schools, and the provisions pertaining to elementary schools failed to utilize geographic attendance zones, pairing of schools or both as directed by the Court in the previous order. The Court ordered that the plan be implemented for the 1968-1969 school year and that a new plan be submitted for the 1969-1970 school year, which would result in the complete desegregation of all schools in the system.

The Board of Education appealed the District Court's decision, contending that the lower court had incorrectly decided that the freedom-of-choice plan was inadequate to effect a transition to a nondiscriminatory school system. The Board also claimed that it was improper for the District Court to require that any plan submitted had to utilize geographic attendance zones or the pairing of schools. After finding that the facts indicated that, after three years of operation, the freedom-of-choice plan had achieved only minimal desegregation, the Fourth Circuit Court of Appeals cited the Supreme Court's decision in Green,[58] to point out that the lower court had both the power and the duty to issue an order which would, as far as possible, eliminate the

discriminatory effects of the past as well as prevent their recurrence in the future.[59]

The District Court for the Western District of North Carolina rendered a desegregation decision, on April 23, 1969, which had a direct influence on the North Carolina Legislature. In ruling for the Negro plaintiffs, in Swann vs. Charlotte-Mecklenburg Board of Education,[60] the District Court directed the Board to consider all known ways of desegregating the public schools. The Court suggested that the Board consider altering attendance zones, pairing or consolidation of schools, bus transportation of students, and any other method of desegregation which was calculated to bring about a racially unitary school system which would be "unhampered and uncontrolled by the race of the faculty or pupils or the temporary housing pattern of the community".[61] As a result of the District Court's 1969 order, in Swann, the North Carolina Legislature enacted a bill which prohibited the assignment of any student on the basis of race or for the purpose of creating a racial balance or ratio in a school.[62] The statute also prohibited the use of involuntary busing of students to achieve a racial balance.[63]

On July 8, 1969, a question came before the District Court for the Eastern District of North Carolina pertaining to whether state school officials, in addition

to local officials, had an affirmative obligation under the Fourteenth Amendment to take action to eliminate the dual school system. In Godwin vs. Johnston County Board of Education[64] the Court cited the Supreme Court's opinion, in Cooper vs. Aaron,[65] to support its ruling that state officials were charged with the duty to desegregate. After noting that the North Carolina Constitution provided that the general supervision and administration of the public school system was vested in the state board and that the state superintendent was a member of the executive department of the state, the Court held that whether the state board or state superintendent had actively discriminated did not affect their duty to actively work toward the desegregation of the public schools of North Carolina. The District Court held that state school officials could be properly named as defendants in desegregation suits.[66]

On December 2, 1969, the United States Court of Appeals for the Fourth Circuit consolidated the appeals from desegregation decisions of several federal district courts in North Carolina and Virginia for hearing and disposition in light of the Supreme Court's decision in Alexander vs. Holmes County Board of Education.[67] In Nesbit vs. Statesville City Board of Education,[68] the Court of Appeals recognized that the clear mandate of

the Supreme Court was immediacy and stated that further delays would not be tolerated in the Fourth Circuit. The Appellate Court held that school districts had to eliminate racially dual school systems by pairing, zoning, consolidation, or any other method that could be expected to most effectively provide for a unitary school system. The Court also required that school faculties be desegregated so that the ratio of Negro and white faculty members of each school would be approximately the same as the ratio throughout the school system. Each of the school districts, represented in the case, were required to submit, to the appropriate district court, by December 8, 1969, a plan for unitary schools. The district judge was to conduct a hearing on December 15, 1969, to determine the effectiveness of a proposed plan and, no later than December 15, he was to enter an order approving a plan that could be expected to immediately achieve a unitary school system.[69]

The influence, which the Supreme Court's opinion in Alexander had on the Fourth Circuit Court of Appeals' ruling in Nesbit vs. Statesville City Board of Education,[70] is best illustrated by comparing the urgency of the Court of Appeals' 1969 ruling to the language of that court's 1965 ruling in the same case. In 1965, the Court of Appeals stated that the district court's approval of a

desegregation plan, which called for a three year progression, might have been within the restricted discretion of the lower court. Subsequent to Alexander, in 1969, the Appellate Court allowed the school districts only six days within which to develop a plan that would provide for the immediate conversion to a unitary school system.

In Chambers vs. Iredell County Board of Education,[71] which came before the United States Court of Appeals in 1970, it was found that the Iredell County Board of Education had implemented a non-racial zoning plan, for the 1969-1970 school year, to govern student assignments. The ratio of faculty desegregation was approximately the same as the racial ratio among students in each school. The only flaw in the unitary school system was that Unity School remained all-black. However, it was scheduled to be closed the following year and those students would attend a new, consolidated, desegregated elementary school, which was already under construction. In affirming the decision of the District Court for the Western District of North Carolina, the Court of Appeals ruled that a unitary system had been substantially achieved. The Appellate Court recognized that the Supreme Court's decision, in Alexander, required the immediate desegregation of the public school systems and admitted that it was difficult to justify the Board's

failure to pair Unity School with neighboring white schools for the 1969-1970 school year. The Court of Appeals, however, agreed with the District Court that, in view of the good faith of the Board and its effectiveness in otherwise completely desegregating the school system, the Board's action did not appear to be racially motivated. The Appellate Court stated that, absent reasonable effectiveness in disestablishing a segregated school system, good intentions were of no avail, but it held that the plan adopted by the Iredell County Board of Education "promises realistically to work and promises realistically to work now" as required by the Supreme Court in Green vs. County School Board.[72] The Court gave considerable weight to the fact that the Iredell County plan had been approved by the Department of Health, Education, and Welfare.[73]

It seemed that the Court of Appeals, in Chambers vs. Iredell County Board of Education,[74] chose to follow the standard set forth by the Supreme Court in Green, in 1968, rather than the "at once" holding in the 1969 Alexander decision. In a dissenting opinion, Judges Sobeloff and Winters stated that the decision of the Court of Appeals violated the Supreme Court's mandate to "eliminate dual school systems at once and to operate now and hereafter unitary schools". They believed that "now"

and "at once" should be untempered by consideration of good faith.[75]

In 1970, a question pertaining to the constitutionality of a North Carolina statute came before the District Court for the Eastern District of North Carolina in United States vs. Halifax County Board of Education.[76] Prior to the adoption of a desegregation plan by the Halifax County Board of Education, in 1968, residents of the city of Scotland Neck complained of the way the Halifax County Board of Education had allowed the schools in the city to deteriorate. In 1963 and 1965, some leaders of Scotland Neck attempted to get a bill passed by the legislature, which would have provided for a separate unit for the administration of the Scotland Neck schools, but their attempts failed. Subsequent to the County Board of Education's adoption of the desegregation plan, the leaders were successful in getting a local act passed by the state legislature, in 1969, which authorized the creation of a separate public school administrative unit to be known as the Scotland Neck City Administrative Unit. It was the constitutionality of that act which Negro plaintiffs challenged on the ground that the motivation behind the passage of the act was simply a desire to decrease the population of black students in the Scotland Neck schools. The District Court found that the proponents

of the legislation were partially motivated by a desire to improve the educational level in the Scotland Neck schools, but that they were also motivated by a desire to preserve a ratio of black to white students, in the schools of Scotland Neck, that would be acceptable to white parents and thereby prevent the flight of white students to all-white private schools.

In analyzing the constitutional issues before it, the District Court considered the requirements set forth by the United States Supreme Court pertaining to what school boards and state and local officials were required to do to guarantee black students their constitutional rights in the area of school desegregation. The Court considered the Supreme Court's decisions in Brown I and II[77] and in Green[78] and Alexander.[79] The District Court interpreted the opinions in those cases to require the establishment of a school system at once, which operated and assigned students without regard to race. The Court pointed out that the Supreme Court had not required busing or population changes to effect particular black-white ratios in the schools, nor had any specific ratio of blacks to whites in a classroom, school, or school district been required.

Although the Scotland Neck school system would have been a totally desegregated system, it would have

taken some of the white students out of the predominantly black Halifax County system. The Court concluded that the statute was enacted with the effect of creating a refuge for white students of the Halifax County school system and that it interfered with the desegregation of that system. The District Court ruled that, because the legislative act was at least partially motivated by a desire to stop the flight of white students to private schools, it was unconstitutional and in violation of the Equal Protection Clause of the Fourteenth Amendment.[80]

The last North Carolina case to be decided by a federal court, during the period from 1968 through 1970, pertained to a desegregation plan which had been implemented by the Asheville City Board of Education.[81] As a result of the plan, the population ratio throughout the school system was approximately 30 percent black and 70 percent white in each school. In order to achieve racial balance, the School Board had closed two previously all-black schools. The Negro plaintiffs initiated action in the District Court for the Western District of North Carolina alleging that the School Board had unfairly discriminated against black children in the selection of schools to be closed. They sought to have the District Court to compel the closing of different schools to obtain racial desegregation. The District Court refused relief

and the plaintiffs appealed to the United States Court of Appeals for the Fourth Circuit. In affirming the lower court's decision, on November 2, 1970, the Court of Appeals held that the mechanics of desegregation was a matter within the discretion of school administrators. The Court held, in Allen vs. Asheville City Board of Education,[82] that the question before it was not whether it would have chosen different schools, but whether the Board's decision was so plainly unfair that it clearly amounted to invidious discrimination in violation of the Equal Protection Clause. The Court did not perceive any invidious discrimination in the Board's plan. After reviewing the desegregation rulings of the Supreme Court, up to that time, the Court of Appeals concluded that the Asheville Board of Education had gone further toward desegregation than any school system had ever been compelled to go, and probably much further than could be required. The Court pointed out that, although no one could say, with any certainty, that there could not be some all-black or all-white schools within a unitary system, or that any particular balance had to be achieved, the Asheville Board had chosen to do those things.[83]

The only desegregation case to be decided by a North Carolina state court during the period from 1968 through 1970 pertained to the validity of a desegregation

plan which was adopted by the Rowan County Board of Education in order to desegregate the schools in the North Rowan area.[84] The North Rowan area is divided by railroad tracks and prior to the adoption of the plan, school facilities had been constructed on each side of the tracks without the necessity of students on one side of the tracks having to go to the other side. Under the plan, the schools were paired, resulting in certain grades being on one side of the tracks and other grades being on the other side. An increase in busing was required as a result of the plan.

White plaintiffs initiated a suit in the superior court seeking to have the action of the School Board declared invalid. In Fries vs. Rowan County Board of Education,[85] they alleged that the plan made assignments without regard to the orderly and efficient administration of the public schools, failed to provide for effective instruction, created unnecessary additional hazards to the health and safety of the pupils and was detrimental to the general welfare of all pupils in the district. The plaintiffs also complained that the desegregation plan was designed to create a balance or ratio of race and compelled students to accept involuntary busing at taxpayers expense, which they alleged, was a violation of North Carolina law. In dismissing the action, the superior court held that the plaintiffs had failed to show that the

Rowan County Board of Education had acted arbitrarily or that it had abused its discretion.

On appeal, the Court of Appeals of North Carolina affirmed the superior court's decision to dismiss the action. The Court pointed out that the North Carolina Pupil Assignment Act provided a procedure for objecting to a school board's plan for making student assignments and that the plaintiffs had failed to exhaust their administrative remedies because they had not appealed the final order of the Rowan County Board of Education. The Court held that where statutes provide administrative remedies, persons who had not exhausted those procedures, could not bring action in a court contesting the school board's plan.[86]

ANALYSIS AND SUMMARY OF INFLUENCE PATTERNS: 1968-1970

The influence of the Supreme Court's impatience with delaying tactics on the lower federal courts, particularly on the Fourth Circuit Court of Appeals, was the primary influence pattern which developed during the period from 1964 through 1967. That pattern of influence became even more evident during the period from 1968 through 1970. The Supreme Court's growing impatience with evasive tactics, used by school boards to undermine its authority,

TABLE V

CASES FILED IN FEDERAL COURTS 1968-1970

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
North Carolina Teachers Association v. Asheboro City Board of Education	Feb. 8, 1968	Failure to re-employ Negro teachers	D.C. M.D. N.C. Dismissed complaint	Reversed decision of the district court	
Green v. County School Board of New Kent County, Virginia	May 27, 1968	Freedom-of-choice pupil assignment plan		Approved plan	Reversed decision of the Court of Appeals
Raney v. Board of Education of the Gould School District	May 27, 1968	Freedom-of-choice plan			Ruled for Negro plaintiffs
Monroe v. Board of Commissioners of the City of Jackson, Tennessee	May 27, 1968	Geographic zoning plan with free transfer provision			Ruled for Negro plaintiffs

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Coppedge v. Franklin County Board of Education	May 31, 1968	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs	Affirmed decision of the district court	
Boomer v. Beaufort County Board of Education	Aug. 8, 1968	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs		
United States by Clark v. Bertie County Board of Education	Aug. 9, 1968	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs		
United States by Clark v. Jones County Board of Education	Aug. 23, 1968	Pupil assignment based on pairing of schools	D.C. E.D. N.C. Approved plan but modified it to include faculty desegregation		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Swann v. Charlotte-Mecklenburg Board of Education	Apr. 23, 1969	Pupil Assignment and teacher assignment	D.C. W.D. N.C. Ruled for Negro plaintiffs		
United States v. Montgomery County Board of Education	Jun. 2, 1969	Faculty desegregation			Ruled for Negro litigants
Godwin v. Johnston County Board of Education	Jul. 8, 1969	Whether state officials were proper parties in desegregation suit	D.C. E.D. N.C. Ruled for Negro plaintiffs		
Alexander v. Holmes County Board of Education	Oct. 29, 1969	Request for delay in implementing desegregation plan			Ruled against Board of Education

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Nesbit v. Statesville City Board of Education	Dec. 2, 1969	Pupil and faculty assignment	D.C. W.D. N.C. Approved board's plan	Reversed decision of the district court and ruled for Negro plaintiffs	
Dowell v. Board of Education of Oklahoma City Public Schools	Dec. 15, 1969	Stay of an order approving implementation of desegregation plan pending an appeal			Ruled that plan should be implemented pending decision of the appeal
Carter v. West Feliciana Parish School Board	Jan. 14, 1970	Delay in implementation of desegregation plan			Ruled against school board

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Chambers v. Iredell County Board of Education	Feb. 27, 1970	Sufficiency of desegregation plan	D.C. W.D. N.C. Ruled for Board of Education	*Affirmed decision of District Court	
Northcross v. Board of Education of the Memphis, Tennessee City Schools	Mar. 9, 1970	Student assignment plan with free transfer provision and faculty assignment			Ruled for Negro plaintiffs
United States v. Halifax County Board of Education	May 23, 1970	Constitutionality of statute creating separate school administrative unit	D.C. E.D. N.C. Ruled for Negro plaintiffs and struck down statute		

*With the exception of one school, the faculties and student bodies had been desegregated. The other school would be desegregated when the construction of a new school was completed.

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Allen v. Asheville City Board of Education	Nov. 2, 1970	Closing of two all-black schools to accomplish desegregation	D.C. W.D. N.C. Ruled for Board of Education	*Affirmed decision of District Court	

*In Asheville, all segregated schools had been eliminated and the racial mix in each school was balanced as nearly as possible.

TABLE VI

CASE FILED IN NORTH CAROLINA STATE COURTS 1968-1970

Case	Date	Issue	Superior Court	North Carolina Court of Appeals	North Carolina Supreme Court
Fries v. Rowan County Board of Education	Feb. 25, 1970	Challenged desegregation plan which required an increase in busing	Ruled against white plaintiffs and dismissed action	Affirmed superior court's decision	

was apparent in the Court's 1968 decision in Green.[87] In that case, the Supreme Court held that a school board had to develop a desegregation plan that promised realistically to work "now". The test, to determine whether the board had met its constitutional obligation, was whether the plan actually worked. The Supreme Court's opinion in Green was reflected in almost every North Carolina case which came before the federal courts during this period. In Monroe vs. Board of Education of the City of Jackson, Tennessee,[88] which was decided by the Supreme Court on the same day as Green, the Court held that a free transfer provision was invalid because it failed to bring about a unitary, nonracial school system. The Court stated that, if all-Negro schools existed or if only a few Negroes had enrolled in white schools, or if no substantial desegregation of facilities and school activities had occurred, then the desegregation plan did not meet the standards as established in Green.[89]

The pattern of influence, which continued throughout the period from 1968 through 1970, can be illustrated by comparing two decisions of the United States Court of Appeals for the Fourth Circuit. In Coppedge vs. Franklin County Board of Education,[90] which was decided four days after Green but did not reflect the Supreme Court's decision, the Court of Appeals affirmed a district court

decision requiring the School Board to submit a schedule of steps to be taken to accomplish a totally desegregated school system. At least ten percent of the Negro students were to attend predominantly white schools the following year. The next North Carolina desegregation case to come before the Court of Appeals was Felder vs. Harnett County Board of Education[91] which was decided on April 22, 1969. In upholding a district court's order, which required the use of geographic attendance zones, pairing of schools or both, the Court of Appeals cited Green to point out that the lower court had both the power and the duty to issue an order which would, as far as possible, eliminate the discriminatory effects of the past as well as prevent their recurrence in the future. In Felder, the Court had become more specific about what type of desegregation plan would be acceptable and about the length of time that would be allowed to convert to a unitary system. The influence of the Supreme Court can be further illustrated by comparing the Court of Appeals' 1969 ruling in Felder to that court's 1965 decision in the same case. In 1965, the Court affirmed a district court ruling which required the Board of Education to either admit Negro students to the school of their choice or to adopt some other non-discriminatory plan. In 1969, after Green, the Court considered a freedom-of-choice plan inadequate to

accomplish sufficient desegregation in Harnett County.

Although no North Carolina case, other than Coppedge, came before the Fourth Circuit Court of Appeals in 1968, there were three cases decided by the District Court for the Eastern District of North Carolina prior to the Court of Appeals' ruling in Felder. On August 5, 1968, after reviewing the Supreme Court's decision in Brown I and pointing out that Brown II placed the burden upon school officials to bring about the transition to a racially, nondiscriminatory school system, the District Court cited Green, in United States vs. Bertie County Board of Education,[92] to emphasize that delays in desegregation were no longer tolerable and that if there were available other ways which promised a speedier and more effective conversion to a unitary, nonracial school system, freedom of choice was not acceptable. The Court also held, based on the opinions in Cooper vs. Aaron[93] and Coppedge vs. Franklin,[94] that conversion to a unitary system could neither be avoided nor postponed because of community attitudes. The District Court required the Board to develop a plan that promised to work "now". With respect to faculty desegregation, the Court held that the Board of Education had an affirmative duty to do everything within its power to completely desegregate the faculty.[95]

On the same day that the Eastern District Court in North Carolina decided the Bertie County case, it found, in Boomer vs. Beaufort County Board of Education,[96] that the Board was maintaining a racially dual public school system and held that freedom of choice was an unconstitutional and impermissible means for desegregating the Beaufort County Public Schools. In ordering the Board to implement a plan consistent with the Supreme Court's decision in Green, the Court required the Board to establish geographic attendance zones and to pair schools.[97] In approving a desegregation plan, in United States vs. Jones County Board of Education,[98] on August 23, 1968, the District Court for the Eastern District of North Carolina permanently enjoined the School Board from failing or refusing to implement the plan for the 1968-1969 school year and from failing to completely desegregate the school system by the 1969-1970 school year.

In United States vs. Montgomery County Board of Education,[99] which was decided on June 2, 1969, the United States Supreme Court upheld a district court order requiring the School Board to move toward a goal whereby the ratio of white to Negro faculty members was substantially the same as it was throughout the system. The district court had set forth specific "fixed mathematical" ratios for the 1968-1969 school year. Although the

Supreme Court did not say that racially balanced faculties were constitutionally or legally required, it did recognize that the district court's order had been adopted in the spirit of the Supreme Court's opinion in Green, in that it promised realistically to work "now".

Although the Supreme Court actually abandoned the "all deliberate speed" formula in Green, it did not formally rule that it was constitutionally unacceptable until it rendered its Alexander decision in 1969. The Court held, in Alexander,[100] that every school district was obligated to eliminate dual school systems at once and to operate only unitary schools thereafter. The Court defined a unitary system as one in which no person was excluded because of race. After the Court's opinion, in Alexander, federal court decisions, pertaining to desegregation, began to reflect the demand for immediate relief. In December, 1969, the United States Supreme Court remanded Dowell vs. Board of Education of the Oklahoma City Public Schools[101] to the Court of Appeals for the Tenth Circuit to be decided consistently with Alexander.

On December 2, 1969, the United States Court of Appeals for the Fourth Circuit consolidated the appeals from several federal district courts for hearing and disposition in light of the Supreme Court's decision in

Alexander. In Nesbit vs. Statesville City Board of Education,[102] the Court of Appeals recognized that the clear mandate of the Supreme Court was immediacy and stated that further delays would not be tolerated in the Fourth Circuit. The influence, which the Supreme Court's opinion in Alexander had on the Fourth Circuit Court of Appeals ruling in Nesbit, is best illustrated by comparing the urgency of the Court of Appeals' 1969 ruling with the language of that court's 1965 ruling in the same case. In 1965, the Court of Appeals stated that the district court's approval of a desegregation plan, which called for a three year progression, might have been within the restricted discretion of the lower court. Subsequent to Alexander, in 1969, the Appellate Court allowed the school districts only six days in which to develop a plan that would provide for the immediate conversion to a unitary school system.

Soon after the Alexander decision, interpretation of the requirement of an immediate end to a dual school system produced the first division on the Supreme Court in an implementation case (see Appendix B). In Carter,[103] the majority of the Court believed that the "at once" holding, in Alexander, required immediate desegregation and even an eight week delay was not permissible. In a dissenting opinion, Chief Justice Burger and

Justice Stewart stated that, since the Court of Appeals had required total desegregation for the upcoming school year, its judgment should not have been set aside without argument and without consideration of the varying problems of individual school districts. The majority of the Court believed that the dissenting justices were retreating from the "at once" holding in Alexander.

In approving a desegregation plan, in 1970, in which the only flaw was the operation of an all-black school for one year, the Fourth Circuit Court of Appeals recognized that the Supreme Court's decision, in Alexander, required immediate desegregation of public school systems. In Chambers vs. Iredell County Board of Education,[104] the Court admitted that it was difficult to justify the Board's failure to pair the all-black school with neighboring white schools for the 1969-1970 school year. However, in view of the good faith of the Board and its effectiveness in otherwise completely desegregating the school system, the Court of Appeals held that the Board's action did not appear to be racially motivated. In a dissenting opinion, Judges Sobeloff and Winters stated that "now" and "at once" should be untempered by consideration of good faith. The reasoning of the majority in the Court of Appeals' opinion was similar to the dissenting Supreme Court Justices' statement in Carter vs.

West Feliciana,[105] however, it is not possible to determine whether the Supreme Court case influenced the decision of the Court of Appeals in the Iredell County case.[106]

In its final desegregation decision, during the period from 1968 through 1970, the Supreme Court remanded a case to the district court and directed the lower court to consider the issues in Northcross[107] consistently with Alexander. In a separate concurring opinion, Chief Justice Burger stated that the Court should consider some basic problems as soon as they were appropriately presented. The problems mentioned by the Chief Justice were: (1) whether, as a constitutional matter, any particular racial balance was required; (2) to what extent school districts and zones should be altered as a constitutional matter, and (3) to what extent transportation should be used to effect desegregation.[108] The issues mentioned by Chief Justice Burger, in Northcross, would eventually emerge in Swann vs. Charlotte-Mecklenburg Board of Education.[109]

Two federal court decisions, which were decided during this period, had an influence on acts of the North Carolina Legislature. In ruling for the Negro plaintiffs, in Swann vs. Charlotte-Mecklenburg Board of Education,[110] the District Court for the Western District of North

Carolina directed the Charlotte-Mecklenburg Board of Education to consider altering attendance zones, pairing or consolidation of schools, bus transportation of students, and any other method of desegregation which was calculated to bring about a racially unitary school system. As a result of the District Court's 1969 order, in Swann, the North Carolina Legislature enacted a bill which prohibited the assignment of any student on the basis of race or for the purpose of creating a racial balance or ratio in a school. The statute also prohibited the use of involuntary busing of students to achieve a racial balance.[111]

The decision of the District Court for the Eastern District of North Carolina, in United States vs. Halifax County Board of Education,[112] was the second federal court decision, during this period, which had an observable influence on a North Carolina state statute. In May, 1970, the District Court concluded that a local act, which was passed by the North Carolina Legislature authorizing the creation of a separate administrative unit for the Scotland Neck city schools, was enacted with the effect of creating a refuge for white students of the Halifax County school system. The District Court ruled that, because the legislative act was at least partially motivated by a desire to stop the flight of

white students to private schools, it was unconstitutional and in violation of the Equal Protection Clause of the Fourteenth Amendment.[113]

The final North Carolina desegregation case to be decided by a federal court, during the period from 1968 through 1970, was Allen vs. Asheville City Board of Education.[114] In that case, the Fourth Circuit Court of Appeals concluded that the Asheville Board of Education had gone further toward desegregation than any school system had ever been compelled to go, and probably much further than could be required. The Court pointed out that, although no one could say with any certainty that there could not be some all-black or all-white schools within a unitary system, or that any particular balance had to be achieved, the Asheville Board had chosen to do those things.[115]

The only desegregation case decided by a North Carolina state court, during this period, pertained to the validity of a desegregation plan. In Fries vs. Rowan County Board of Education,[116] the Court of Appeals of North Carolina refused to rule on whether a plan, which was designed to create a racial balance and which compelled students to accept involuntary busing at taxpayers expense, was a violation of North Carolina law. The Court held that the white plaintiffs were not entitled to

bring action in a court contesting the School Board's plan because they had not exhausted the administrative remedies provided by the North Carolina Pupil Assignment Act.[117]

The most prevalent influence pattern, during the period from 1968 through 1970, was the Supreme Court's influence on lower federal court decisions. That pattern of influence developed even more strongly during this period than it did during the period from 1964 through 1967. The Supreme Court's influence was reflected in the decisions of the federal district courts in North Carolina as well as in the opinions of the Fourth Circuit Court of Appeals. The influence of the Supreme Court had developed to the extent that the lower courts, almost immediately, adopted the standards set forth in Green and Alexander. The lower courts also began to review earlier Supreme Court opinions to find support for their firmer position in scrutinizing desegregation plans.

Other influence patterns which were apparent during the period from 1968 through 1970, were (1) the influence of a North Carolina statute on a decision of a state court, and (2) the influence of federal district court decisions on acts of the North Carolina Legislature. Although these influences seemed minor, they were a continuation of a pattern which developed during the

period from 1954 to 1964.

In 1970, for the first time in an implementation case, the Supreme Court was divided on the interpretation of what constituted adequate compliance for a school board. This was an indication of a pattern which would develop further in 1973 (see Appendix B). However, the Supreme Court's increasing influence on the lower federal courts' decisions would continue to be the most prevalent influence pattern during the period from 1971 through 1972.

CHAPTER IV

FOOTNOTES

1. Joseph T. Durham, "Sense and Nonsense About Busing," Journal of Negro Education, XLII (Summer, 1973), 323.

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

3. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

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

5. Ibid.

6. Brown v. Board of Education of Topeka, Kansas, 349 U.S. 294 (1955).

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

8. Ibid.

9. Raney v. Board of Education of the Gould School District, 391 U.S. 443 (1968).

10. Ibid.

11. Monroe v. Board of Education of the City of Jackson, Tennessee, 391 U.S. 450 (1968).

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

13. Monroe v. Board of Education of the City of Jackson, Tennessee, 391 U.S. 450 (1968).

14. United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).

15. Bradley v. School Board, City of Richmond, 382 U.S. 105 (1965).

16. United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).

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

18. United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).

19. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

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

21. Griffin v. County School Board of Prince Edward County, 377 U.S. 220 (1964).

22. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

23. Ibid.

24. Dowell v. Board of Education of the Oklahoma City Public Schools, 396 U.S. 269 (1969).

25. Ibid.

26. Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970).

27. Ibid.

28. Gerald Gunther and Noel T. Dowling, Cases and Materials on Constitutional Law (Mineola: The Foundation Press, Inc., 1970), p. 1436.

29. Northcross v. Board of Education of the Memphis, Tennessee, City Schools, 397, U.S. 232 (1970).

30. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

31. Northcross v. Board of Education of the Memphis, Tennessee, City Schools, 397 U.S. 232 (1970).

32. Ibid.

33. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

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

35. Ibid.

36. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

37. North Carolina Teachers Association v. Asheboro City Board of Education, 393 F. 2d 738 (1968).

38. Chambers v. Iredell County Board of Education, 364 F. 2d 189 (1966).

39. North Carolina Teachers Association v. Asheboro City Board of Education, 393 F. 2d 738 (1968).

40. Coppedge v. Franklin County Board of Education, 394 F. 2d 410 (1968).

41. Ibid.

42. Ibid.

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

44. United States v. Bertie County Board of Education, 293 F. Supp. 1276 (1968).

45. Brown v. Board of Education, 347 U.S. 483 (1954).

46. Brown v. Board of Education, 349 U.S. 294 (1955).

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

48. Cooper v. Aaron, 358 U.S. 1 (1958).

49. Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

50. United States v. Bertie County Board of Education, 293 F. Supp. 1276 (1968).

51. Boomer v. Beaufort County Board of Education, 294 F. Supp. 179 (1968).

52. Ibid.

53. United States v. Jones County Board of Education, 295 F. Supp. 640 (1968).

54. United States v. Bertie County Board of Education, 293 F. Supp. 1276 (1968).

55. United States v. Jones County Board of Education, 295 F. Supp. 640 (1968).

56. Felder v. Harnett County Board of Education, 409 F. 2d 1070 (1969).

57. Ibid.

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

59. Felder v. Harnett County Board of Education, 409 F. 2d 1070 (1969).

60. Swann v. Charlotte-Mecklenburg Board of Education, 300 F. Supp. 1358 (1969).

61. Ibid.

62. North Carolina, General Statutes, Article 21, Section 115, Paragraph 176.1 (1969).

63. Ibid.

64. Godwin v. Johnston County Board of Education, 301 F. Supp. 1339 (1969).

65. Cooper v. Aaron, 358 U.S. 1 (1958).

66. Godwin v. Johnston County Board of Education, 301 F. Supp. 1339 (1969).

67. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

68. Nesbit v. Statesville City Board of Education, 418 F. 2d 1040 (1969).

69. Ibid.

70. Ibid.

71. Chambers v. Iredell County Board of Education, 423 F. 2d 613 (1970).

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

73. Chambers v. Iredell County Board of Education, 423 F. 2d 613 (1970).

74. Ibid.

75. Ibid.

76. United States v. Halifax County Board of Education, 314 F. Supp. 65 (1970).

77. Brown v. Board of Education, 347 U.S. 483 (1954), and Brown v. Board of Education, 349 U.S. 294 (1955).

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

79. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

80. United States v. Halifax County Board of Education, 314 F. Supp. 65 (1970).

81. Allen v. Asheville City Board of Education, 434 F. 2d 902 (1970).

82. Ibid.

83. Ibid.

84. Fries v. Rowan County Board of Education, 172 S.E. 2d 75 (1970).

85. Ibid.

86. Ibid.

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

88. Monroe v. Board of Education of the City of Jackson, Tennessee, 391 U.S. 450 (1968).

89. Ibid.

90. Coppedge v. Franklin County Board of Education, 394 F. 2d 410 (1968).

91. Felder v. Harnett County Board of Education, 409 F. 2d 1070 (1969).

92. United States v. Bertie County Board of Education, 293 F. Supp. 1267 (1968).

93. Cooper v. Aaron, 358 U.S. 1 (1958).

94. Coppedge v. Franklin County Board of Education, 394 F. 2d 410 (1968).

95. United States v. Bertie County Board of Education, 293 F. Supp. 1276 (1968).

96. Boomer v. Beaufort County Board of Education, 294 F. Supp. 179 (1968).

97. Ibid.

98. United States v. Jones County Board of Education, 295 F. Supp. 640 (1968).

99. United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).

100. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

101. Dowell v. Board of Education of the Oklahoma City Public Schools, 396 U.S. 269 (1969).

102. Nesbit v. Statesville City Board of Education, 418 F. 2d 1040 (1969).

103. Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970).

104. Chambers v. Iredell County Board of Education, 423 F. 2d 613 (1970).

105. Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970).

106. Chambers v. Iredell County Board of Education, 423 F. 2d 613 (1970).

107. Northcross v. Board of Education of the Memphis, Tennessee, City Schools, 397 U.S. 232 (1970).

108. Ibid.

109. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

110. Swann v. Charlotte-Mecklenburg Board of Education, 300 F. Supp. 1358 (1969).

111. North Carolina, General Statutes, Article 21, Section 115, Paragraph 176.1 (1969).

112. United States v. Halifax County Board of Education, 314 F. Supp. 65 (1970).

113. Ibid.

114. Allen v. Asheville City Board of Education, 434 F. 2d 902 (1970).

115. Ibid.

116. Fries v. Rowan County Board of Education, 172 S.E. 2d 75 (1970).

117. Ibid.

CHAPTER V

COURT PROVIDES GUIDANCE FOR DESEGREGATION EFFORTS: 1971-1972

The Supreme Court's influence on the decisions of the lower federal courts continued to be the most prevalent influence pattern during the period from 1971 through 1972. After the Supreme Court's decision in Green vs. County School Board[1] in 1968, the lower federal courts had held a firmer position in scrutinizing desegregation plans. Much of the litigation which came before the Supreme Court during this period challenged the desegregation requirements that had resulted from the firmer stand of the lower courts. Mr. Chief Justice Burger, in his 1970 opinion in Northcross,[2] had stated that the Supreme Court should provide the lower courts with guidelines relative to the scope of the duty of school authorities and district courts in implementing Brown I and the mandate to eliminate dual systems and establish unitary systems at once; those guidelines were considered in Swann[3] and the related cases[4] which were decided during the period from 1971 through 1972.

UNITED STATES SUPREME COURT
LITIGATION: 1971-1972

The last of the Supreme Court's three unanimous, pivotal school desegregation decisions was rendered on April 20, 1971. The original litigation, in Swann vs. Charlotte-Mecklenburg Board of Education[5] was begun, in 1965, by Negro plaintiffs seeking relief from state-imposed segregated schools. In 1965, the District Court for the Western District of North Carolina approved a desegregation plan which was based upon geographic zoning with a free-transfer provision. As a result of the plan, two-thirds of the Negro students in the system attended 21 schools which were either totally Negro or more than 99 percent Negro. Additional proceedings were begun, in 1968, seeking further relief based on the Supreme Court's ruling in Green vs. County School Board.[6] In April, 1969, after finding that certain actions of the School Board were discriminatory and that residential patterns in the city and county resulted from federal, state, and local action other than School Board decisions, the District Court ordered the School Board to submit a plan for both faculty and student desegregation.

The Charlotte-Mecklenburg Board of Education submitted a plan which was rejected by the District Court in December 1969. The Court then appointed an expert in

educational administration, Dr. John Finger, to prepare a desegregation plan. In February 1970, two alternative plans were presented to the court -- the finalized Board plan and the Finger plan, which was a modification of the Board plan. The Board plan restructured school attendance zones to achieve greater racial balance but maintained existing grade structures and rejected techniques such as pairing and clustering. The plan also contained provisions which were designed to desegregate the athletic league, transportation system, faculties and administrative staffs. With respect to elementary schools, the Board plan relied entirely upon gerrymandering of geographic zones.

Dr. Finger adopted many provisions of the Board's plan pertaining to the desegregation of the junior and senior high schools, however, his plan required that 300 additional Negro students be transported from the Negro residential area of the city to the nearly all-white Independence High School. The Finger plan also modified the Board's plan to provide that nine "satellite" zones be created for the junior high schools. Under the satellite plan, inner-city Negro students were assigned by attendance zones to nine outlying predominately white junior high schools. The Finger plan completed the desegregation of the elementary schools by grouping white schools with

black schools; by transporting black students from grades one through four to the outlying white schools; and by transporting white students from the fifth and sixth grades from outlying white schools to an inner-city black school.

On February 5, 1970, the District Court adopted the Board plan, as modified by Dr. Finger, for the junior and senior high schools. The elementary school desegregation plan, prepared by Dr. Finger, was adopted by the Court. On appeal, the Court of Appeals for the Fourth Circuit affirmed the District Court's order pertaining to faculty desegregation and the secondary school plans, but vacated the order respecting elementary schools. The Appellate Court feared that the pairing and grouping of elementary schools would place an unreasonable burden on the Board and the pupils in the system. The case was remanded to the District Court for reconsideration and submission of further plans.

On remand, the District Court rejected a plan prepared by the United States Department of Health, Education, and Welfare which was based on contiguous grouping and zoning of schools. The Court approved three plans and ordered the Board to adopt one. On August 7, 1970, the Board indicated that it would acquiesce in the Finger plan. The United States Supreme Court granted certiorari.

The problem before the Supreme Court was to define in more precise terms, than ever before, the scope of the duty of school authorities and district courts in implementing the principles set forth in Brown I and the mandate to eliminate dual systems and to establish unitary systems at once. After quoting at length from Brown,[7] Green,[8] and Montgomery,[9] and observing that the Civil Rights Act of 1964 did nothing but "foreclose any interpretation of the Act as expanding the existing powers of the federal courts," the Supreme Court found the Charlotte-Mecklenburg plan to be within the scope of a federal court's equity powers. The Court stated that, if school authorities failed in their affirmative obligation to eliminate all vestiges of state-imposed segregation from the public schools, judicial authority could be invoked. The Supreme Court emphasized that judicial powers could be exercised only on the basis of a constitutional violation. It was pointed out that remedial judicial authority did not put judges automatically in the shoes of school authorities whose powers were plenary. The Court stated that it was within the broad discretionary power of school authorities to require each school to have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole; but, absent a finding of a

constitutional violation, it would not be within the authority of a federal court. The Supreme Court held that, if school authorities failed to develop acceptable remedies, a district court had the broad power to order a remedy that would assure a unitary system.

The central issue, in Swann, was that of student assignment, and the Court attempted to establish guidelines in four problem areas:

1. Racial quotas. The Supreme Court held that the constitutional command to desegregate schools did not mean that every school in every community had to always reflect the racial composition of the school system as a whole. The Court stated that, if the District Court had required, as a matter of substantive constitutional right, any particular racial balance or mixing, that approach would have been disapproved. The Court found that the use of mathematical ratios, in Swann, was only a starting point in shaping a remedy, rather than an inflexible requirement. The awareness of the racial composition of the whole system was held to be a useful starting point in shaping a remedy to correct past constitutional violations. The Supreme Court referred to Green to point out that a school authority's remedial plan or a district court's remedial decree was judged by its effectiveness. The limited use of mathematical ratios, in Swann, was held

to be within the equitable-remedial discretion of the District Court.

2. One-race schools. The Court held that, in some circumstances, a few schools may remain all or largely of one race, but, in a system having a history of state-imposed segregation, school authorities had the burden of showing that such school assignments were not the result of present or past discriminatory action on their part. The Court noted that an optional majority-to-minority transfer provision had long been recognized as a useful part of a desegregation plan, however, to be effective, the transferring student had to be provided free transportation and available space in the school to which he chose to transfer.

3. Attendance zones. The Supreme Court found it permissible to gerrymander attendance zones in order to eliminate a dual school system. The Court also held that, as an interim corrective measure, it was not beyond the broad remedial powers of a court to order the pairing, clustering, or grouping of schools with attendance assignments made deliberately to accomplish desegregation. The Court recognized that the zones might be neither compact nor contiguous. It was stated, however, that absent a constitutional violation, there would be no basis for

judicially ordering assignment on a racial basis. The Court was not able to establish fixed guidelines or to specify exact limits as to how far a court could go, but it did recognize that there were limits. The Supreme Court did say that racially neutral assignment plans would not be adequate unless they counteracted the continuing effects of past state-imposed segregation.

4. Transportation. The prime issue raised, in Swann, was whether the busing of children was constitutionally permissible or even constitutionally required. The Court held that it was within the power of a district court to employ bus transportation as one tool of desegregation. The Court was unable to establish rigid guidelines, pertaining to student transportation, because of the variety of problems present in various situations. The Court stated that, when the time or distance of travel was so great as to either risk the health of the children or to impinge on the educational process, an objection to busing may have validity. However, in Swann, the court ordered transportation system compared favorably with the system previously operated in Charlotte and the Supreme Court held that the District Court's order was "reasonable, feasible and workable".[10]

Mr. Chief Justice Burger stated that once school

authorities had achieved full compliance with the decision in Brown I, a year-by-year adjustment of student assignments by school authorities or district courts was not constitutionally required. Once school authorities had met their affirmative duty to desegregate, no further intervention by a district court should be necessary unless the State deliberately attempted to alter demographic patterns to affect the racial composition of the schools. Throughout its opinion, in Swann, the Court referred to desegregation in states where a racially dual system had been maintained through state action. The Court made it clear that the question pertaining to de facto segregation was not being considered. The Court stayed clear of doing anything that could be characterized as an endorsement of busing for racial balance; at the same time, though, it strongly reaffirmed the principle that dual systems were to be eliminated and unitary systems established at once.

Swann combined the directions from the significant cases since Brown into clear language for school authorities and district court judges. Schools were required to do anything within their power to end segregation. The Court held that they had to use all of the resources which they had traditionally used in their educational program, including assignment of staff and pupils, careful

selection of school sites, and the use of transportation. Noncontiguous attendance zones could be paired with pupils being bused from one to the other to dismantle a dual system.[11]

In an ancillary case connected with Swann vs. Charlotte-Mecklenburg,[12] which was also decided by the Supreme Court on April 20, 1971, the constitutionality of North Carolina's anti-busing law was challenged.[13] The bill had been enacted, in 1969, as a result of the district court's order directing the Charlotte-Mecklenburg School Board to consider altering attendance areas, pairing, consolidation of schools, bus transportation of students, and any other method which would bring about a racially unitary system. The anti-busing law prohibited the assignment of any student on account of race or for the purpose of creating a racial balance in the schools. It also forbade the use of involuntary busing of students to achieve a racial balance.[14]

In affirming the decision of the three judge district court in North Carolina State Board of Education vs. Swann,[15] the United States Supreme Court ruled that North Carolina's anti-busing law was unconstitutional. As in Swann, the Court stated that the Constitution did not compel any particular degree of racial balance, but

when past and continuing constitutional violations were found, some ratios might be useful starting points in shaping a remedy. The Court held that an absolute prohibition against the use of such a device would contradict the command in Green -- that all reasonable methods be available to formulate an effective remedy. The Supreme Court said that, if a state-imposed limitation on a school board's discretion served to inhibit the operation of a unitary school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees. The Court recognized that it was unlikely that a truly effective remedy could be devised without some reliance upon bus transportation.

A school desegregation case, which was initiated in Clarke County, Georgia, was decided by the United States Supreme Court on the same day as Swann.[16] The plan at issue had been in effect since 1969 and relied primarily upon geographic attendance zones drawn to achieve racial balance. In addition to the zones, the plan provided that pupils in five heavily Negro pockets either walk or be transported by bus to schools located in other attendance zones. The white plaintiffs in McDaniel vs. Barresi[17] initiated action in the state courts of Georgia contending that the board's desegregation plan violated the Fourteenth Amendment of the United States Constitu-

tion and Title IV of the Civil Rights Act of 1964. The State Supreme Court of Georgia concluded that the plan violated the Equal Protection Clause of the Fourteenth Amendment by treating students differently because of race and that Title IV of the Civil Rights Act of 1964 prohibited the board's requiring the transportation of students to achieve a racial balance. The United States Supreme Court granted certiorari.

In reversing the State Supreme Court's decision, the United States Supreme Court cited Green to say that school boards, which had operated dual systems, were clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system. The Court referred to its opinion, in Swann, to point out that, in a remedial process, students would almost invariably be assigned differently because of their race. In rejecting the contention that the board's plan violated Title IV of the Civil Rights Act of 1964, the Supreme Court stated that Title IV did not restrict state school authorities in the exercise of their discretionary powers to assign students within their school systems, but merely preserved the existing powers of federal officials in enforcing equal protection of the law.[18]

In Davis vs. Board of School Commissioners of Mobile County,[19] which was also decided on April 20, 1971,

the Supreme Court reversed a decision of the Fifth Circuit Court of Appeals in which the lower appellate court had approved a desegregation plan that treated the western section of the metropolitan area of Mobile as isolated from the eastern section. Under the Court of Appeals' plan, which provided no transportation for the purpose of desegregation, nine elementary schools in the eastern section were over 90 percent Negro and they housed 64 percent of all the Negro elementary school pupils in the metropolitan area. Over one-half of the Negro junior and senior high school students were attending all-Negro or nearly all-Negro schools.

The United States Supreme Court once again held that neighborhood school zoning, whether based strictly on home-to-school distance or on unified geographic zones, was not the only constitutionally permissible remedy; nor was it, in itself, adequate to meet the remedial responsibilities of local boards. The Court held that, once a constitutional violation had been found, the district judge or school officials should make every effort to achieve the greatest degree of desegregation. The Supreme Court stated that a district court should consider the use of all available techniques including restructuring of attendance zones and both, contiguous and noncontiguous attendance zones. The Court found that the lower courts

had not given adequate consideration to the possible use of bus transportation and split zoning in the Mobile metropolitan area. The Supreme Court remanded the case to the Court of Appeals with instructions that a decree be developed "that promises realistically to work, and promises realistically to work now". The Davis decision was similar to Swann in that the Supreme Court held that remedies in desegregation cases could transcend unified school zones and that the lower courts should have considered split zoning and the busing of pupils.[20]

On August 25, 1971, Mr. Justice Douglas, as Circuit Justice, made it clear that the opinion in Brown I was not written for blacks alone. In Guey Heung Lee vs. Johnson,[21] the district court, after finding that California had historically provided separate schools for children of Chinese ancestry and that the school board had continued to draw school attendance lines knowing that the lines maintained a racial imbalance, ordered that pupils of Chinese ancestry be reassigned to elementary public schools in San Francisco. The applicants, who were Americans of Chinese ancestry, applied for a stay of the federal district court's order. After the district court and a three judge panel of the Court of Appeals denied the motions for a stay, Mr. Justice Douglas refused to take action contrary to the lower courts.

Mr. Justice Douglas pointed out that Brown I required that schools once segregated by state action had to be desegregated by state action, at least until the force of the earlier segregation policy had been eliminated. He referred to Swann to say that the objective remained to eliminate, from the public schools, all vestiges of state-imposed segregation. Mr. Justice Douglas stated that the opinion, in Brown I, was not written for blacks alone, and the theme of the school desegregation cases extended to all racial minorities treated invidiously by a state.

Swann received a number of reinterpretations, but none were more significant than that of Chief Justice Burger, in August 1971, and those produced by the opinions of the Supreme Court in the school redistricting cases of 1972.[22] On August 31, 1971, Mr. Chief Justice Burger, as Circuit Justice, considered an application, in Winston-Salem/Forsyth County Board of Education vs. Scott,[23] which sought a stay of an order of the Fourth Circuit Court of Appeals remanding the case to the District Court for the Middle District of North Carolina. The applicants also sought a stay of the District Court order entered pursuant to the remand order.

Prior to the Supreme Court's holding in Swann, the Winston-Salem/Forsyth County Board of Education had sub-

mitted a desegregation plan which was designed to achieve as closely as possible a mathematical racial balance in all schools of the system equal to that in the system as a whole. The plan employed satellite zoning and extensive cross-busing. The District Court rejected the plan as not constitutionally required and unduly burdensome. The District Court finally approved a plan for the 1970-1971 school year which utilized zoning and freedom-of-choice provisions with modifications preventing minority-to-majority transfers. All parties appealed to the Fourth Circuit Court of Appeals.

While the appeal was pending, the Supreme Court rendered its decision in Swann vs. Charlotte-Mecklenburg Board of Education.[24] In light of the Swann holding, the Court of Appeals remanded the case to the District Court with instructions to receive a new plan from the School Board which would give effect to Swann. The Appellate Court instructed the district judge and school authorities to make every effort to achieve the greatest possible actual desegregation. The Court stated that, if the District Court approved a plan achieving less actual desegregation than would be achieved under another plan, it had to find facts that would make the achieving of a greater degree of desegregation impracticable.

On remand, the District Court stated that it was

as practicable to desegregate all the public schools in the Winston-Salem/Forsyth County system as it was in the Charlotte-Mecklenburg system and that the appellate courts would accept no less; therefore, the District Court could accept no less. The Board, believing that it was required to do so, adopted a plan which was designed to achieve a racial balance throughout the system that would be acceptable to the courts. The revised plan required at least 157 additional buses to transport 16,000 additional pupils. The Board, submitting the plan to the District Court under protest, stated that it was not a desirable plan, and that it should not be required. On August 23, after the Court had approved the plan, the School Board applied to Mr. Chief Justice Burger, as Circuit Justice, for a stay of the District Court's order.

Mr. Chief Justice Burger believed there might have been some misreading of the Supreme Court's opinion in the Swann case. He stated that, if the Court read the opinion, in Swann, as requiring a fixed racial balance, it had overlooked specific language, in the opinion, to the contrary. In Swann, the Supreme Court had stated that "the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole".[25] The Chief Justice also observed that

there might have been some confusion respecting the standards employed and the findings made by the District Court and the terms of the remand order of the Court of Appeals. He pointed out that judicial power could be invoked only on a showing of discrimination which violated the constitutional standards declared in Brown I. Although the findings were not clear, in the Winston-Salem case, the District Court, on remand, seemed to have thought that it was compelled to achieve a fixed racial balance reflecting the composition of the total county system. The Supreme Court specifically stated, in Swann, that a fixed racial balance was not required.

Mr. Chief Justice Burger denied the stay because the record before him was inadequate for him to conclude that the District Court or the Court of Appeals had not correctly read the Supreme Court's holding in Swann, particularly the part pertaining to the requirement of fixed mathematical ratios and the limits suggested as to transportation of students.[26] Throughout his opinion, the Chief Justice stressed that he would be disposed to grant the stay if the application had been made earlier and more articulately; he seemed especially conscious that the plan required a large increase in busing.[27]

Two cases pertaining to school redistricting were decided by the Supreme Court on June 22, 1972.[28] The

question before the Supreme Court, in those cases, was, under what circumstances could a federal court enjoin state or federal officials from carving out a new district from an existing district that had not completely dismantled a state-enforced dual system. In Wright vs. Council of City of Emporia,[29] the Fourth Circuit Court of Appeals had reversed a district court ruling that enjoined the creation of a new school district through the secession of a Virginia city from a joint school district operated by it and the surrounding county. Although Emporia had been designated as a city since 1967 and, as such, had a separate obligation, under state law, to provide free public education for children residing within its borders, it had agreed to a contract with the county whereby the city and county were recognized as a single school division by the State Board of Education. That arrangement was still in effect, in 1969, when in the aftermath of the Green decision, the district court ordered the pairing of schools in order to accomplish desegregation. Two weeks after the district court entered its decree requiring that all children enrolled in a particular grade level be assigned to the same school, the Emporia City Council announced that it intended to operate a separate school system beginning in September. The city proposed to operate its own schools on a unitary

basis, with all children enrolled in a particular grade attending the same school.

On August 1, 1969, the Negro petitioners filed a supplemental complaint seeking to enjoin the city school board from withdrawing Emporia children from the county schools. After finding that the establishment of a separate school system, by the city, would frustrate its desegregation order, the district court enjoined the city board from taking any action which would interfere with the implementation of that order. In reversing the district court's decision, the Court of Appeals ruled that the lower court had erred because the motivation behind the secession move was political and financial, and not racial. The United States Supreme Court granted certiorari.

In reversing the ruling of the Court of Appeals and affirming the decision of the district court, the Supreme Court observed that Emporia had not attempted to establish a separate system until it became clear that segregation in the county system was finally to be abolished. The Court held, under these circumstances, the power of the district court to enjoin Emporia's withdrawal from the county system need not rest upon an independent constitutional violation. The lower court's remedial power was correctly invoked on the basis of a

finding that the dual system violated the Constitution, and since the city and county constituted one unit during the time that the dual system was maintained, they were properly treated as a single unit for the purpose of dismantling that system. The Supreme Court stated that a proposal erecting new boundary lines for the purpose of school attendance in a district where no such lines had previously existed, and where a dual system had been maintained, had to be judged according to whether it hindered or furthered the process of school desegregation. The Supreme Court focused upon the effect - not the purpose or motivation - of the school board's action in determining whether it was a permissible method of dismantling the dual system.

The district court had based its decision on a conclusion that, if Emporia were allowed to establish an independent system, there would be a substantial increase in the proportion of whites in the city schools and a decrease of whites in the county schools. The Supreme Court held that desegregation was not achieved by splitting a single school district operating a dual system into two new districts, each operating unitary schools within its borders, where one of the two new systems was white and the other was Negro. The Court stated that its holding did not rest upon a conclusion that the disparity

in racial balance between the city and county schools resulting from separate systems would, absent any other considerations, be unacceptable. The city's creation of a separate school system was enjoined because of the effect it would have had, at the time, upon the effectiveness of the remedy ordered to dismantle the dual system. The Court said that once the unitary system had been established and accepted, Emporia could possibly establish an independent system without such an adverse effect upon the students remaining in the county. The Supreme Court held only that a new school district could not be created where its effect would be to impede the process of dismantling a dual system.[30]

In a dissenting opinion, Mr. Chief Justice Burger, joined by Justices Blackmun, Powell and Rehnquist, stated that he believed that the racial imbalance itself might have been what the Supreme Court found most unacceptable, and if so, there was no basis for saying that a plan providing a uniform racial balance was more effective or constitutionally preferred. The Chief Justice stated that, when a plan devised by local authorities had crossed the threshold of achieving actual desegregation, it was not for the district courts to overstep local perogatives and insist on some other alternative. He emphasized that judicial power ends where a dual school system has ceased

to exist. Mr. Chief Justice Burger believed that the Supreme Court, in adopting the district court's approach, had gone too far.[31]

The second school redistricting case which was decided by the Supreme Court on June 22, 1972, was United States vs. Scotland Neck City Board of Education.[32] The facts in the Scotland Neck case were similar to those in Emporia. Prior to 1969, the schools in the city of Scotland Neck, North Carolina were part of the Halifax County School Administrative Unit. Very little desegregation had occurred in the Halifax County schools under a freedom-of-choice plan. In 1968, an agreement was reached between the Halifax County School Board and the United States Department of Justice whereby the School Board undertook to provide some desegregation in the fall of 1968, and to establish a completely unitary system in the 1969-1970 school year. In January 1969, after the interim plan had been submitted to the Board, a bill was introduced in the state legislature to authorize the creation of a new school district bounded by the city limits of Scotland Neck. The bill was enacted on March 3, 1969, as Chapter 31 of the 1969 Session Laws of North Carolina[33] and after approval of the voters of Scotland Neck, the new district began making plans to open the separate school system in the fall of 1969.

In June 1969, a complaint was filed by the United States, in the District Court for the Eastern District of North Carolina, seeking an injunction against the implementation of Chapter 31. After finding that the Act impeded and defeated the Halifax County Board of Education's plan to completely desegregate the public schools in the county by the 1969-1970 school year, the District Court ruled that the act was unconstitutional and permanently enjoined its enforcement. The Fourth Circuit Court of Appeals, in reversing the District Court's order, did not agree that the separation of Scotland Neck from the Halifax County system should have been viewed as an alternative plan for desegregating the county system. The Appellate Court stated that the severance was an action of the legislature redefining the boundaries of local governmental units and was not part of a desegregation plan proposed by the School Board. The United States Supreme Court granted certiorari.

The Supreme Court stated that the fact that the creation of the Scotland Neck school district was authorized by a special act of the state legislature rather than by the School Board had no constitutional significance. The Court pointed out that it had held, in North Carolina State Board of Education vs. Swann,[34] that if a state-imposed limitation on a school authority's discretion in-

hibited the disestablishment of a dual school system, it had to fall. The Court found that, if Chapter 31 were implemented, the formerly all-white Scotland Neck school would retain a white majority while the former all-Negro Brawly school, a high school located just outside Scotland Neck, would be 91 percent Negro. The Court noted that, in Emporia, it had held that any attempt by state or local officials to carve out a new school district from an existing district, which was in the process of dismantling a dual school system, had to be judged according to whether it hindered or furthered the process of school desegregation. The Supreme Court pointed out that it had held, in Swann, that district court judges or school authorities should make every effort to achieve the greatest possible degree of desegregation and that in formulating a plan to remedy state-enforced school segregation there should be a presumption against one-race or substantially one-race schools. It was also noted that the Court had held, in Emporia, that desegregation was not achieved by splitting a single school system operating a dual system into two new school systems, each operating unitary schools within its borders, where one of the two new systems was white and the other Negro. Based on its previous decisions, the Supreme Court concluded that the implementation of Chapter 31 would have the effect of impeding the dis-

establishment of the dual school system that existed in Halifax County. The ruling of the Court of Appeals was reversed and the decision of the District Court was affirmed.[35]

In a separate concurring opinion, Mr. Chief Justice Burger, joined by Justices Blackmun, Powell and Rehnquist, stated reasons why he distinguished the Scotland Neck case from Emporia. He said that Scotland Neck had been a part of the county system for many years and special legislation had to be pushed through the North Carolina General Assembly to enable Scotland Neck to operate its own system, while the city of Emporia was totally independent from Greensville County and, pursuant to long-standing statutory procedures, it had taken on the legal responsibility of providing for the education of its children and was no longer entitled to use the county school facilities. The Chief Justice also pointed out that the Scotland Neck severance was substantially motivated by the desire to create a predominantly white system more acceptable to the white parents of Scotland Neck, while no similar finding was made by the district court in Emporia.[36] It is significant that Mr. Chief Justice Burger based his separate opinions, at least partially, on the motivation of the school authorities while the majority of the Court focused on the effect--not the purpose or mo-

tivation of the School Board's action.

The last desegregation case recorded in the Supreme Court Reporter for the period from 1971 through 1972 is Drummond vs. Acree.[37] The parent-intervenors in that case applied to Mr. Justice Powell, as Circuit Justice, seeking a stay of a judgment of the Fifth Circuit Court of Appeals which had affirmed an order of a district court adopting a plan for desegregating the elementary schools in Augusta, Georgia. The application was based solely on the contention that a stay was required under the Education Amendments Act of 1972. The section of the Act referred to by the applicants provided that the effectiveness of any United States district court order requiring the transfer or transportation of any student for the purpose of achieving a racial balance should be postponed until appeals had been exhausted.

Mr. Justice Powell pointed out that the statute required that the effectiveness of a district court order be postponed pending appeal only if the order required the transfer or transportation of students for the purpose of achieving a racial balance. He stated that all desegregation orders, which required the transportation of students, were not blocked. In denying the stay, Mr. Justice Powell accepted the holding of the courts below that the

order was entered to accomplish desegregation of a school system in accordance with the mandate in Swann and not for the purpose of achieving a racial balance.[38]

OTHER LITIGATION WHICH ORIGINATED IN NORTH CAROLINA

Although the Supreme Court's influence on the lower federal court decisions continued to be the most prevalent influence pattern during the period from 1971 through 1972, there were only two federal court decisions in North Carolina cases, in addition to the ones reported in the Supreme Court Reporter, in which the influence of the Supreme Court was directly reflected. Even though the opinion in the other North Carolina cases did not directly reflect the Supreme Court's influence, the influence of the Court's command, to take whatever steps that were necessary to convert to a unitary system, was evident.

A case came before the Fourth Circuit Court of Appeals, in 1971, in which the plaintiff sought an injunction to stop the North Carolina State Board of Education, the State Superintendent of Public Instruction, and the Controller of the State Board of Education from granting state aid to school districts which were segregated by race. In Smith vs. North Carolina State Board of Education,[39] the United States District Court for the Eastern

District of North Carolina had granted the injunction and an appeal was taken. The Fourth Circuit Court of Appeals agreed that the defendants were proper parties, however, it pointed out that the local boards had the responsibility of the assignment of children to the public schools and that no North Carolina statute gave the defendants any power or authority to prescribe school attendance plans for any school district. For that reason, the Appellate Court vacated the part of the District Court's order prohibiting the defendants from granting aid to segregated school districts. The Court of Appeals stated that nothing said in its opinion precluded the District Court from joining as defendants school boards that operated racially dual systems. Neither was the District Court precluded from enjoining the defendants, in this case, from disbursing funds to a school district, if the court determined that a school board had not complied with its obligation under the Fourteenth Amendment and if the withholding of funds was shown to be an appropriate remedy. The Court of Appeals held that the defendants could be enjoined from disbursing funds to segregated school systems if it was shown that the injunction was required to convert to a unitary system.[40]

In Horton vs. Orange County Board of Education,[41] the Negro plaintiff initiated action in the District Court

for the Middle District of North Carolina alleging that the Orange County Board of Education had terminated her contract at the close of the 1968-1969 school year because of her race, and without according her due process of law. The plaintiff further alleged that, pursuant to a plan for desegregating the public schools of Orange County, the Board had discriminated against black pupils by arbitrarily closing Cedar Grove Elementary School, a former all-black school.

In ruling for the School Board, the District Court stated that, under North Carolina law, school authorities were not required to grant a hearing or to prefer charges in cases where the teacher was not recommended for the following year. It was also pointed out that it had been clearly established, in the Fourth Circuit, that there was no vested right to public employment so long as the termination of a contract was not in retribution for an exercise of some constitutionally protected right. Thus, the District Court ruled that the plaintiff had not been deprived of due process of the law. In determining whether she had been denied the equal protection of the laws, the Court found that both black and white parents had complained of the plaintiff's actions and that no complaints had been received on any other black teacher. The Court also found that Horton had been insubordinate to the Board

of Education. Based on these facts, the District Court ruled that the Board had not acted arbitrarily or capriciously in refusing to re-employ the plaintiff. The Court stated that race was clearly not the reason for the Board's action.

In rejecting the plaintiff's contention that the closing of the all-black Cedar Grove Elementary School was arbitrary and racially discriminatory, the District Court referred to Allen vs. Asheville City Board of Education,[42] in stating that there was no evidence that the Board's decision to close the school was so plainly unfair that it amounted to invidious discrimination. The Court concluded that the Board's decision to close Cedar Grove School was based solely upon lawful efforts to accomplish a desegregated school system, and was not racially discriminatory.[43]

In 1971, pursuant to a desegregation plan adopted by the Bladen County Board of Education, white students were assigned to East Arcadia School, a predominantly black school, in order to accomplish further desegregation. The white plaintiffs brought action in the District Court for the Eastern District of North Carolina claiming that they had been assigned on the basis of race and that the assignment required that they be transported through an inter-

section at which there had been some fatal accidents and which had a high incidence of fog from time to time.[44] They sought an injunction prohibiting the Board from implementing the desegregation plan.

The District Court cited North Carolina State Board of Education vs. Swann[45] to state that it was necessary for school boards to consider race in the assignment of students to fulfill their constitutional obligation to eliminate existing dual school systems. In dismissing the complaint, on August 10, 1971, the District Court stated that the reassignment of the plaintiffs did not expose them to any hazards of travel other than natural conditions over which the Board had no control.[46] Although the Supreme Court had stated, in Swann, that an objection to transportation may have validity if time or distance was so great as to risk the health of the children, the District Court refused to rule that a natural hazard, such as fog, which risked the health of the children, justified an injunction prohibiting the Board from requiring the transportation of pupils to accomplish desegregation.

A case similar to Swann was decided by the Fourth Circuit Court of Appeals in 1972.[47] In Eaton vs. New Hanover County Board of Education,[48] which was originally instituted in 1964, the District Court for the Eastern

District of North Carolina had entered a number of orders directing the New Hanover County Board of Education to further desegregate the school system. Among other remedies approved by the Court was the institution of a freedom-of-choice plan. However, in the aftermath of Green, the Court found the freedom-of-choice plan to be ineffective and ordered the Board to submit a plan for complete desegregation of the system.

Several desegregation plans were rejected by the Court and, in July 1971, the District Court ordered the Board to implement a plan which was similar to the one approved by the Supreme Court in Swann vs. Charlotte-Mecklenburg Board of Education.[49] It provided for pairing and the establishment of geographic zones for the senior high schools and the establishment of satellite zones for the junior high and elementary schools. Although the plan required that a number of students be transported from one area of the county to another, the District Court found that the plan was feasible, practicable and capable of being implemented and that it would effectively desegregate the school system.[50]

The Board of Education appealed to the Fourth Circuit Court of Appeals alleging that the District Court had erred in finding the school system to be an unconstitutional, racially dual system. In rejecting the argument,

the Court of Appeals pointed out that the District Court had found that 15 of the 30 schools in New Hanover County were racially identifiable. The Board also argued that the court ordered plan was unreasonable and that its own plan should have been accepted. The Appellate Court upheld the lower court and stated that the Board's plan would have merely continued an unconstitutionally segregated system. Finally, the Board challenged the busing aspect of the District Court's order. After pointing out that the plan would result in only 2600 more students being transported and would require only an additional 38 buses, the Court of Appeals ruled that there was no evidence to support the contention that the proposed busing program would involve time or distance so great as to risk the health of the children or otherwise significantly impinge on the educational processes.[51]

The New Hanover case exemplified the trend of the lower federal court decisions from 1964 through 1972. The influence of the Supreme Court on the lower federal courts' decisions, during the different periods, was reflected in Eaton vs. New Hanover County Board of Education.[52]

ANALYSIS AND SUMMARY OF INFLUENCE PATTERNS: 1971-1972

The Supreme Court's influence on lower federal courts' decisions, which had begun to develop in 1964 and had continued through 1970, remained the most prevalent pattern of influence during the period from 1971 through 1972. The Supreme Court also relied on its earlier decisions in attempting to formulate guidelines for school authorities and district judges who were involved in desegregating school systems. The Supreme Court's 1968 decision, in Green, continued to be a major influence in federal court decisions during the period from 1971 through 1972. Most litigation, which reached the Supreme Court during this period, grew out of the firmer position held by the lower courts in scrutinizing desegregation plans as a result of the Supreme Court's decisions in Green and Alexander.

In Swann vs. Charlotte-Mecklenburg Board of Education,[53] the Supreme Court attempted to combine the directions from the significant cases, since Brown, into clear language for school authorities and district judges. The Court set forth guidelines supporting the command that school authorities were to do anything within their power to end state-imposed segregation, however, it stressed that judicial authority could be invoked only on the basis

TABLE VII

CASES FILED IN FEDERAL COURTS 1971-1972

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Swann v. Charlotte-Mecklenburg Board of Education	Apr. 20, 1971	Pupil Assignment with forced busing and teacher assignment	D.C. W.D. N.C. Ruled for Negro plaintiffs	Affirmed decision of district court pertaining to teacher assignment in high schools. Reversed district court pertaining to pupil assignment in elementary schools	Affirmed court of appeals only as it upheld district court and affirmed decision of district court
North Carolina State Board of Education v. Swann	Apr. 20, 1971	Constitutionality of North Carolina's anti-busing law	D.C. W.D. N.C. Held law to be unconstitutional		Affirmed the decision of the district court

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
McDaniel v. Barresi	Apr. 20, 1971	Pupil Assignment with cross-busing			Ruled against white plaintiffs in upholding board's plan
Davis v. Board of School Commissioners of Mobile County	Apr. 20, 1971	Pupil Assignment and teacher assignment			Ruled for Negro plaintiffs
Moore v. Charlotte-Mecklenburg Board of Education	Apr. 20, 1971	Constitutionality of North Carolina's anti-busing law			Action dismissed because both parties sought same result

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Smith v. North Carolina State Board of Education	Jun. 14, 1971	State aid to segregated school districts	D.C. E.D. N.C. Ruled for Negro litigants in granting injunction	Vacated district court's order	
Horton v. Orange County Board of Education	Jul. 2, 1971	Termination of Negro teacher's contract and the closing of an all-black school to accomplish desegregation	D.C. M.D. N.C. Ruled for school board		
Squires v. Bladen County Board of Education	Aug. 10, 1971	Pupil Assignment	D.C. E.D. N.C. Dismissed white plaintiff's complaint		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Guey Heung Lee v. Johnson	Aug. 25, 1971	Assignment of pupils of Chinese ancestry			Upheld order requiring desegregation
Winston-Salem/ Forsyth County Board of Education v. Scott	Aug. 31, 1971	Pupil Assignment	D.C. M.D. N.C. Approved plan requiring cross-busing which had been adopted as a result of an earlier court order		Mr. Chief Justice Burger, as Circuit Justice, denied stay
Whitley v. Wilson City Board of Education	Mar. 21, 1972	Counsel fees	D.C. E.D. N.C. Ruled against Negro litigants	Affirmed decision of district court	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Eaton v. New Hanover County Board of Education	Apr. 26, 1972	Pupil Assignment	D.C. E.D. N.C. Ordered desegregation plan similar to the one approved in Swann	Affirmed decision of district court	
United States v. Scotland Neck City Board of Education	Jun. 22, 1972	Constitutionality of statute creating separate school administrative unit	D.C. E.D. N.C. Ruled for Negro plaintiffs and struck down statute	Reversed decision of district court	Ruling of the Court of Appeals was reversed and the district court was affirmed

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Wright v. Council of the City of Emporia	Jun. 22, 1972	Establishment of a separate school unit which frustrated desegregation in the county schools		Approved establishment of separate school unit	Reversed ruling of court of appeals
Drummond v. Acree	Sep. 1, 1972	Requirement of stay under the Education Amendments Act of 1972			Mr. Justice Powell, as Circuit Justice, ruled that the Act did not require a stay pending an appeal unless an order required busing to achieve racial balance

of a constitutional violation.

The central issue, in Swann, was student assignment, and the Court attempted to establish guidelines in four areas. It stated that district courts could not require, as a matter of substantive constitutional right, any particular racial balance, however, the Court held the use of mathematical ratios to be a useful starting point in shaping a remedy to correct past constitutional violations. The Supreme Court referred to Green to re-emphasize that a school authorities remedial plan or a district court's remedial decree was judged by its effectiveness. In holding that, in some circumstances, a few schools could remain all or largely of one race, the Court stated that, in a system having a history of state-imposed segregation, school authorities had the burden of showing that such assignments were not the result of present or past discriminatory action on their part. The Court also held that, as an interim corrective measure, a district court could order the pairing, clustering, or grouping of schools with attendance assignments made deliberately to accomplish desegregation, even if the zones were neither compact nor contiguous. The Court stated, however, that absent a constitutional violation, there would be no basis for judicially ordering assignment on a racial basis. In considering whether the busing of children, to accomplish

desegregation, was constitutionally permissible or even constitutionally required, the Supreme Court held that it was within the power of the district court to employ bus transportation as one tool of desegregation. The Court stated, however, that when the time or distance of travel was so great as to either risk the health of the children or to impinge on the educational process, an objection to busing may have validity.[54]

Throughout its opinion, in Swann, the Court made it clear that the question pertaining to de facto segregation was not being considered. Mr. Chief Justice Burger stated that once school authorities had met their affirmative duty to desegregate, no further intervention by a district court was constitutionally required unless the State deliberately attempted to alter demographic patterns to affect the racial composition of the schools.[55]

In an ancillary case connected with Swann vs. Charlotte-Mecklenburg, which was decided on the same day as the main Swann case, the Supreme Court affirmed the decision of a three-judge district court which had held that North Carolina's anti-busing law was unconstitutional. In striking down the law, in North Carolina State Board of Education vs. Swann,[56] the Supreme Court stated that while the Constitution did not compel any particular degree of racial balance, an absolute prohibition against the use of

such a device to dismantle a dual system would contradict the command in Green--that all reasonable methods be available to formulate an effective remedy. The Supreme Court held that, if a state-imposed limitation on a school board's discretion served to inhibit the operation of a unitary school system, it must fall.[57]

The influence of Green and Swann was evident in another case which was decided by the Supreme Court on April 20, 1971. In McDaniel vs. Barresi[58] the State Supreme Court of Georgia had concluded that the Equal Protection Clause of the Fourteenth Amendment prevented students being treated differently because of race and that Title IV of the Civil Rights Act of 1964 prohibited the school board's requiring the transportation of students to achieve a racial balance. In reversing the State Supreme Court's decision, the United States Supreme Court cited Green to say that school boards, which had operated dual systems, were clearly charged with the affirmative duty to take whatever steps that might be necessary to convert to a unitary system. The Court also referred to its opinion, in Swann, to point out that in a remedial process, students would almost invariably be assigned differently because of their race. The contention that Title IV of the Civil Rights Act of 1964 restricted state school authorities in the exercise of their discretionary powers to assign

students, was also rejected by the Supreme Court, in McDaniel vs. Barresi, as it was in Swann.[59]

The Supreme Court's holdings in Green and Swann were also reflected in its decision in Davis vs. Board of Commissioners of Mobile County,[60] which was decided on the same day as Swann. In Davis, the Court cited Swann in holding that remedies in desegregation cases could transcend unified school zones and that the lower courts should have considered split zoning and the busing of pupils in formulating its decree. The Supreme Court referred to Green in remanding the case to the Fifth Circuit Court of Appeals with instructions that a decree be developed "that promises realistically to work and promises realistically to work now".[61]

Although the first lower federal court decision, which pertained to a North Carolina case, during the period from 1971 through 1972, did not directly reflect the influence of any previous court decision, the influence of the Supreme Court's command in Green--that school officials should take whatever steps necessary to eliminate a dual system--was evident in the ruling of the Fourth Circuit Court of Appeals.[62] The Court held that the North Carolina State Board of Education, the State Superintendent of Public Instruction, and the Controller of the State Board of Education could be enjoined from disbursing

funds to a segregated school system if it was shown that the injunction was required to eliminate the dual system. The Court of Appeals, however, refused to affirm the decision of the District Court for the Eastern District of North Carolina, which had granted the injunction to prohibit the defendants from granting state aid to segregated school districts, because no North Carolina statute gave the defendants any power or authority to prescribe school attendance plans for any school district. Once again, a decision of the Fourth Circuit Court of Appeals was influenced by North Carolina's Pupil Assignment Act, which provided that local school boards had the responsibility to assign students to the public schools.[63]

The decision of the District Court for the Middle District of North Carolina, in Horton vs. Orange County Board of Education,[64] was also partially based on a North Carolina statute. In ruling that the Negro plaintiff had not been deprived of due process of the law, the District Court stated that, under North Carolina law, school authorities were not required to grant a hearing or to prefer charges in cases where a teacher was not re-employed for the following year. The Court also found that the School Board had not acted arbitrarily or capriciously and that its decision was clearly not based on race, therefore, the plaintiff had not been deprived of

the equal protection of the laws. In rejecting the plaintiff's contention that the closing of an all-black school was arbitrary and racially discriminatory, the District Court referred to the Fourth Circuit Court of Appeals' 1970 ruling in Allen vs. Asheville City Board of Education[65] to state that since the Board's decision to close the school was not so plainly unfair that it amounted to invidious discrimination, the Court could not substitute its judgment for that of the School Board.[66]

In August 1971, the District Court for the Eastern District of North Carolina dismissed a complaint in which the white plaintiffs sought an injunction prohibiting the implementation of a desegregation plan on the ground that, under the plan, they had been assigned on the basis of their race. The District Court cited North Carolina State Board of Education vs. Swann[67] in holding that it was necessary for school boards to consider race in the assignment of students to fulfill their constitutional obligation to eliminate existing dual school systems.[68]

In 1971, after finding that California had historically provided separate schools for children of Chinese ancestry, a district court ordered that pupils of Chinese ancestry be reassigned to elementary public schools in San Francisco. Mr. Justice Douglas, as Circuit Justice,

refused to grant a stay of the district court's order. He pointed out that Brown I required that schools once segregated by state action had to be desegregated by state action, at least until the force of the earlier segregation policy had been eliminated. Mr. Justice Douglas referred to Swann in holding that the objective remained to eliminate all vestiges of state-imposed school segregation. He stated that the opinion, in Brown I, was not written for blacks alone, and the theme of the school desegregation cases extended to all racial minorities treated invidiously by a state.[69]

The influence of Swann on lower federal court decisions was illustrated in Winston-Salem/Forsyth County Board of Education vs. Scott.[70] Prior to the Supreme Court's holding in Swann, the Winston-Salem/Forsyth County Board of Education had submitted a desegregation plan which was designed to achieve as clearly as possible a mathematical racial balance in all schools equal to that in the system as a whole. The plan employed satellite zoning and extensive cross-busing. The District Court for the Middle District of North Carolina rejected the plan as not constitutionally required and unduly burdensome. While an appeal was pending in the Fourth Circuit Court of Appeals, the Supreme Court rendered its decision in Swann vs. Charlotte-Mecklenburg.[71] In light of the Swann

holding, the Court of Appeals remanded the case to the District Court with instructions that the lower court receive a new plan from the School Board which would give effect to Swann.

On remand, the District Court stated that the appellate courts would not accept a plan which required less than the Charlotte-Mecklenburg plan and therefore, it could accept no less. The Board, believing that it was required to do so, adopted a plan which was designed to achieve a racial balance throughout the system that would be acceptable to the courts. The Board submitted the plan under protest and,upon the District Court's approval of the plan, applied to Mr. Chief Justice Burger, as Circuit Justice, for a stay of the Court's order.

Mr. Chief Justice Burger believed that there might have been some misreading of the Supreme Court's opinion in the Swann case. He stated that if the District Court read the opinion, in Swann, as requiring a fixed racial balance, it had overlooked specific language in the opinion to the contrary. The Supreme Court specifically stated, in Swann, that a fixed racial balance was not required. The Chief Justice also observed that, although the findings were not clear in the Winston-Salem case, the District Court seemed to have thought that it was

compelled to achieve a fixed racial balance. He pointed out that judicial power could be invoked only on a showing of discrimination that violated the constitutional standards declared in Brown I. Mr. Chief Justice Burger denied the stay, but he seemed especially concerned that the plan required a large increase in busing.[72]

A case which was decided by the Fourth Circuit Court of Appeals in 1972 exemplified the trend of the Supreme Court's influence on the lower federal courts from 1964 through 1972. The influence of the Supreme Court's 1971 opinion in Swann, in particular, was reflected in the opinions of the district court and the Fourth Circuit Court of Appeals in Eaton vs. New Hanover County Board of Education.[73] From 1964 to 1968 the District Court for the Eastern District of North Carolina had entered a number of orders directing the New Hanover County Board of Education to further desegregate the school system. In 1968, in the aftermath of Green, the Court found the freedom-of-choice plan to be ineffective and ordered the Board to submit a plan for the complete desegregation of the school system. In July 1971, the District Court ordered the Board to implement a plan which was similar to the one approved by the Supreme Court in Swann vs. Charlotte-Mecklenburg.[74] The Fourth Circuit Court of Appeals cited Swann in affirming the lower

court's decision.[75]

The district court, in Wright vs. Council of the City of Emporia,[76] found that two weeks after it had ordered the pairing of county schools in order to accomplish desegregation, the Emporia City Council had announced that it intended to operate a separate school system beginning in September. The city proposed to operate unitary schools. After finding that the establishment of a separate school system, by the city, would frustrate its desegregation order, the district court enjoined the city from taking any action which would interfere with the implementation of that order. In reversing the district court's decision, the Fourth Circuit Court of Appeals ruled that the lower court had erred because the motivation behind the secession move was political and financial, and not racial.

In reversing the ruling of the Court of Appeals and affirming the decision of the district court, the United States Supreme Court held that, since Emporia had not attempted to establish a separate system until it became clear that segregation in the county system was to be abolished, the lower court had correctly invoked its remedial power on the basis of a finding that the dual system violated the Constitution. After noting that the school buildings in Emporia, which were formerly all-white,

were better equipped and located on better sites than those in the county, which were formerly all-Negro, the Court cited Swann in holding that such factors as those could indicate that enforced racial segregation had been perpetuated. The Supreme Court stated that, since the city and county constituted one unit during the time that the dual system was maintained, they were properly treated as a single unit for the purpose of dismantling that system. The Court said that a proposal erecting new boundary lines for the purpose of school attendance in a district where no such lines had previously existed, and where a dual system had been maintained, had to be judged according to whether it hindered or furthered the process of school desegregation. The Court cited Davis[77] in focusing on the effect--not the purpose or motivation--of the school board's action in determining whether it was a permissible method of dismantling the dual system. The Supreme Court held that desegregation was not achieved by splitting a single school district operating a dual system into two new districts, each operating unitary schools within its borders, where one of the two new systems was white and the other was Negro. The Court referred to its opinion, in Swann, to state that the racial composition of the two systems, standing alone, would not be a sufficient reason to enjoin the creation of the separate school dis-

trict. It was held only that a new school district could not be created where its effect would impede the process of dismantling a dual system.[78]

In a dissenting opinion, Mr. Chief Justice Burger stated that he believed that the racial imbalance itself might have been what the Supreme Court found most unacceptable, and if so, there was no basis for saying that a plan providing a uniform racial balance was more effective or constitutionally preferred. He referred to Swann to state that it was not constitutionally required that every school in every community reflect the racial composition of the school system as a whole.[79]

In a case in which the facts were similar to those in Emporia, the Supreme Court struck down a North Carolina statute which authorized the creation of the Scotland Neck school district.[80] The District Court for the Middle District of North Carolina had found the act unconstitutional and had permanently enjoined its enforcement. However, in reversing the District Court's order, the Fourth Circuit Court of Appeals did not agree that the separation of Scotland Neck from the Halifax County system should have been viewed as an alternative desegregation plan for the county system. The Appellate Court based its opinion, in United States vs. Scotland Neck City Board

of Education,[81] on the fact that the severance was an action of the legislature redefining the boundaries of local governmental units and was not part of a desegregation plan proposed by the School Board.

The Supreme Court rejected the reasoning of the Court of Appeals and pointed out that, in North Carolina State Board of Education vs. Swann,[82] it had held that, if a state-imposed limitation on a school authority's discretion inhibited the disestablishment of a dual school system, it had to fall. The Court pointed out that it had held in Swann vs. Charlotte-Mecklenburg,[83] that district court judges or school authorities should make every effort to achieve the greatest possible degree of desegregation. It was noted by the Court that, in Emporia, it had held that any attempt by state or local officials to carve out a new district from an existing district, which was in the process of dismantling a dual system, had to be judged according to whether it hindered or furthered the process of school desegregation. The Court stated that it had also held in Emporia, that desegregation was not achieved by splitting a single school system operating a dual system into two new school systems, each operating unitary schools within its borders, where one of the two new systems was white and the other Negro. Based on its

previous decisions, the Supreme Court ordered, in United States vs. Scotland Neck Board of Education,[84] that the implementation of the North Carolina statute authorizing the creation of the Scotland Neck school district be enjoined because it would have the effect of impeding the disestablishment of the dual school system.

Although the Court did not use the Scotland Neck case as an occasion for any new doctrine, the case was important because it illustrated how the Supreme Court, during the period from 1971 through 1972, used new cases to clarify its holdings in previous cases. The fact that, during this period, the district courts decisions were more in align with the Supreme Court's holdings than were the rulings of the Fourth Circuit Court of Appeals, was also demonstrated in Scotland Neck.[85]

In the last case reported in the Supreme Court Reporter, during this period, Mr. Justice Powell, as Circuit Justice, pointed out that the Educational Amendments Act of 1972 required that the effectiveness of a district court order be postponed pending appeal only if the order required the transfer or transportation of students for the purpose of achieving a racial balance. In Drummond vs. Acree[86] he stated that all desegregation orders, which required the transportation of students, were not blocked. Mr. Justice Powell denied the stay of the

district court's order because it was entered to accomplish desegregation of a school system in accordance with the mandate in Swann and not for the purpose of achieving a racial balance.[87]

The influence of the Supreme Court's 1968 decision, in Green, continued to be reflected in almost every desegregation decision during this period. The Supreme Court's influence on lower federal courts, particularly on the decisions of the United States District Courts in North Carolina, was the most prevalent pattern of influence during the period from 1971 through 1972. Another pattern that became more evident during this period was the Supreme Court's use of desegregation cases, which came before it, to clarify its holdings in previous cases as well as to formulate new doctrine.

Two United States Supreme Court decisions had a direct influence on North Carolina state statutes. In both cases[88] the Court struck down a statute after finding that it would impede the dismantling of a dual system. In denying relief to a black teacher, who had not been re-employed, the District Court for the Middle District of North Carolina stated that, under North Carolina law, the board was not required to grant a hearing or to prefer charges in cases where a teacher was not re-employed for the following year; this was a case in which a state stat-

ute influenced a district court decision. In Smith vs. North Carolina State Board of Education,[89] a second case in which a state statute influenced a court decision, the Fourth Circuit Court of Appeals refused to grant an injunction prohibiting the North Carolina State Board of Education, the State Superintendent of Public Instruction, and the Controller for the State Board of Education from granting state aid to segregated school systems because the North Carolina Pupil Assignment Act provided that local boards had the responsibility of assigning children to the public schools.

In the period from 1971 through 1972, the Supreme Court Justices began to disagree as to how far a court could go in ordering remedial desegregation plans and under what circumstances a court was justified in invoking its authority (see Appendix B). This trend would become more evident in the period from 1973 through 1974.

CHAPTER V

FOOTNOTES

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

2. Northcross v. Board of Education of the Memphis, Tennessee City Schools, 397 U.S. 232 (1970).

3. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

4. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971), McDaniel v. Barresi, 402 U.S. 39 (1971), and Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).

5. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

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

7. Brown v. Board of Education, 347 U.S. 483 (1954).

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

9. United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).

10. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

11. Ibid.

12. Ibid.

13. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

14. North Carolina, General Statutes, Article 21, Section 115, Paragraph 176.1 (1969).

15. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

16. McDaniel v. Barresi, 402 U.S. 39 (1971).

17. Ibid.

18. Ibid.

19. Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).

20. Ibid.

21. Guey Heung Lee v. Johnson, 404 U.S. 1215 (1971).

22. James Bolner and Robert Shanley, Busing: The Political and Judicial Process (New York: Praeger Publishers, 1974), p. 20.

23. Winston-Salem/Forsyth County Board of Education v. Scott, 404 U.S. 1221 (1971).

24. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

25. Ibid.

26. Winston-Salem/Forsyth County Board of Education v. Scott, 404 U.S. 1221 (1971).

27. Bolner and Shanley, Busing: The Political and Judicial Process, p. 21.

28. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972), and United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

29. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972).

30. Ibid.

31. Ibid.

32. United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

33. North Carolina, Session Laws, Chapter 31 (1969).

34. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

35. United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

36. Ibid.

37. Drummond v. Acree, 409 U.S. 1228 (1972).

38. Ibid.

39. Smith v. North Carolina State Board of Education, 444 F. 2d 6 (1971).

40. Ibid.

41. Horton v. Orange County Board of Education, 342 F. Supp. 1244 (1971).

42. Allen v. Asheville City Board of Education, 434 F. 2d 902 (1970).

43. Horton v. Orange County Board of Education, 342 F. Supp. 1244 (1971).

44. Squires v. Bladen County Board of Education, 329 F. Supp. 1405 (1971).

45. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

46. Squires v. Bladen County Board of Education, 329 F. Supp. 1405 (1971).

47. Eaton v. New Hanover County Board of Education, 459 F. 2d 684 (1972).

48. Ibid.

49. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

50. Eaton v. New Hanover County Board of Education, 459 F. 2d 684 (1972).

51. Ibid.

52. Ibid.

53. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

54. Ibid.

55. Ibid.

56. Ibid.

57. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

58. McDaniel v. Barresi, 402 U.S. 39 (1971).

59. Ibid.

60. Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).

61. Ibid.

62. Smith v. North Carolina State Board of Education, 444 F. 2d 6 (1971).

63. Ibid.

64. Horton v. Orange County Board of Education, 342 F. Supp. 1244 (1971).

65. Allen v. Asheville City Board of Education, 434 F. 2d 902 (1970).

66. Horton v. Orange County Board of Education, 342 F. Supp. 1244 (1971).

67. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

68. Squires v. Bladen County Board of Education, 329 F. Supp. 1405 (1971).

69. Guey Heung Lee v. Johnson, 404 U.S. 1215 (1971).

70. Winston-Salem/Forsyth County Board of Education v. Scott, 404 U.S. 1221 (1971).

71. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

72. Winston-Salem/Forsyth County Board of Education v. Scott, 404 U.S. 1221 (1971).

73. Eaton v. New Hanover County Board of Education, 459 F. 2d 684 (1972).

74. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

75. Eaton v. New Hanover County Board of Education, 459 F. 2d 684 (1972).

76. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972).

77. Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).

78. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972).

79. Ibid.

80. United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

81. Ibid.

82. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

83. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

84. United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

85. Ibid.

86. Drummond v. Acree, 409 U.S. 1228 (1972).

87. Ibid.

88. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971), and United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

89. Smith v. North Carolina State Board of Education, 444 F. 2d 6 (1971).

CHAPTER VI

TREND CHANGES: 1973-1974

The sharp division in the Supreme Court, which was demonstrated in its 1972 Emporia[1] decision, became more obvious during the period from 1973 through 1974, as it became clear that, even with the utilization of cross-busing within school district boundaries, the predominantly black inner-city schools would not be eliminated. The significance of Swann to districts outside the South became more apparent during this period. The Court's disagreement, as to how far a court could go in ordering remedial desegregation plans and under what circumstances a court was justified in invoking its authority, became more evident when the segregated school systems outside the South began to be challenged (see Appendix B).

UNITED STATES SUPREME COURT LITIGATION: 1973-1974

The Supreme Court rendered the decision of Keyes vs. School District No. 1, Denver, Colorado[2] on June 21, 1973. The school system in Denver, Colorado had never been operated under a constitutional or statutory provision

that mandated or permitted racial segregation in public education. However, after finding that for almost a decade after 1960, the Denver School Board had engaged in an unconstitutional policy of deliberate racial segregation with respect to the schools in the Park Hill area, the district court ordered the Board to desegregate those schools. The Negro petitioners, not satisfied with their success, sought an order requiring the desegregation of all segregated schools in Denver, particularly the heavily segregated schools in the core city area. The district court held that its finding of a purposeful program of racial segregation in the Park Hill area did not, in itself, impose on the Board an affirmative duty to eliminate segregation throughout the school district. Nevertheless, the district court, after finding that the segregated core city schools were educationally inferior to the predominantly white schools in the other parts of the district, held that, under Plessy vs. Ferguson,[3] the Board had to provide an equal educational opportunity. Thus, although all-out desegregation could not be required, the court held that the only constitutionally acceptable program, which would provide substantial equality, was a system of desegregation and integration that provided compensatory education in an integrated environment.

On appeal, the Tenth Circuit Court of Appeals affirmed the lower court's decision with respect to the Park Hill schools; however, it reversed the district court's holding that the core city schools were maintained in violation of the Fourteenth Amendment because of the unequal educational opportunity afforded. The United States Supreme Court granted certiorari.

The primary question, which the Supreme Court considered,was whether the lower courts had applied an incorrect standard in considering the petitioners' contention that the School Board had engaged in an unconstitutional policy of deliberate segregation in the core city schools. The Court pointed out that plaintiffs in school desegregation cases did not have to prove de jure segregation as to each and every school or each and every student within a school system; thus, it was held that the lower courts had not applied the correct legal standard in considering the plaintiffs' contention that the School Board had a policy of deliberately segregating the core city schools. The Court found that the lower courts had erred in holding that a finding of de jure segregation, as to the core city schools, was not permissible based on the petitioners' failure to prove a racially discriminatory purpose and a causal relationship between the act complained of and the

racial imbalance in those schools. The Supreme Court held that a finding of intentionally segregative school board actions in a substantial portion of a school system established a prima facie case of unlawful segregative design on the part of school authorities, and shifted to those authorities the burden of proving that other segregated schools within the system were not also the result of intentionally segregative actions. Disregarding the distinction made in the 1972 school districting cases,[4] the Court emphasized that the difference between de jure and de facto segregation, which it had referred to in Swann, was the purpose or intent to segregate. If the School Board could not disprove segregative intent, the Court held that the Board could rebut the prima facie case only by showing that its past segregative acts did not create or contribute to the current segregated condition of the core city schools.[5]

The Supreme Court did not consider whether a neighborhood school policy, in itself, would justify racial or ethnic concentrations in the absence of a finding that school authorities had committed acts which constituted de jure segregation. It referred to Swann in holding that, since the School Board had been found to have practiced deliberate segregation in a substantial portion of the

district, its neighborhood school policy in the core city area was not acceptable simply because it appeared to be neutral. In remanding the case to the district court, the Supreme Court instructed the lower court to afford the School Board an opportunity to rebut the prima facie case. If the Board failed to rebut the prima facie case, the district court was required to decree total desegregation of the core city schools.[6]

The Denver school case was expected to be the ultimate test of desegregation outside the South, however, the Court chose not to consider the question of de facto segregation and the decision proved anticlimatic. The ruling was so mild there was little reaction from anti-busing forces in the White House and Congress, but Justice Rehnquist still dissented. Justice Powell wrote a denunciation of busing and Chief Justice Burger, explicitly withheld his approval of the decision, and concurred only in its application to Denver[7] (see Appendix B).

The question pertaining to the desegregation of inner-city schools came before the Supreme Court in two other cases during the period from 1973 through 1974. In the Detroit[8] and Richmond[9] cases the solution to the desegregation question revolved around the involvement of suburban white areas and, ultimately, the busing of students to achieve desegregation; in both cases the district

courts took a broad view of state action and found housing, zoning, and financial patterns to be related to school site selection, school construction and the establishment of attendance zones.

In School Board of City of Richmond, Virginia vs. State Board of Education of Virginia,[10] which was decided by the Supreme Court on May 21, 1973, the district court judge had ordered consolidation of three school units partly because of his concern with what seemed to him an unfortunate racial balance in the three separate systems and partly because he felt the racial imbalance was the result of invidious state action. The district court judge, Robert R. Merhige, Jr., conceded that Richmond had done all it could do to disestablish the formerly state-imposed dual system within the municipal borders, however, he concluded that past action by the counties had kept blacks within the boundaries of the City of Richmond. In deriving his conclusion, the district court judge had relied on such factors as the selection of new school construction sites over the years, racially restrictive covenants in deeds, and the nonparticipation of the counties in federally assisted low income housing.[11]

The decision of the district court was appealed to the Fourth Circuit Court of Appeals. The question before

the Court of Appeals was whether a federal district court could compel a state to restructure its internal government for the purpose of achieving racial balance in the assignment of pupils to public schools. In ruling that, absent invidious discrimination in the establishment or maintenance of local governmental units, a district court could not compel a state to restructure its internal government to achieve a racial balance in the public schools, the Court of Appeals stated that the district court judge had failed to sufficiently consider a fundamental principle of federalism incorporated in the Tenth Amendment and had failed to consider that Swann had established limitations on his power to fashion remedies in school cases. The Appellate Court viewed the adoption of the Richmond Metropolitan Plan as the equivalent of the imposition of a fixed racial quota. In stating that the Constitution did not require any fixed racial quota, the Court cited Swann to say that, as a matter of substantive constitutional right, the imposition of any degree of racial balance was beyond the power of the district court.[12]

The Court of Appeals recognized that this was not primarily a case concerning de jure segregation because state law had never required segregation as between Richmond and the other school districts. The Court found that,

within each district, the formerly dual system of schools had been disestablished and effectively replaced with a unitary system. In considering whether the maintenance of three separate unitary school divisions constituted invidious racial discrimination in violation of the Fourteenth Amendment, the Appellate Court found that, although all three districts had, in the past, discriminated against blacks with respect to places of residence, there had been no joint interaction between any two of the units for the purpose of keeping one unit relatively white by confining blacks to another. The Court of Appeals held that the housing discrimination in all three districts did not support a conclusion that it had been invidious state action which had resulted in the racial composition of the three school districts.[13]

The Appellate Court stated that one of the powers reserved to the states under the Tenth Amendment was the power to structure their internal government, and absent a finding that the power had been used to circumvent the equal protection rights of blacks to attend a unitary school system, the state's use of the power could not be disturbed. The Court of Appeals found that the State's establishment and maintenance of the school districts involved in this case had not been intended to circumvent

any federally protected right. Neither was it found that the state action impaired any federally protected right for, as stated in Swann, there was no right to racial balance within even a single school district. The Court cited Swann to emphasize that judicial powers could be invoked only on the basis of a constitutional violation.[14]

The Fourth Circuit Court of Appeals held that it was not within the district court's authority to order the consolidation of the three school districts because there was no constitutional violation in the establishment or maintenance of the three districts. The Court stated that, when it became clear that state-imposed segregation within the school district of the City of Richmond had been eliminated, no further intervention by the district court was necessary or justifiable. The Court of Appeals reversed the decision of the district court.

On May 21, 1973, the issues in the Richmond case were considered by the United States Supreme Court. With Mr. Justice Powell taking no part in the consideration of the case, the Court was equally divided; thus, no decision was rendered. The decision of the Fourth Circuit Court of Appeals was allowed to stand as it pertained to the Fourth Circuit, but the Supreme Court's action did not constitute a precedent for other federal judicial circuits.[15]

In Milliken vs. Bradley[16] (the Detroit case), which

was decided by the Supreme Court on July 25, 1974, the district court, after finding that the Detroit Board of Education had created and perpetuated school segregation in Detroit and that a Detroit-only plan was inadequate to accomplish desegregation, ruled that it was proper to consider metropolitan plans. The lower court stated that school district lines were simply matters of political convenience and could not be used to deny constitutional rights. Although there was no evidence that the suburban school districts had committed acts of de jure segregation, the district court appointed a panel to submit a desegregation plan for the Detroit schools that would encompass an entire designated desegregation area consisting of 53 of the 58 suburban school districts, plus Detroit. The plan was to achieve the greatest degree of actual desegregation to the end that no school, grade, or classroom would be substantially disproportionate to the pupil racial composition of the metropolitan area as a whole.

In affirming the district court's finding as to the constitutional violations committed by the Detroit Board, the Court of Appeals for the Sixth Circuit stated that a metropolitan plan was the only feasible means of desegregating the city's schools and ruled that it was within the equity powers of the district court to order such a plan. The United States Supreme Court granted

certiorari.

The question before the Supreme Court was whether a federal court could impose a multi-district, area-wide remedy to a single district de jure segregation problem, absent any finding that the other school districts had failed to operate unitary school systems within their districts and absent any finding that the other school districts had contributed to the segregation in the city. The Supreme Court noted that the lower courts had assumed that the Detroit schools could not be truly desegregated unless the racial composition of the student body of each school reflected the racial composition of the population of the metropolitan area as a whole. In rejecting the assumption of the lower courts, the Supreme Court pointed out that, in Swann, it had held that desegregation did not require any particular degree of racial balance.

The Court also disagreed with the district court's conclusion that school district lines were simply matters of political convenience. The Supreme Court said that boundary lines could be abridged upon a showing of a constitutional violation calling for inter-district relief, but, to casually ignore them or to treat them as a mere administrative convenience could disrupt and alter the structure of public education in Michigan. The Court stated that substantial local control of public education

was a deeply rooted tradition in the United States, however, it pointed out that, in Emporia[17] and Scotland Neck,[18] it had held that school district lines and state laws, with respect to local control, could be set aside if they conflicted with the Fourteenth Amendment. The Court noted, however, that its prior holdings had been confined to violations and remedies within a single district.[19]

In the Detroit case the Supreme Court considered, for the first time, the validity of a remedy mandating cross-district or inter-district consolidation to correct a condition found to exist in only one district. The Court referred to its holding, in Swann, to support its statement that the controlling principle in previous cases was that the scope of the remedy was determined by the scope and extent of the constitutional violation. The Supreme Court said that before the boundaries of separate and autonomous school districts could be set aside by consolidating the separate units, it had to be shown that there had been a constitutional violation within one district that had produced a significant segregative effect in another district. The Court held that, since there was no showing of any inter-district violation or effect, the lower courts had gone beyond the original theory of the case in mandating a metropolitan area remedy. The Court stated if the inter-district remedy was approved, it would

impose on the outlying districts, not shown to have committed any constitutional violation, an impermissible remedy based on a standard not hinted at in any previous Supreme Court holding.

The Court pointed out that a remedy should be designed to restore victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. The Supreme Court held that since the discriminatory treatment of white and Negro students occurred within the Detroit school system, and not elsewhere, the remedy had to be limited to that system. The Court stated that the constitutional right of the Negro respondents was to attend a unitary school system in that district and unless school officials had drawn the district lines in a discriminatory fashion, they were under no constitutional obligation to allow the Negroes to attend schools in other districts in order to accomplish a greater degree of racial mixing.

The Supreme Court concluded that the relief ordered by the district court and approved by the Sixth Circuit Court of Appeals was based upon an erroneous standard and was unsupported by any evidence that acts of the outlying districts affected the discrimination found to exist in the schools of Detroit. In reversing the rul-

ings of the lower courts, the Supreme Court held that where the schools of only one district had been affected by discriminatory acts, there was no constitutional power in the courts to decree relief balancing the racial composition of the district's schools with those of the surrounding districts.[20]

The dissenting Justices, Douglas, Brennan, Marshall, and White, stated that the Court's refusal to uphold the decision of the Court of Appeals was a giant step backward in the process of guaranteeing equal educational opportunities to minority pupils. Mr. Justice Douglas also stated that he believed the Court's decision, in the Detroit case, would put the problems of the Negroes back to the period that antedated the "separate-but-equal" regime of Plessy vs. Ferguson.[21]

In San Antonio Independent School District vs. Rodriquez,[22] the Mexican American plaintiffs alleged that the Texas system of financing public education violated the equal protection clause because of substantial inter-district disparities in per-pupil expenditures resulting primarily from differences in the value of assessable property among the districts. The question before the Court was whether education was a fundamental right in the sense that it had been held to be among the rights and liberties protected by the Constitution in school deseg-

regation cases, since 1954. In 1954, the Supreme Court had said, in Brown, that education was perhaps the most important function of state and local governments, and that, where a state had undertaken to provide it, education had to be made available to all on equal terms.[23] The Supreme Court said, in Rodriquez, that the key to discovering whether education was fundamental was whether there was a right to education explicitly or implicitly guaranteed by the Constitution. The Court found that education was not among the rights afforded explicit protection under the Federal Constitution, nor did it find any basis for finding that it was implicitly so protected. The Court also found that, because it could not be shown that all poor children lived in poor districts, wealth was not a suspect classification. In ruling for the school district, the Supreme Court held that Rodriquez was not an appropriate case in which to subject state action to strict judicial scrutiny because the Texas system of financing public education did not create a suspect classification or impinge upon constitutionally protected rights.[24]

The Court stated that, in the context of racial discrimination, its statement in Brown had lost none of its vitality and that nothing it held, in Rodriquez, de-

tracted from its historic dedication to public education. Although Rodriquez did not pertain to school desegregation, the Court, in that case, did clarify its position in school desegregation cases as distinguished from a case in which no distinct or suspect class was involved. In school desegregation cases, the courts had held that a minority race constituted a suspect classification because all members of that classification suffered a similar deprivation of rights as a result of their membership in that particular race. In school desegregation cases, state action was subjected to strict judicial scrutiny, thus, a school district was required to show a compelling interest in order to justify an action which resulted in the unequal treatment of anyone based on race. In Rodriquez, it could not be shown that all poor children lived in poor districts, and thus, were subjected to similar discriminatory practices. Therefore, a suspect classification could not be established for wealth as it could for race. The school district, in Rodriquez, was only required to show a reasonable interest to justify its system of financing public education, because no suspect classification was created and it was held that education was not a fundamentally protected right.

ANALYSIS AND SUMMARY OF INFLUENCE PATTERNS: 1973-1974

The significance of Swann to school districts outside the South became more apparent during the period from 1973 through 1974. The primary influence during this period was the influence of the Supreme Court's opinion in Swann on its decision in cases which originated outside the South. When segregated school systems outside the South began to be challenged in the courts, the Supreme Court's disagreement, as to how far a court could go in ordering remedial desegregation plans and under what conditions a court was justified in invoking its authority, became more evident.

San Antonio Independent School District vs. Rodriquez[25] did not pertain to school desegregation, but the Court, in that case, did clarify its position in school desegregation cases as distinguished from a case in which no distinct or suspect class was involved. In Rodriquez, the plaintiffs had claimed that the Texas system of financing public education violated the equal protection clause because of substantial inter-district disparities in per-pupil expenditures resulting primarily from differences in the value of assessable property among the districts. In ruling for the school district, the Supreme Court held that wealth was not a suspect class

TABLE VIII

CASES FILED IN FEDERAL COURTS 1973-1974

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
San Antonio Independent School District v. Rodriquez	Mar. 21, 1973	System of financing public education			Ruled for school district
School Board of City of Richmond, Virginia v. State Board of Education of Virginia	Mar. 21, 1973	Restructuring internal government to achieve racial balance in public schools		Ruled for school district	Affirmed Court of Appeals' decision which had reversed the district court's decision

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Keyes v. School District No. 1, Denver, Colorado	Jun. 21, 1973	Pupil assignment where state action had contributed to segregation in the public schools			Ruled that, if state action had contributed to the segregation of the schools, the schools must be desegregated
Milliken v. Bradley	Jul. 25, 1974	Pupil assignment involving consolidation of separate independent school districts			Ruled for the school board

and that, although education was important, it was not within the limited category of rights recognized by the Court as guaranteed by the Constitution.

After noting that, in Brown,[26] a unanimous Court had recognized that education was perhaps the most important function of state and local governments, the Supreme Court emphasized that, in the context of racial discrimination, its statement in Brown had lost none of its vitality and that nothing it held in Rodriquez detracted from its historic dedication to public education. The Court held only that Rodriquez was not an appropriate case in which to subject state action to strict judicial scrutiny. In school desegregation cases, state action was subjected to strict scrutiny, thus a school district was required to show a compelling interest in order to justify an action which resulted in unequal treatment of anyone based on race. In Rodriquez, the school district was only required to show a reasonable interest to justify its system of financing public education, because no suspect classification was created and it was held that education was not a fundamentally protected right.[27]

In School Board of City of Richmond vs. State Board of Education of Virginia[28] an equally divided Supreme Court approved a decision of the Fourth Circuit

Court of Appeals, which had refused to allow the district court to require the State to restructure its internal political boundaries to accomplish a racial balance in the public schools. The Court of Appeals had said that the district court judge had failed to sufficiently consider a fundamental principle of federalism incorporated in the Tenth Amendment and had failed to consider that Swann had established limitations on his power to fashion remedies in school cases. The Appellate Court stated that one of the powers reserved to the states under the Tenth Amendment was the power to structure their internal government, and absent a finding that the power had been used to circumvent the equal protection rights of blacks to attend a unitary school system, the State's use of the power could not be disturbed. The Court of Appeals referred to Swann to point out that, as a matter of constitutional right, the imposition of any degree of racial balance was beyond the power of the district court.

After the Court of Appeals found that no state action had impaired any federally protected right, it cited Swann to emphasize that judicial powers could be invoked only on the basis of a constitutional violation. Again referring to Swann, the Court stated that, when it became clear that state-imposed segregation within the school

district of the City of Richmond had been eliminated, no further intervention by the district court was necessary or justifiable.[29]

Keyes vs. School District No. 1, Denver, Colorado,[30] was the first desegregation case to be decided by the Supreme Court, during this period, which involved a school district outside the South. In Keyes, the Supreme Court side-stepped the de facto segregation issue by ruling that the segregation in the Denver school system was a result of state action and therefore it was actually de jure segregation even though the school system in Denver had never been operated under a constitutional or statutory provision that mandated racial segregation in public education. The Court said that the difference between de jure and de facto segregation, which it had referred to in Swann, was the purpose or intent to segregate. The Supreme Court referred to Swann in holding that since the Denver school district had practiced de jure segregation, its neighborhood school policy was not acceptable simply because it appeared to be neutral. As mild as the order was in Keyes, Justice Rehnquist still dissented and Justice Powell wrote a denunciation of busing. Mr. Chief Justice Burger limited his approval of the Court's decision to its application to Denver.[31]

On July 25, 1974, a second case was decided by the Supreme Court, which pertained to a segregated school system outside the South. In Milliken vs. Bradley,[32] the Court continued to cite Swann as limiting the power of district courts in school desegregation cases. In rejecting the lower federal courts' assumption that the Detroit schools could not be truly desegregated unless the racial composition of the student body of each school reflected the racial composition of the population of the metropolitan area as a whole, the Supreme Court pointed out that, in Swann, it had held that desegregation did not require any particular degree of racial balance.

In considering the validity of a remedy mandating cross-district consolidation to correct a condition found to exist in only one district, the Supreme Court again referred to its holding in Swann to support its statement that the scope of the remedy was determined by the scope and extent of the constitutional violation. The Court held that before the boundaries of separate and autonomous school districts could be set aside by consolidating the separate units, it had to be shown that there had been a constitutional violation within one district that had produced a significant segregative effect in another district. The Court pointed out that a remedy should be designed to

restore victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. It was held that since the discriminatory treatment of white and Negro students had occurred within the Detroit school system, and not elsewhere, the remedy had to be limited to that system. The Supreme Court held that where the schools of only one district had been affected by discriminatory acts, there was no constitutional power in the courts to decree relief balancing the racial composition of the district's schools with those of the surrounding districts.[33]

In the period from 1973 through 1974 the disagreement among the Supreme Court Justices, as to how far a court could go in ordering remedial desegregation plans and under what circumstances a court was justified in invoking its authority, became more evident. The Court's interpretation of its holding, in Swann, as placing limitations on the power of district courts in fashioning remedies in school desegregation cases, was the most prevalent influence during this period. No cases which originated in North Carolina came before the courts during the period from 1973 through 1974.

FOOTNOTES

CHAPTER VI

1. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972).

2. Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973).

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

4. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972) and United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

5. Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973).

6. Ibid.

7. John C. Hogan, The Schools, the Courts, and the Public Interest (Lexington: D.C. Heath and Company, 1974), p. 39.

8. Milliken v. Bradley, 418 U.S. 717 (1974).

9. School Board of City of Richmond, Virginia v. State Board of Education of Virginia, 412 U.S. 92 (1973).

10. Ibid.

11. Ibid.

12. School Board of City of Richmond, Virginia v. State Board of Education of Virginia, 462 F. 2d 1058 (1972).

13. Ibid.

14. Ibid.

15. School Board of City of Richmond, Virginia v. State Board of Education of Virginia, 412 U.S. 92 (1973).

16. Milliken v. Bradley, 418 U.S. 717 (1974).

17. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972).

18. United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

19. Milliken v. Bradley, 418 U.S. 717 (1974).

20. Ibid.

21. Ibid.

22. San Antonio Independent School District v. Rodriquez, 411 U.S. 1 (1973).

23. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

24. San Antonio Independent School District v. Rodriquez, 411 U.S. 1 (1973).

25. Ibid.

26. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

27. San Antonio Independent School District v. Rodriquez, 411 U.S. 1 (1973).

28. School Board of City of Richmond, Virginia v. State Board of Education of Virginia, 412 U.S. 92 (1973).

29. Ibid.

30. Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973).

31. Ibid.

32. Milliken v. Bradley, 418 U.S. 717 (1974).

33. Ibid.

CHAPTER VII

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

SUMMARY

A trend in the United States Supreme Court's decisions from 1954 through 1973 was that the Court continually strengthened requirements for desegregating public school systems. In 1974, the Court broke this pattern when it ruled that the scope of the remedy, in a desegregation case, was determined by the scope and the extent of the constitutional violation; thus, an interdistrict remedy was not justifiable unless there was an interdistrict constitutional violation. During the different periods of this study, the trend in the Supreme Court's decisions was reflected in the lower courts and the North Carolina Legislature in various ways.

The influence patterns which were evident during the period from 1954 to 1964 developed primarily between the United States Supreme Court and the North Carolina State Legislature and between the State Legislature and the North Carolina State Supreme Court and lower federal

TABLE IX

CASES FILED IN FEDERAL COURTS 1954-1974

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Brown v. Board of Education of Topeka	May 17, 1954	Public schools segregated by law			Ruled for Negro plaintiffs
Bolling v. Sharpe	May 17, 1954	Public schools segregated by law			Ruled for Negro plaintiffs
Brown v. Board of Education of Topeka	May 31, 1955	Implementation of the 1954 Brown decision			Public schools segregated by law were to be desegregated with "all deliberate speed.
Frasier v. Board of Trustees of University of North Carolina	Sept. 16, 1955	Admission to undergraduate school	D.C. M.D. N.C. Ruled for Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Carson v. Board of Education of McDowell County	Dec. 1, 1955	Pupil assignment	D.C. W.D. N.C. Dismissed action	Remanded to district court to be considered after administrative remedies were exhausted	
Carson v. Warlick	Nov. 14, 1956	Pupil assignment and constitutionality of Pupil Assignment Act	D.C. W.D. N.C. Ruled for Board of Education and upheld Pupil Assignment Act	Upheld district court	
Holt v. Raleigh City Board of Education	Aug. 29, 1958	Pupil assignment	D.C. E.D. N.C. Ruled against Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Cooper v. Aaron	Sept. 29, 1958	Delay of desegregation plan because of public hostility			Ruled that extreme public hostility not sufficient reason to suspend plan
Covington v. Edwards	Mar. 19, 1959	Pupil assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs	Affirmed district court's decision	
McKissick v. Durham City Board of Education	Sep. 4, 1959	Pupil assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
McCoy v. Greensboro City Board of Education	Nov. 14, 1960	Pupil assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs	Reversed district court decision and ruled for Negro plaintiffs	
Morrow v. Mecklenburg Co. Board of Education	Jun. 15, 1961	Pupil assignment	D.C. W.D. N.C. Ruled against Negro plaintiffs		
Vickers v. Chapel Hill City Board of Education	Aug. 4, 1961	Pupil assignment	D.C. M.D. N.C. Ruled for Negro plaintiff		
St. Helena Parish School Board v. Hall	Feb. 19, 1962	Constitutionality of Louisiana Act providing for the closing of public school systems to avoid desegregation			Held that Act was unconstitutional

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Griffith v. Board of Education of Yancey Co.	Sep. 12, 1960	Pupil assignment	D.C. W.D. N.C. Found that administrative remedies had been exhausted and ruled for Negro plaintiffs		
McCoy v. Greensboro City Board of Education	Feb. 19, 1962	Constitutionality of Louisiana Act providing for the closing of public school systems to avoid desegregation			Held that Act was unconstitutional

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Wheeler v. Durham City Board of Education	Oct. 12, 1962	Pupil assignment	D.C. M.D. N.C. Ruled against Negro plaintiffs	Reversed decision of district court and ruled for Negro plaintiffs	
Jeffers v. Whitley	Oct. 12, 1962	Pupil assignment	D.C. M.D. N.C. Ruled for some of the Negro plaintiffs and against others	Ruled that the district court should have ordered that the applications of all the Negro plaintiffs be approved	
Goss v. Board of Education of the City of Knoxville, Tenn.	Jun. 3, 1963	Constitutionality of a minority-to majority transfer policy			Held that the board's policy was unconstitutional

Table Of Cases (Cont.)

Cases	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Griffin v. Co. School Board of Prince Edward County	May 25, 1964	Closing of schools to avoid desegregation		Ruled in favor of the Board	Reversed ruling of Court of Appeals
Calhoun v. Latimer	May 25, 1964	Free-transfer policy			Remanded to district to be considered in light of Goss and Griffin
Bowditch v. Buncombe Co. Board of Education	Apr. 1, 1965	Pupil assignment plan delayed desegregation and teacher assignments	D.C. W.D. N.C. Approved plan after modification. Refused to consider teacher assignments	Approved plan after further modification. Upheld district court's refusal to consider teacher assignments	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Nesbit v. Statesville City Board of Education	Apr. 7, 1965	Freedom-of-choice pupil assignment plan	D.C. W.D. N.C. Approved plan	Remanded with warning against extended delays	
Felder v. Harnett County Board of Education	Jul. 30, 1965	Pupil assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs	Affirmed district court's decision	
Buford v. Morganton City Board of Education	Aug. 12, 1965	Teacher employment and assignment	D.C. W.D. N.C. Ruled for Board		
Bradley v. School Board of Richmond	Nov. 15, 1965	Faculty assignment		Approved desegregation plans without considering faculty assignment	Vacated court of appeals judgment and ordered hearing on faculty assignment

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Rogers v. Paul	Dec. 6, 1965	Grade-per-year desegregation and faculty assignment			Ruled that plan was too slow. Instructed district court to consider faculty assignment
Johnson v. Branch	Jun 6, 1966	Failure to renew Negro teacher's contract	D.C. E.D. N.C. Ruled for the board	Reversed the decision of the district court	
Chambers v. Hendersonville City Board of Education	Jun. 6, 1966	Failure to re-employ Negro teachers	D.C. W.D. N.C. Ruled for board	Reversed the decision of the district court	

Table Of Cases (Cont.)

Cases	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Wheeler v. Durham City Board of Education	Jul. 5, 1966	Pupil assignment and teacher assignment	D.C. W.D. N.C. Approved pupil assignment plan. Dismissed teacher assignment complaint	Affirmed district court decision pertaining to pupil assignment plan but reversed the lower court's decision pertaining to teacher assignment	
Swann v. Charlotte-Mecklenburg Board of Education	Oct. 24, 1966	Pupil assignment	D.C. W.D. N.C. Ruled against Negro plaintiffs	Affirmed district court's decision	
Wall v. Stanley Co. Board of Education	May 19, 1967	Failure to re-employ Negro teacher	D.C. M.D. N.C. Ruled for board	Reversed the decision of the district court	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Teel v. Pitt Co. Board of Education	Aug. 4, 1967	Freedom-of-choice pupil assignment plan and teacher assignment	D.C. E.D. N.C. Approved pupil assignment after modification but ruled for Negro plaintiffs pertaining to teacher assignment		
Coppedge v. Franklin Co. Board of Education	Aug. 21, 1967	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs		
N.C. Teachers' Association v. Asheboro City Board of Education	Feb. 8, 1968	Failure to re-employ Negro teachers	D.C. M.D. N.C. Dismissed complaint	Reversed the decision of the district court	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Green v. Co. School Board of New Kent Co., Virginia	May 27, 1968	Freedom-of-choice pupil assignment plan		Approved plan	Reversed decision of the Court of Appeals
Raney v. Board of Education of the Gould School District	May 27, 1968	Freedom-of-choice plan			Ruled for Negro plaintiffs
Monroe v. Board of Commissioners of the City of Jackson, Tenn.	May 27, 1968	Geographic zoning plan with free transfer provision			Ruled for Negro plaintiffs
Coppedge v. Franklin Co. Board of Education	May 31, 1968	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs	Affirmed decision of the district court	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Boomer v. Beaufort Co. Board of Education	Aug. 8, 1968	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs		
U.S. by Clark v. Bertie Co. Board of Education	Aug. 9, 1968	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs		
U.S. by Clark v. Jones Co. Board of Education	Aug. 23, 1968	Pupil assignment based on pairing of schools	D.C. E.D. N.C. Approved plan but modified it to include faculty desegregation		
Swann v. Charlotte-Mecklenburg Board of Education	Apr. 23, 1969	Pupil assignment and teacher assignment	D.C. W.D. N.C. Ruled for Negro plaintiffs		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Felder v. Harnett Co. Board of Education	Apr. 22, 1969	Pupil and teacher assignment	D.C. E.D. N.C. Ruled for Negro plaintiffs	Upheld decision of district court	
U.S. v. Montgomery Co. Board of Education	Jun. 2, 1969	Faculty desegregation			Ruled for Negro litigants
Godwin v. Johnston Co. Board of Education	Jul. 8, 1969	Whether state officials were proper parties in desegregation suit	D.C. E.D. N.C. Ruled for Negro plaintiffs		
Alexander v. Holmes Co. Board of Education	Oct. 29, 1969	Request for delay in implementing desegregation plan			Ruled against board of education

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Nesbit v. Statesville City Board of Education	Dec. 2, 1969	Pupil and faculty assignment	D.C. W.D. N.C. Approved board's plan	Reversed decision of the district court and ruled for Negro plaintiffs	
Dowell v. Board of Education of Oklahoma City Public Schools	Dec. 15, 1969	Stay of an order approving implementation of desegregation plan pending an appeal			Ruled that plan should be implemented pending decision of the appeal
Carter v. W. Feliciana Parish School Board	Jan. 14, 1970	Delay in implementation of desegregation plan			Ruled for Negro plaintiffs

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Chambers v. Iredell Co. Board of Education	Feb. 27, 1970	Sufficiency of desegregation plan	D.C. W.D. N.C. Ruled for board of education	*Affirmed decision of district court	
Northcross v. Board of Education of the Memphis, Tenn. City Schools	Mar. 9, 1970	Student assignment plan with free transfer provision and faculty assignment			Ruled for Negro plaintiffs
U.S. v. Halifax Co. Board of Education	May 23, 1970	Constitutionality of statute creating separate school administrative unit	D.C. E.D. N.C. Ruled for Negro plaintiffs and struck down statute		

*With the exception of one school, the faculties and student bodies had been desegregated. The other school would be desegregated when the construction of a new school was completed

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Allen v. Asheville City Board of Education	Nov. 2, 1970	Closing of two all-black schools to accomplish desegregation	D.C. W.D. N.C. Ruled for Board of Education	*Affirmed decision of district court	
Swann v. Charlotte-Mecklenburg Board of Education	Apr. 20, 1971	Pupil assignment with forced busing and teacher assignment	D.C. W.D. N.C. Ruled for Negro plaintiffs	Affirmed decision of district court pertaining to teacher asisignment and pupil assignment in high schools. Reversed district court pertaining to pupil assignment in elementary schools	Affirmed court of appeals only as it upheld district court and affirmed decision of district court

*In Asheville, all segregated schools had been eliminated and the racial mix in each school was balanced as nearly as possible.

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
North Carolina State Board of Education v. Swann	Apr. 20, 1971	Constitutionality of North Carolina anti-busing law	D.C. W.D. N.C. Held law to be unconstitutional		Affirmed the decision of the court
McDaniel v. Barresi	Apr. 20, 1971	Pupil assignment with cross-busing			Ruled against white plaintiffs in upholding board's plan
Davis v. Board of School Commissioners of Mobile Co.	Apr. 20, 1971	Pupil assignment and teacher assignment			Ruled for Negro plaintiffs
Moore v. Charlotte-Mecklenburg Board of Education	Apr. 20, 1971	Constitutionality of North Carolina anti-busing law			Action dismissed because both parties sought same result

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Smith v. N.C. State Board of Education	Jun. 14, 1971	State aid to segregated school districts	D.C. E.D. N.C. Ruled for Negro litigants in granting injunction	Vacated district court's order	
Horton v. Orange Co. Board of Education	Jul. 2, 1971	Termination of Negro teacher's contract and the closing of an all-black school to accomplish desegregation	D.C. M.D. N.C. Ruled for school board		
Squires v. Bladen Co. Board of Education	Aug. 10, 1971	Pupil assignment	D.C. E.D. N.C. Dismissed white plaintiff's complaint		

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Guey Heung Lee v. Johnson	Aug. 25, 1971	Assignment of pupils of Chinese ancestry			Upheld order requiring desegregation
Winston-Salem/ Forsyth Co. Board of Education v. Scott	Aug. 31, 1971	Pupil assignment	D.C. M.D. N.C. Approved plan requiring cross-busing which had been adopted as a result of an earlier court order		Mr. Chief Justice Burger, as Circuit Justice, denied stay
Whitley v. Wilson City Board of Education	Mar. 21, 1972	Counsel fees	D.C. E.D. N.C. Ruled against Negro litigants	Affirmed decision of district court	

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Eaton v. New Hanover Co. Board of Education	Apr. 26, 1972	Pupil assignment	D.C. E.D. N.C. Ordered desegregation plan similar to the one approved in Swann	Affirmed decision of district court	
U.S. v. Scotland Neck City Board of Education	Jun. 22, 1972	Constitutionality of statute creating separate school administrative unit	D.C. E.D. N.C. Ruled for Negro plaintiffs and struck down statute	Reversed decision of district court	Ruling of the Court of Appeals was reversed and the district court was affirmed

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Wright v. Council of the City of Emporia	Jun. 22, 1972	Establishment of a separate school unit which frustrated desegregation in the county schools		Approved establishment of separate school unit	Reversed ruling of court of appeals
Drummond v. Acree	Sep. 1, 1972	Requirement of stay under the Education Amendments Act of 1972			Mr. Justice Powell, as Circuit Justice, ruled that the Act did not require a stay pending an appeal unless an order required busing to achieve racial balance

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
San Antonio Independent School District v. Rodriquez	Mar. 21, 1973	System of financing public education			Ruled for school district
School Board of City of Richmond, Virginia v. State Board of Education of Virginia	Mar. 21, 1973	Restructuring internal government to achieve racial balance in public schools		Ruled for school district	Affirmed Court of Appeals' decision which had reversed the district court's decision
Keyes v. School District No. 1, Denver, Colorado	Jun. 21, 1973	Pupil assignment where state action had contributed to segregation in the public schools			Ruled that, if state action had contributed to the segregation of the schools, the schools must be desegregated

Table Of Cases (Cont.)

Case	Date	Issue	District Court	Fourth Circuit Court of Appeals	United States Supreme Court
Milliken v. Bradley	Jul. 25, 1974	Pupil assignment involving consolidation of separate independent school districts			Ruled for the school board

TABLE X

CASES FILED IN NORTH CAROLINA STATE COURTS 1954-1970

Case	Date	Issue	Superior Court	North Carolina Court of Appeals	North Carolina Supreme Court
Joyner v. McDowell Co. Board of Education	May 23, 1956	Pupil assignment	Ruled for board of education		Upheld Superior Court
Constantian v. Anson Co.	Jun. 6, 1956	Sale of bonds for desegregated schools	Ruled against white plaintiff-sale of bonds was allowed		Upheld Superior Court
Applications for Reassignment of Pupils	Jan. 10, 1958	White parents challenged assignment of Negro pupils to white schools	Ruled for board of education-against white parents		Upheld Superior Court

Table Of Cases (Cont.)

Case	Date	Issue	Superior Court	North Carolina Court of Appeals	North Carolina Supreme Court
Dilday v. Beaufort Co. Board of Education	Jun. 16, 1966	Spending bond money for consolidated, desegregated high school	Ruled against white plaintiffs-expenditure was allowed		*Reversed Superior Court decision
Huggins v. Wake Co. Board of Education	Nov. 22, 1967	Reorganization of grade-structure in schools to accomplish desegregation	Ruled against white plaintiffs		Upheld decision of the Superior Court
Fries v. Rowan Co. Board of Education	Feb. 25, 1970	Challenged desegregation plan which required an increase in busing	Ruled against white plaintiffs and dismissed action	Affirmed Superior Court's decision	

*State Supreme Court enjoined Beaufort County from spending bond money for a consolidated, desegregated high school because the county commissioners had failed to follow the proper procedures. The Court stated that the expenditure would be allowed once the procedures had been followed.

courts. As a result of the Brown decision, the North Carolina General Assembly enacted the Pupil Assignment Act, which influenced state court and lower federal court decisions. The State Supreme Court, the federal district courts in North Carolina, and the United States Court of Appeals for the Fourth Circuit refused to rule for Negro plaintiffs until they had exhausted the administrative remedies provided under the state statute. Of course, the United States Supreme Court's decision, in Brown, had a direct influence on the decisions of the lower courts. The lower courts recognized that state-imposed segregation in public schools was no longer constitutionally acceptable, but they refused to grant relief to Negro litigants until the administrative remedies, provided for in the North Carolina Pupil Assignment Act, had been exhausted and it had been clearly shown that a board of education had discriminated against the Negro plaintiffs because of their race. In addition to the direct influence on the lower courts, the Supreme Court's reluctance to issue specific guidelines indirectly influenced the lower courts to be more lenient in their desegregation orders.

It was not until 1960 that the Fourth Circuit Court of Appeals began to reverse federal district court decisions and to rule for Negro plaintiffs. In 1960, the

Court of Appeals began to rule for Negro plaintiffs in cases where the Negroes had exhausted their administrative remedies and also in a case where the remedies had been used by a school board to frustrate the Negro pupils' right to an education without racial discrimination. The trend, which developed in the Court of Appeals' decisions from 1960 through 1962 was reflected in federal district court decisions in 1961 and 1962.

The influence patterns, which were evident during the period from 1964 through 1967, developed primarily between the United States Supreme Court and the Court of Appeals for the Fourth Circuit and between the Fourth Circuit Court of Appeals and the federal district courts in North Carolina. One influence pattern, which was evident during the period from 1964 through 1967, was the influence of the United States Supreme Court's decisions, reflecting its impatience with delaying tactics in pupil desegregation cases, on the Fourth Circuit Court of Appeals and the federal district courts in North Carolina.

While the Supreme Court's influence on the Fourth Circuit Court of Appeals' decisions, pertaining to faculty desegregation, was obvious, its influence on the decisions of the federal district courts in North Carolina was not as evident. The district courts' decisions were influ-

enced more directly by the decisions of the Court of Appeals than by the Supreme Court's rulings. During 1964, the federal courts in the Fourth Circuit refused to consider faculty desegregation until direct measures were employed to eliminate all direct discrimination in the assignment of pupils. This trend continued, in 1965, until the Supreme Court ruled in Bradley vs. Richmond[1] that the federal courts should consider the desegregation of faculty and administrative personnel, and that delay was not a proper remedy. After the Supreme Court ruled that lower federal courts should consider allegations pertaining to faculty desegregation and that delays in desegregating school systems, including faculties, were no longer tolerable, the Fourth Circuit Court of Appeals began to stiffen its desegregation requirements. The federal district courts in North Carolina, however, continued to rule for school boards in cases pertaining to faculty desegregation. Thus, a pattern developed where the Court of Appeals consistently reversed the district courts' decisions in which the lower courts continued to refuse to grant relief to Negro plaintiffs who complained of racially based faculty allocations and assignments. This pattern continued until the Court of Appeals ruled, in Wheeler vs. Durham City Board of Education,[2] that no proof of rela-

tionship between faculty allocation and pupil assignment was needed because the removal of race considerations from faculty selection and allocation was an inseparable and indispensible command within the abolition of pupil segregation in public schools as set forth in Brown. Following this decision of the Court of Appeals, the federal district courts in North Carolina stiffened their requirements pertaining to faculty desegregation.

Although the Civil Rights Act of 1964 was not directly reflected in any federal court decision, from 1964 through 1967, it did have a direct influence on the two North Carolina State Supreme Court decisions which were decided during this period. In each case, the State Supreme Court approved the action of the county board of education because the board was operating under unusual circumstances created by the Act.

In its 1967 decision, in Coppedge vs. Franklin,[3] the District Court for the Eastern District of North Carolina referred to the Fifth Circuit Court of Appeals ruling in United States vs. Jefferson County Board of Education,[4] in stating that the ultimate objective of its desegregation order was that each faculty, in the system, contain the same percentage of non-white teachers as there was in the entire system. The Court also stated that at

least ten percent of the Negro students, in the system, were to attend predominantly white schools the following year. This was the first North Carolina case in which a court had referred to percentages or ratios in a desegregation order. This was a beginning of a trend which continued during the period from 1968 through 1970.

The most prevalent pattern of influence, during the period from 1968 through 1970, was the United States Supreme Court's influence on the decisions of the Fourth Circuit Court of Appeals and the district courts in North Carolina. The influence of the Supreme Court had developed to the extent that the lower courts, almost immediately, adopted the standards set forth in Green[5] and Alexander.[6] The Supreme Court's opinion, in Green, was reflected in almost every North Carolina case which came before the federal courts during this period. In addition to considering Green, the lower federal courts also began to review earlier Supreme Court opinions to find support for their firmer position in scrutinizing desegregation plans.

Other influence patterns, which were apparent during the period from 1968 through 1970, were (1) the influence of federal court decisions on acts of the North Carolina Legislature, and (2) the influence of a North Carolina statute on a decision of a state court. In

United States vs. Halifax County Board of Education,[7] a question pertaining to the constitutionality of a local act of the North Carolina Legislature came before the District Court for the Eastern District of North Carolina. Chapter 31 of the North Carolina Session Laws of 1969 provided for a separate administrative unit for the schools in the city of Scotland Neck. After finding that the creation of the separate public school administrative unit would interfere with the desegregation of the Halifax County school system and after considering that, in Green, the Supreme Court had stated that school officials must use the method of desegregation which promised to be most effective, the District Court ruled that Chapter 31 was unconstitutional and in violation of the Equal Protection Clause of the Fourteenth Amendment.

In 1969, the decision of the District Court for the Western District of North Carolina, in Swann vs. Charlotte-Mecklenburg Board of Education,[8] directly influenced a North Carolina statute. In Swann, the District Court directed the Board of Education to consider altering attendance areas, pairing or consolidation of schools, bus transportation of students, and any other method which would bring about a racially unitary school system. As a result of the District Court's order, the North Carolina Legis-

lature enacted a bill which prohibited the assignment of any student on account of race or for the purpose of creating a racial balance or ratio in a school. The statute also prohibited the use of involuntary busing of students to achieve a racial balance. This was a continuation of a trend, which developed during the period from 1954 to 1964; the North Carolina Legislature passed legislation in an attempt to circumvent desegregation orders of federal courts. The anti-busing law was further influenced by a federal court, in 1970, when the District Court for the Western District of North Carolina, in North Carolina State Board of Education vs. Swann,[9] ruled that the statute was unconstitutional.

In Fries vs. Rowan County Board of Education,[10] in 1970, the decision of the Court of Appeals of North Carolina was influenced by the North Carolina Pupil Assignment Act. In Fries, the white plaintiffs, who sought to have the Rowan County desegregation plan declared invalid, claimed that the plan was designed to create a racial balance or ratio of race and compelled students to accept involuntary busing in violation of the North Carolina anti-busing law. The Court dismissed the action because the plaintiffs had not exhausted the administrative remedies provided under the North Carolina Pupil Assignment Act.

This was a continuation of an influence pattern which had developed during the period from 1954 to 1964. The trend for white plaintiffs to seek relief in state courts, while Negro plaintiffs usually sought relief in federal courts, was also illustrated in this case.

The trend for federal courts to consider percentages or ratios developed more fully during the period from 1968 through 1970. It was indirectly reflected in Green[11] and Monroe,[12] in 1968, when the Supreme Court stated that a desegregation plan had to result in actual desegregation. In 1969, in United States vs. Montgomery County Board of Education,[13] the Supreme Court stated that the School Board had to move toward a goal whereby the ratio of white to Negro faculty members was substantially the same as it was throughout the system. Although the Court did not rule that fixed mathematical ratios were required, it did say that the use of fixed mathematical ratios were justifiable as starting points in formulating remedies for past racial assignments. Also in 1969, the District Court for the Western District of North Carolina ordered the Charlotte-Mecklenburg Board of Education to effect a racially unitary school system. In 1970, in a separate concurring opinion, in Northcross,[14] Mr. Chief Justice Burger stated that one of the basic problems that the Court should consider, when properly presented, was

whether any particular degree of racial balance was required in the schools. This was considered by the Supreme Court in its 1971 decision in Swann.

The Supreme Court's influence on lower federal courts, particularly on the decision of the federal district courts in North Carolina, was the most prevalent pattern of influence during the period from 1971 through 1972. The Supreme Court's 1968 decision, in Green, continued to be a major influence in federal court decisions during this period. Most litigation, which reached the Supreme Court during this period, grew out of a firmer position held by the courts in scrutinizing desegregation plans as a result of the Supreme Court's opinions in Green and Alexander. The lower federal courts' decisions and the United States Supreme Court's decision, in Swann, was influenced by the Court's opinion in Green. Other federal court decisions were influenced by the guidelines which were set forth by the Supreme Court in Swann.

The trend of the Supreme Court's influence on lower federal courts from 1964 through 1972 was exemplified in Eaton vs. New Hanover County Board of Education,[15] which was originally instituted in 1964. Beginning in 1964, the District Court for the Eastern District of North Carolina entered a number of orders directing the New

Hanover County Board of Education to further desegregate the school system. The orders of the District Court reflected the trend of the United States Supreme Court's opinion in school desegregation cases. Finally, in 1972, the Supreme Court's opinion, in Swann, was reflected in the decisions of the District Court and the Fourth Circuit Court of Appeals in the New Hanover case.

A change, which developed in the pattern of the Supreme Court's influence on lower federal court decisions during the period from 1971 through 1972, was that the district courts in North Carolina were more in agreement with the Supreme Court than was the Fourth Circuit Court of Appeals. This change in the influence pattern was illustrated in the Emporia and Scotland Neck cases.[16] In each case the district court ruled that the creation of a separate school administrative unit for a city was unconstitutional because it frustrated the desegregation of the county unit in violation of the Supreme Court's mandate in Green. The Fourth Circuit Court of Appeals, in each case, reversed the district court's decision and approved the creation of the separate school administrative units. In Emporia and Scotland Neck, the Supreme Court reversed the decisions of the Fourth Circuit Court of Appeals and ruled that the district courts were correct in prohibiting the creation of the new units.

The Supreme Court's decision in the Scotland Neck case had a direct influence on Chapter 31 of the 1969 Session Laws of North Carolina. Chapter 31 was the local act which had created the separate administrative unit in the city of Scotland Neck. As a result of the Supreme Court's decision, the act was rendered invalid. A second case in which the Supreme Court's decision had a direct influence on a North Carolina statute, was North Carolina State Board of Education vs. Swann.[17] In that case the Court struck down the North Carolina anti-busing law after finding that it would impede the dismantling of a dual system.

In 1971, the North Carolina Pupil Assignment Act, again, influenced the decision of a federal court. In Smith vs. North Carolina State Board of Education,[18] the Fourth Circuit Court of Appeals refused to enjoin the State Board of Education, the State Superintendent of Public Instruction, and the Controller for the State Board of Education from granting state aid to segregated school systems because the Pupil Assignment Act provided that the local boards had the responsibility of assigning children to the public schools. The influence of the Pupil Assignment Act was a continuation of a pattern which developed during the period from 1954 to 1964.

The trend for federal courts to consider percentages or racial balance in the public schools, which was first considered in a North Carolina case in 1967, was evident in decisions of the Supreme Court during the period from 1971 through 1972. In almost every school desegregation case, which came before it during this period, the Court considered the racial balance issue. In Swann, the Supreme Court found that the use of mathematical ratios was a useful starting point in shaping a remedy to correct past constitutional violations, however, it held that no particular racial balance was required. That point was re-emphasized in North Carolina State Board of Education vs. Swann.[19] In Emporia, the Supreme Court Justices disagreed on how far a court could go in ordering remedial desegregation plans and under what circumstances a court was justified in invoking its authority. The dissenting Justices believed that the racial imbalance was what the majority of the Court found most unacceptable. The trend to consider racial balance was also evident in decisions of the lower federal courts during the period from 1971 through 1972. The trend for the Supreme Court Justices to disagree as to how far a court could go in ordering remedial desegregation plans and under what circumstances a court was justified in invoking its authority

became more evident in the period from 1973 through 1974.

The primary pattern of influence, which was evident during the period from 1973 through 1974, was the influence of the Supreme Court's opinion, in Swann, on its decisions in cases which originated outside the South. When segregated school systems, outside the South, began to be challenged in the courts, the disagreement among the Supreme Court Justices as to how far a court could go in ordering remedial desegregation plans and under what conditions a court was justified in invoking its authority, became more apparent. An equally divided Supreme Court affirmed the decision of the Fourth Circuit Court of Appeals in the Richmond case, in which the Court of Appeals had stated that, when it became clear that state-imposed segregation within the school district of the City of Richmond had been eliminated, no further intervention by the district court was necessary or justifiable. Throughout the period from 1973 through 1974, the Supreme Court continued to refer to Swann in pointing out that desegregation did not require any particular degree of racial balance. The Supreme Court's interpretation of its holding, in Swann, as placing limitations on the power of district courts in fashioning remedies in school desegregation cases, was the most prevalent influence during this period.

A trend in the Supreme Court's decisions from 1954 through 1973 was to continually strengthen requirements for desegregating public school systems. In 1974, the Court broke this pattern when it ruled that the scope of the remedy, in a desegregation case, was determined by the scope and the extent of the constitutional violation; thus, an interdistrict remedy was not justifiable unless there was an interdistrict constitutional violation. The change in the trend of the Supreme Court's decisions was further illustrated in its 1973 decision in Rodriquez.[20] In Rodriquez, which was a case pertaining to the Texas system of financing public education, the Court found that education was not among the rights afforded explicit protection under the Constitution nor did it find that it was implicitly so protected. The Court distinguished Rodriquez from cases pertaining to school desegregation by pointing out that wealth was not a suspect classification and that race was. The Supreme Court stated that, in the context of racial discrimination, its statement in Brown had lost none of its vitality and nothing it held, in Rodriquez, detracted from its historic dedication to public education. However, even in light of the Court's statement that it had done nothing to change its position in cases pertaining to school desegregation, it was ob-

vious that the Supreme Court was no longer searching for cases which could be used to expand the rights of minority classes or individuals.

Conclusions

Based on the analysis of influence patterns among federal court decisions, state appellate court decisions, and state statutes pertaining to the desegregation of public schools in North Carolina, from 1954 through 1974, the following conclusions are justified:

1. In reaction to the Supreme Court's 1954 decision, in Brown, the North Carolina Legislature enacted the Pupil Assignment Act in an effort to circumvent the Court's order. This pattern of influence continued throughout the period with which this study was concerned. It was apparent, in 1969, when the State Legislature enacted the anti-busing law as a result of the district court's ruling in Swann, and again in 1969 when the Legislature passed a local act creating a separate administrative unit for the City of Scotland Neck in an attempt to circumvent the Supreme Court's 1968 order in Green.

2. The pattern of the federal courts' influence on North Carolina statutes was carried a step further in 1969 and 1970. After the State Legislature had enacted

laws to circumvent the orders of the federal courts, which required the desegregation of the Charlotte-Mecklenburg school system and the Halifax County school system, the district courts ruled that the respective legislative acts were unconstitutional.

3. As a result of the Pupil Assignment Act, a pattern of influence developed between the North Carolina Legislature and the North Carolina appellate courts and the lower federal courts. The State Supreme Court, the federal district courts in North Carolina and the United States Court of Appeals for the Fourth Circuit refused to rule for plaintiffs in desegregation cases until they had exhausted the administrative remedies provided under the state statute. Although this influence pattern was most obvious during the period from 1954 to 1964, it was evident throughout this study. In 1970, the Court of Appeals of North Carolina refused to rule for plaintiffs who had not exhausted the administrative remedies provided under the Pupil Assignment Act, and in 1971, the Fourth Circuit Court of Appeals refused to enjoin the granting of state funds to segregated school systems because the North Carolina Pupil Assignment Act provided that local boards had the responsibility of assigning children to the public schools.

4. The Supreme Court's reluctance to issue specific guidelines for desegregating school systems indirectly influenced the lower courts to be more lenient in their desegregation orders. As the Supreme Court imposed more stringent desegregation requirements on school systems, the lower courts eventually did the same.

5. The influence of the Supreme Court's decision, in Brown, was reflected in the decisions of the Fourth Circuit Court of Appeals when, in 1960, that court began to rule for Negro plaintiffs in cases where the Negroes had exhausted their administrative remedies. An influence pattern developed, in 1961 and 1962, in which the Court of Appeals reversed the decisions of the district courts in North Carolina in cases where the Negro plaintiffs had exhausted their administrative remedies.

6. The Supreme Court's impatience with delaying tactics in desegregating public schools, which was reflected in its decisions, influenced the Fourth Circuit Court of Appeals and the district courts in North Carolina to scrutinize desegregation plans more closely and to require desegregation at the earliest practicable date during the period from 1964 through 1967. Generally, during this period, the Court of Appeals upheld the decisions of the district courts in pupil desegregation cases, but only

after modifying the plans to effect desegregation at an earlier date than that required by the district courts.

7. The Supreme Court's 1965 decisions, pertaining to faculty desegregation, influenced the Fourth Circuit Court of Appeals to begin to strengthen its desegregation requirements and to consider faculty desegregation even in systems where direct measures had not been employed to eliminate all direct discrimination in the assignment of pupils.

8. The federal district courts in North Carolina ignored the Supreme Court's 1965 desegregation decisions, and continued to rule for school boards in cases pertaining to faculty desegregation and teacher employment. An influence pattern developed in which the Fourth Circuit Court of Appeals consistently reversed the district courts' decisions in cases where the lower courts continued to refuse to grant relief to Negro plaintiffs who complained of racially based faculty allocations and assignments. This pattern continued until the Court of Appeals ruled that the elimination of racial discrimination in faculty selection and allocation was an inseparable and indispensible command within the abolition of pupil segregation in public schools as set forth in Brown. Following the ruling of the Court of Appeals, the federal district courts in

North Carolina strengthened their requirements pertaining to faculty desegregation and the pattern of consistent reversals ended.

9. Two decisions of the North Carolina State Supreme Court were influenced by the Civil Rights Act of 1964 during the period from 1964 through 1967. In each case, the Court approved the action of the county board of education because it recognized that the board was operating under unusual circumstances created by the Act.

10. A pattern of influence developed from 1968 through 1971 in which the decisions of the Supreme Court, which required the elimination of segregated school systems at once, were, almost immediately, reflected in the decisions of the Fourth Circuit Court of Appeals and the federal district courts in North Carolina.

11. The district courts in North Carolina were more in agreement with the United States Supreme Court than was the Fourth Circuit Court of Appeals during the period from 1969 through 1972. This resulted in the development of an influence pattern in which the Court of Appeals reversed the decisions of the district courts and then the Supreme Court would uphold the district courts' rulings, thus, reversing the decisions of the Court of Appeals. Until this time the Court of Appeals' desegregation requirements had been more stringent than those of the

district courts in North Carolina.

12. A 1967 decision of the District Court for the Eastern District of North Carolina, which required that a particular percentage of students attend desegregated schools during the 1967-1968 school year, was influenced by a 1966 ruling of the Fifth Circuit Court of Appeals. This was a beginning of a trend for federal courts to consider percentages or racial balance in shaping remedies in school desegregation cases. The trend for the courts to consider percentages was first reflected in a Supreme Court decision in 1968. The Supreme Court held, in its 1971 decision in Swann, that no particular racial balance was required, but the use of mathematical ratios was held to be a justifiable starting point in shaping remedies for past racial assignments. This holding, in Swann, influenced decisions of the Supreme Court from 1971 through 1974. The Court's statement, that desegregation did not require any particular racial balance, influenced the Supreme Court to refuse to require the elimination of de facto segregation in its 1974 decision.

13. An influence pattern, which was evident during the period from 1973 through 1974, was the influence of the Supreme Court's 1971 opinion, in Swann, on its school desegregation decisions during this period. The

Court's interpretation of its holding, in Swann, as placing limitations on the power of the district courts in fashioning remedies in school desegregation cases, influenced its decisions during the period from 1973 through 1974.

14. The Supreme Court did not use the school cases, which it decided during the period from 1973 through 1974, to expand the rights of minority classes or individuals. It is too early to determine whether that change in the Court's attitude will influence the decisions of lower federal courts pertaining to school desegregation in North Carolina.

15. Generally, the trend was for white plaintiffs to initiate action in the State courts and for Negro plaintiffs to seek relief in the federal courts. This resulted in very little influence and no influence pattern developing between federal and State courts.

Recommendations For Further Study

Based on insights gained through this study the following statements are offered as areas of further study. It is recommended that:

1. Research be conducted to determine the influence of the Presidents of the United States on the school

desegregation decisions of the Supreme Court. This would include the President's influence through appointments to the Supreme Court.

2. Research be conducted to determine the influence of the guidelines issued by the Department of Health, Education and Welfare on the decisions of the federal courts in school desegregation cases.

3. A replication of this study be done in a Southern state other than North Carolina.

4. A replication of this study be done in a state where segregation has never been required or permitted by law. Whether sufficient court attention has been given to de facto segregation to justify a study, at this time, is doubtful, but it is likely that the question will receive court attention with increasing frequency.

CHAPTER VII

FOOTNOTES

1. Bradley v. School Board, City of Richmond, 382 U.S. 105 (1965).

2. Wheeler v. Durham City Board of Education, 363 F. 2d 738 (1966).

3. Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1967).

4. United States v. Jefferson County Board of Education, 372 F. 2d 836 (1966).

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

6. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

7. United States v. Halifax County Board of Education, 314 F. Supp. 65 (1970).

8. Swann v. Charlotte-Mecklenburg Board of Education, 300 F. Supp. 1358 (1969).

9. North Carolina State Board of Education v. Swann, 312 F. Supp. 503 (1970).

10. Fries v. Rowan County Board of Education, 172 S.E. 2d 75 (1970.

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

12. Monroe v. Board of Education of the City of Jackson, Tennessee, 391 U.S. 450 (1968).

13. United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).

14. Northcross v. Board of Education of the Memphis, Tennessee, City Schools, 397 U.S. 232 (1970).

15. Eaton v. New Hanover County Board of Education, 459 F. 2d 684 (1972).

16. Wright v. Council of the City of Emporia, 407 U.S. 451 (1972), and United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

17. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

18. Smith v. North Carolina State Board of Education, 444 F. 2d 6 (1971).

19. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

20. San Antonio Independent School District v. Rodriquez, 411 U.S. 1 (1973).

A P P E N D I X E S

APPENDIX A

LIST OF CASES CITED

COURT CASES

Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

Allen v. Asheville City Board of Education, 434 F. 2d 902 (1970).

Application for Reassignment of Pupils, 247 N.C. 413 (1958).

Barksdale v. Commissioners of Sampson County, 93 N.C. 472 (1885).

Berea College v. Commonwealth of Kentucky, 211 U.S. 45 (1908).

Bolling v. Sharpe, 347 U.S. 497 (1954).

Boomer v. Beaufort County Board of Education, 294 F. Supp. 179 (1968).

Bowditch v. Buncombe County Board of Education, 345 F. 2d 329 (1965).

Bradley v. School Board, City of Richmond, 345 F. 2d 310 (1965), 382 U.S. 105 (1965).

Briggs v. Elliott, 103 F. Supp. 920 (1952).

Brown v. Board of Education of Topeka, 98 F. Supp. 797 (1951), 347 U.S. 483 (1954), 349 U.S. 294 (1955).

Buford v. Morganton City Board of Education, 244 F. Supp. 437 (1965).

Calhoun v. Latimer, 377 U.S. 263 (1964).

Carson et al. v. Board of Education of McDowell County, 227 F. 2d 789 (1955).

Carson v. Warlick, 238 F. 2d 724 (1956), 353 U.S. 910 (1959).

Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970).

Chambers v. Hendersonville City Board of Education, 364 F. 2d 189 (1966), 245 F. Supp. 759 (1966).

Chambers v. Iredell County Board of Education, 364 F. 2d 189 (1966), 423 F. 2d 613 (1970).

Civil Rights Cases, 109 U.S. 3 (1883).

Constantian v. Anson County, 244 N.C. 221 (1956).

Cooper v. Aaron, 78 S. Ct. 1401 (1958), 358 U.S. 1 (1958).

Coppedge v. Franklin County Board of Education, 394 F. F. 2d 410 (1968), 273 F. Supp. 289 (1967).

Covington v. Edwards, 264 F. 2d 780 (1959).

Cummings v. Board of Education of Richmond County, 175 U.S. 528 (1899).

Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).

Davis v. County School Board of Prince Edward County, Virginia, 103 F. Supp. 337 (1952).

Dilday v. Beaufort County Board of Education, 267 N.C. 438 (1966).

Dowell v. Board of Education of the Oklahoma City Public Schools, 396 U.S. 269 (1969).

Dred Scott v. Sanford, 19 Howard 393 (1857).

Drummond v. Acree, 409 U.S. 1228 (1972).

Eaton v. New Hanover County Board of Education, 459 F. 2d 684 (1972).

Felder v. Harnett County Board of Education, 349 F. 2d 366 (1965), 409 F. 2d 1070 (1969).

Frasier v. Board of Trustees of the University of North Carolina, 134 F. Supp. 589 (1955).

Fries v. Rowan County Board of Education, 172 S.E. 2d 75 (1970).

Gaines v. Canada, 305 U.S. 337 (1938).

Gebhart v. Belton, 87A. 2d 862 (1952),344 U.S. 891 (1952).

Godwin v. Johnston County Board of Education, 301 F. Supp. 1339 (1969).

Goss v. Board of Education of the City of Knoxville, Tennessee, 83 S. Ct. 1405 (1963), 373 U.S. 683 (1963).

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

Griffin v. County School Board of Prince Edward County, 377 U.S. 220 (1964).

Griffith v. Board of Education of Yancey County, 186 F. Supp. 511 (1960).

Guey Heung Lee v. Johnson, 404 U.S. 1215 (1971).

Gung Lum v. Rice, 275 U.S. 78 (1921).

Holt v. Raleigh City Board of Education, 164 F. Supp. 853 (1958).

Horton v. Orange County Board of Education, 342 F. Supp. 1244 (1971).

Huggins v. Wake County Board of Education, 272 N.C. 33 (1967).

Jeffers v. Whitley, 309 F. 2d 621 (1962).

Johnson v. Branch, 364 F. 2d 177 (1966).

Joyner v. McDowell County Board of Education, 244 N.C. 164 (1956).

Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973).

Lane v. Stanley, 65 N.C. 153 (1870).

McCoy v. Greensboro City Board of Education, 283 F. 2d 667 (1960).

McDaniel v. Barresi, 402 U.S. 39 (1971).

McKissick v. Durham City Board of Education, 176 F. Supp. 3 (1959).

McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

Milliken v. Bradley, 418 U.S. 717 (1974).

Monroe v. Board of Education of the City of Jackson, Tennessee, 391 U.S. 450 (1968).

Morrow v. Mecklenburg County Board of Education, 195 F. Supp. 109 (1961).

Nesbit v. Statesville City Board of Education, 345 F. 2d 333 (1965), 418 F. 2d 1040 (1969).

North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

North Carolina Teachers' Association v. Asheboro City Board of Education, 393 F. 2d 738 (1968).

Northcross v. Board of Education of the Memphis, Tennessee, City Schools, 397 U.S. 232 (1970).

Pearson v. Murray, 182 Atl. 590 (Md. 1936).

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

Puitt v. Commissioners, 94 N.C. 709 (1886).

Raney v. Board of Education of the Gould School District, 391 U.S. 443 (1968).

Roberts v. City of Boston, 59 Mass. 198 (1849).

Rogers v. Paul, 345 F. 2d 117 (1965), 382 U.S. 198 (1965).

San Antonio Independent School District v. Rodriquez, 411 U.S. 1 (1973).

School Board of City of Richmond, Virginia v. State Board of Education of Virginia, 412 U.S. 92 (1973), 462 F. 2d 1058 (1972).

Sipuel v. Oklahoma, 332 U.S. 631 (1948).

Smith v. North Carolina State Board of Education, 444 F. 2d 6 (1971).

Spaulding v. Durham City Board of Education, 309 F. 2d 630 (1962), 196 F. Supp. 71 (1961).

Squires v. Bladen County Board of Education, 329 F. Supp. 1405 (1971).

St. Helena Parish School Board et al. v. Lawrence Hall et al., 368 U.S. 515 (1962).

Swann v. Charlotte-Mecklenburg Board of Education, 369 F. 2d 29 (1966), 402 U.S. 1 (1971).

Sweatt v. Painter, 339 U.S. 629 (1950).

Teel v. Pitt County Board of Education, 272 F. Supp. 703 (1967).

United States v. Bertie County Board of Education, 293 F. Supp. 1276 (1968).

United States v. Halifax County Board of Education, 314 F. Supp. 65 (1970).

United States v. Jones County Board of Education, 295 F. Supp. 640 (1968).

United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).

United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

Vickers v. Chapel Hill City Board of Education, 196 F. Supp. 97 (1961).

Wall v. Stanly County Board of Education, 378 F. 2d 275 (1967).

Wheeler v. Durham City Board of Education, 196 F. Supp. 71 (1961), 309 F. 2d 630 (1962), 363 F. 2d 738 (1966).

Winston-Salem/Forsyth County Board of Education v. Scott, 404 U.S. 1221 (1971).

Wright v. Council of the City of Emporia, 407 U.S. 451 (1972).

APPENDIX B

THE POSITION OF SUPREME COURT JUSTICES IN CASES CITED FROM 1954 - 1974

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
Brown v. Board of Education	May 17, 1954	Warren, Black, Reed, Frankfurter, Douglas, Jackson, Burton, Clark, Minton			
Bolling v. Sharpe	May 17, 1954	Warren, Black, Reed, Frankfurter, Douglas, Jackson, Burton, Clark, Minton			
Brown v. Board of Education	May 31, 1955	Warren, Black, Reed, Frankfurter, Douglas, Harlan, Burton, Clark, Minton			

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
Cooper v. Aaron	Sep. 29, 1958	Warren, Black, Frankfurter, Douglas, Burton, Clark, Harlan, Brennan, Whittaker			
St. Helena Parish School Board v. Hall	Feb. 19, 1962	Warren, Black, Frankfurter, Douglas, Burton, Clark, Harlan, Brennan, Whittaker			
Goss v. Board of Education of the City of Knoxville, Tennessee	Jun. 3, 1963	Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, White, Goldberg			
Griffin v. Co. School Board of Prince Edward County	May 25, 1964	Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, White Goldberg			

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
Calhoun v. Latimer	May 25, 1964	Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, White, Goldberg			
Bradley v. School Board, City of Richmond, Virginia	Nov. 15, 1965	Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, White, Fortas			
Rogers v. Paul	Dec. 6, 1965	Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, White, Fortas			
Green v. County School Board of New Kent County, Virginia	May 27, 1968	Warren, Black, Douglas, Harlan, Brennan, Stewart, White, Fortas, Marshall			

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
Raney v. Board of Education of Gould School District	May 27, 1968	Warren, Black, Douglas, Harlan, Brennan, Stewart, White Fortas, Marshall			
Monroe v. Board of Commissioners of the City of Jackson, Tenn.	May 27, 1968	Warren, Black, Douglas, Harlan, Brennan, Stewart, White, Fortas, Marshall			
United States v. Montgomery County Board of Education	Jun. 2, 1969	Warren, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall			
Alexander v. Holmes County Board of Education	Oct. 29, 1969	Burger, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall			

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
Dowell v. Board of Education of the Oklahoma City Public Schools	Dec. 15, 1969	Burger, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall			
Carter v. West Feliciana Parish School Board	Jan. 14, 1970	Black, Douglas, Harlan, Brennan, White, Marshall	Burger, Stewart		
Northcross v. Board of Education of the Memphis, Tennessee, City Schools	Mar. 9, 1970	Burger, Black, Douglas, Harlan, Brennan, Stewart, White			Marshall
Swann v. Charlotte-Mecklenburg Board of Education	Apr. 20, 1971	Burger, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall, Blackmun			

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
North Carolina State Board of Education v. Swann	Apr. 20, 1971	Burger, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall, Blackmun			
McDaniel v. Barresi	Apr. 20, 1971	Burger, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall, Blackmun			
Davis v. Board of School Commissioners of Mobile County	Apr. 20, 1971	Burger, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall, Blackmun			

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
Moore v. Charlotte-Mecklenburg Board of Education	Apr. 20, 1971	Burger, Black, Douglas, Harlan, Brennan, Stewart, White, Marshall, Blackmun			
Wright v. Council of the City of Emporia	Jun. 22, 1972	Douglas, Brennan, Stewart, White, Marshall	Burger, Blackmun, Powell, Rehnquist		
United States v. Scotland Neck City Board of Education	Jun. 22, 1972	Burger, Douglas, Brennan, Stewart, White, Marshall, Blackmun, Powell, Rehnquist			
San Antonio Independent School District v. Rodriquez	Mar. 21, 1973	Burger, Stewart, Blackmun, Powell, Rehnquist	Brennan, White, Douglas, Marshall		

Case	Date	Concurring Justices	Dissenting Justices	Justices Dissenting In Part and Concurring In Part	Justices Not Participating
School Board of City of Richmond, Virginia v. State Board of Education of Virginia	May 21, 1973	Burger, Stewart, Blackmun, Rehnquist	Brennan, White, Douglas, Marshall		Powell
Keyes v. School District No. 1, Denver, Colorado	Jun. 21, 1973	Burger, Douglas, Brennan, Stewart, Marshall, Blackmun	Rehnquist	Powell	White
Milliken v. Bradley	Jul. 25, 1974	Burger, Stewart, Blackmun, Powell, Rehnquist	Douglas, White, Marshall, Brennan		

G L O S S A R Y

Alleged. "Stated; recited; claimed; asserted; charged."[1]

Appellant. "The party who takes an appeal from one court or jurisdiction to another."[2]

Appellee. "The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment."[3]

Arbitrary. "Based on one's preference, notion, or whim."[4]

Busing. The transporting of students to achieve desegregation in public schools.

Capricious. "Subject to caprices; inclined to change abruptly and without reason; erratic; flighty; unpredictable."[5]

Civil Rights. "Civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action."[6]

Class Action. "An action brought on behalf of other persons similarly situated."[7]

Clustering. A method of desegregating public schools whereby several schools are grouped and the students of those schools are assigned in such a way that a greater degree of desegregation is achieved.

Concurring Opinion. "In the practice of appellate courts, a 'concurring opinion' is one filed by one of the judges or justices, in which he agrees with the conclusions or the result of another opinion filed in the case (which may be either the opinion of the court or a dissenting opinion) though he states separately his views of the case or his reasons for so concurring."[8]

Constitutional Right. "A right guaranteed to the citizens by the Constitution and so guaranteed as to prevent legislative interference therewith."[9]

De Facto Segregation. A condition of separation of the races, either completely or partially, which is the result of factors not established by statute, regulation, or policy. Separation such as that caused by residential patterns or socio-economic factors.

De Jure Segregation. Racial separation as provided for by law or created by state action.

De Novo. "Anew, afresh; a second time."[10]

Declaratory Judgment. "One which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done."[11]

Defendant. "The person defending or denying; the party against whom relief or recovery is sought in an action or suit."[12]

Desegregation. The abolition of the separation of races. The act of bringing the different races together physically.

Discretionary Review. In North Carolina, an appellate proceeding for re-examination of action of inferior state court or as auxiliary process to enable a state appellate court to obtain further information in pending cause. Discretionary review in the state judicial system of North Carolina is equivalent to certiorari in the federal judicial system.

Evidentiary. "Having the quality of evidence; constituting evidence; evidencing."[13]

Freedom of Choice Plan. A plan whereby a student is permitted or required to choose the school he prefers to attend.

Free Transfer Plan. A plan whereby a student is permitted to transfer to the school he prefers to attend after an initial assignment has been made.

Geographical Plan. A plan which uses some form of geographical zoning based upon a division of the school district into attendance areas by the drawing of boundary lines which determine to which school a child will be assigned. Geographical zoning has taken two forms.

Dual zones: A system of overlapping geographical zones with separate schools for white and Negro children. Unitary geographical zones: A system in which a single attendance zone is used and all children within the zone attend the single school assigned to that zone.

In Loco Parentis. "In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities."[14]

Influence. The power of court decisions or statutes to affect other court decisions or statutes, seen only in its effects.

Influence Pattern. A definite direction, tendency, or characteristic in the influence of court decisions or statutes on other court decisions or statutes.

Injunction. "A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law."[15]

Interlocutory Injunction. "One granted prior to the final hearing and determination of the matter in issue, and which is to continue until answer, or until the final hearing, or until the further order of the court."[16]

Intervenor. "An intervenor is a person who voluntarily interposes in an action or other proceeding with the leave of the court."[17]

Majority Opinion. The official or per curiam opinion of a court.

Mandamus. "This is the name of a writ which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer or to an inferior court, commanding the performance of a particular act."[18]

Minority Opinion. An opinion expressed by the dissenting judges in a case, used synonomously with dissenting opinion.

Minority to Majority Transfer. A transfer or change of schools granted solely because the request is initiated by a pupil who has been assigned to a school in which his race is in the minority and the student declares his preference to attend a school where his race is in the majority.

Neighborhood School Concept. The assignment of pupils to schools on the basis of the distance from the school. This system may consider in addition such factors as natural boundaries, transportation, and safety in establishing these areas of attendance. The basic idea behind the concept is that children should attend schools near their homes.

Pairing. A method of desegregating public schools whereby the grade structure of two schools are reorganized in such a way that all students in particular grades are assigned to one school and all students in other grades are assigned to the other school. Example: Grades 1 - 8 would be totally desegregated by pairing two schools and assigning grades 1 - 4 to one of the paired schools and grades 5 - 8 to the other.

Per Curiam. "A phrase used in the reports to distinguish an opinion of the whole court from an opinion written by any one judge."[19]

Plaintiff. "A person who brings an action; the party who complains or sues in a personal action and is so named on the record."[20]

Plenary. "Full, entire, complete, absolute, perfect, unqualified."[21]

Public Schools. "Schools established under the laws of the state (and usually regulated in matters of detail by the local authorities) in the various districts, counties, or towns, maintained at the public expense by taxation."[22] It is limited in this study to any or all of the grades K-12.

Remand. "To send back."[23]

Respondent. In equity practice the party who makes an answer to a bill or other proceeding in chancery. In appellate practice the party who contends against an appeal.[24]

Satellite Zone. An area which is not contiguous with the main attendance zone surrounding the school.

School Board. "A board of municipal officers charged with the administration of the affairs of the public schools."[25] The terms "board of education," "board of public education," and "board of school commissioners" are synonymous with the term "school board."

School District. "A public and quasi municipal corporation, organized by legislative authority or direction, comprising a defined territory, for the erection, maintenance, government, and support of the public schools within its territory."[26]

Segregation. State of being separate or set apart from others on the basis of race.

Summary Judgment. A decree issued by a court when there is no issue between the parties.[27]

Tuition Grant. A provision whereby a state or school system agrees to pay the tuition of a student who attends a private school or a public school in another school district.

Unitary System. A public school system within which no person is effectively excluded from any school because of race or color.

Vacate. "To annul; to set aside; to cancel or rescind; to render an act void."[28]

Writ. "A formal legal document ordering or prohibiting the performance of some action."[29]

Writ of Certiorari. "Certiorari is an appellate proceeding for re-examination of action of inferior tribunal or as auxiliary process to enable appellate court to obtain further information in pending cause."[30]

FOOTNOTES

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1. Henry Campbell Black, Black's Law Dictionary (4th ed.; St. Paul: West Publishing Company, 1951), p. 99.

2. Ibid., p. 126.

3. Ibid.

4. Webster's New World Dictionary (College Edition; New York: The World Publishing Company, 1966), p. 74.

5. Ibid., p. 217.

6. Black, p. 1487.

7. Ibid., p. 315.

8. Ibid., p. 363.

9. Ibid., p. 385.

10. Ibid., p. 483.

11. Ibid., p. 497.

12. Ibid., p. 507.

13. Ibid., p. 658.

14. Ibid., p. 896.

15. Ibid., p. 923.

16. Ibid.

17. Ibid., p. 956.

18. Ibid., p. 1113.

19. Ibid., p. 1293.

20. Ibid., p. 1309.

21. Ibid., p. 1313.

22. Ibid., p. 1512.

23. Ibid., p. 1457.

24. Ibid., p. 1476.

25. Ibid., p. 1512.

26. Ibid.

27. Words and Phrases Legally Defined, Vol. 40A (St. Paul: West Publishing Company), p. 289.

28. Black, p. 1717.

29. Webster's New World Dictionary, p. 1688.

30. Black, p. 287.

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A CASE STUDY OF NORTH CAROLINA DESEGREGATION ISSUES: INFLUENCE PATTERNS OF FEDERAL AND STATE COURTS AND STATE STATUTES

by

James E. Benfield

(ABSTRACT)

Problem: This study sought to analyze the influence patterns among federal court decisions, state appellate court decisions, and state statutes pertaining to the desegregation of public schools in North Carolina.

Sources of Data: The search for cases and statutes pertinent to this study required the use of the National Reporter System, American Digest System, American Law Reports, North Carolina Reports, American Jurisprudence, Corpus Juris Secundum, North Carolina General Statutes, and other legal bibliographical aids.

Procedure: Each case was briefed, including the case citation, the date, the judge or judges, the situation, the decision, and the court opinion relative to the points of law. The cases were then arranged chronologically and the trends in the court decisions were identified. An attempt was made to compare the development of

North Carolina law to trends which were detected in the Supreme Court's decisions in order to identify influence patterns among federal and state courts and state statutes.

Major Findings: A trend in the United States Supreme Court's decisions from 1954 through 1973 was that the Court continually strengthened requirements for desegregating public school systems. In 1974, the Court broke this pattern when it ruled that an interdistrict remedy was not justifiable unless there was an interdistrict constitutional violation. During the different periods of this study, the trend in the Supreme Court's decisions was reflected in the lower courts and in the North Carolina Legislature in various ways.

Conclusions: Based on the facts as presented in this study, the following were drawn:

1. In an effort to circumvent the 1954 Brown decision the North Carolina Legislature enacted the Pupil Assignment Act.

2. The State Supreme Court, the federal district courts in North Carolina, and the Fourth Circuit Court of Appeals refused to rule for plaintiffs in desegregation cases who had not exhausted the administrative remedies provided under the state statute.

3. The Supreme Court's reluctance to issue specific guidelines for desegregating school systems indirectly influenced the lower courts to be more lenient in their desegregation orders.

4. In 1961 and 1962, the Fourth Circuit Court of Appeals reversed the decisions of the district courts in North Carolina in cases where the Negro plaintiffs had exhausted their administrative remedies.

5. The Supreme Court's impatience with delays in desegregating public schools influenced the lower courts to scrutinize desegregation plans more closely during the period from 1964 through 1967.

6. The Supreme Court's 1965 decisions, pertaining to faculty desegregation, influenced the Fourth Circuit Court of Appeals to begin to consider faculty desegregation. The Court of Appeals consistently reversed the district courts' decisions in cases where the lower courts continued to refuse to grant relief to Negro plaintiffs who complained of racially based faculty allocations and assignments.

7. The decisions of the Supreme Court, which required the elimination of segregated school systems at once, were, almost immediately, reflected in the decisions of the Fourth Circuit Court of Appeals and the federal district courts in North Carolina during the period

from 1968 through 1971.

8. During the period from 1969 through 1972, an influence pattern developed in which the Fourth Circuit Court of Appeals reversed the decisions of the district courts in North Carolina and then the Supreme Court would uphold the district courts' rulings, thus, reversing the decisions of the Court of Appeals.

9. The Supreme Court's interpretation of its 1971 holding, in Swann, as placing limitations on the power of the district courts in fashioning remedies in school desegregation cases, influenced its decisions during the period from 1973 through 1974.

10. Very little influence and no influence pattern developed between federal and state courts from 1954 through 1974.