COMPARATIVE ANALYSIS OF THE EIGHT CITIES

I INTRODUCTION

Our purpose in this concluding analysis is to point up the various patterns which seem to emerge in these case studies. We are well aware that eight cities represent a small sample. They were selected more with reference to scholarly access than representativeness. As a result, all of the cities have universities in them. In the three cities which emerge as "most successful," universities play a significant role—if not a dominant one—in the life of the community. Although direct participation of these universities, as such, is not emphasized in the case studies, their indirect influence may have been extremely significant in producing atypical results. Clearly we cannot hope to present any final and ultimate conclusions, but it is nevertheless possible to make a number of suggestive observations about why the school boards in some cities were able to respond to the problem of de facto school segregation more successfully and effectively than others. While there is, of course, virtually no invulnerable or uncontroversial method for measuring the relative success and failure of school boards confronted with racial imbalance in their schools, three possible yardsticks come to mind. First, do the statistics show either a decrease in the racial imbalance in some or all of a city's schools or a decrease in the trend toward increasing racial imbalance? Second, has the school system actually implemented some sort of desegregation program? Third, did the school boards (or superintendents) resolve conflict by satisfying or placating the various disputants?

Of course, there are problems in each of these yardsticks and none is very precise. Interestingly enough, however, each of them seems to group the eight cities studied in the same way: three cities (Evanston, Berkeley, and New Haven) seem to have been successful according to all three yardsticks; three (Albany, San Francisco, and Chicago) seem not to have succeeded in any of the three methods of measurement; and two (St. Louis and Pasadena) appear to be borderline cases, scoring high according to some of the yardsticks and low according to others.

The least successful cities:

Albany is perhaps the easiest city to assess: No desegregation program as such was even proposed or debated, let alone implemented;

the racial imbalance in the schools did not improve; and with a quiescent Negro community there was no noticeable conflict to resolve (perhaps, because the heavily Negro schools were not—as a group—inferior to many of the predominantly white schools).

San Francisco had two clear opportunities to adopt integrationist plans (to open Central Junior High School and to "pair" Dudley Stone Elementary School) but seized neither one. Racial imbalance in San Francisco's schools steadily increased, and although a number of conflicts ran their course and passed away it is not clear that any of them were in fact "resolved" by creative board action.

Chicago's Board of Education, in passively allowing protests about de facto segregation to die out, also failed to respond with creative and effective desegregation plans. Although a certain resolution of conflict was achieved in the controversy concerning the reappointment of Superintendent Willis, this was not a desegregation issue per se. Furthermore, no effective desegregation programs were implemented and even the token cluster and transfer which were approved were administered half-heartedly. Finally, during these years racial imbalance increased.

The most successful cities:

Evanston did adopt a plan that promises a substantial decrease in the racial imbalance in the city's elementary schools. Since this plan satisfied the Board's only major critics, the integrationist parent and civil rights groups, the Board seems to have displayed an ability to reduce friction.

Berkeley also adopted a plan, and this plan served both to reduce racial imbalance in the city's junior high schools and to satisfy, apparently, all the disputants.

New Haven radically redrew two junior high schools boundaries, and "paired" a number of elementary schools, thus significantly improving the racial balance of these schools until previously determined redistricting could be accomplished as part of a general building program. In terms of conflict-resolution, the Board attempted to steer a narrow path between integrationist forces and those groups opposed to any change in the status quo. The plan that was implemented left smoldering resentment among many of the latter and disappointed many of the former by its apparent compromise with announced principles.

The borderline cities:

Pasadena merits a mixed assessment. While overall imbalance increased, there were isolated but noteworthy exceptions. And while the Board never adopted an explicit desegregation plan, it did redistrict the high schools and implement a selected open enrollment plan. And in terms of conflict-resolution, while the Board—and more especially Superintendent Jenkins—did successfully negotiate NAACP support for a high school bond issue, there were also notable failures.

St. Louis is also quite difficult to assess in terms of the three yardsticks. Racial imbalance there increased, though it is possible (yet hardly certain) that the trend toward racial imbalance was slowed; a plan was adopted, but it is not clear it was effective. Conflict-resolving measures were taken and there was a corresponding decline in pressure from the integrationist groups; nevertheless, there is some question whether this decline in pressure was attributable to the Board's actions or to dissension among the various integrationist groups.[1]

A number of patterns emerge from this. To begin with the most obvious, none of the three largest cities seems to have been clearly successful in meeting the desegregation challenge, and two of them clearly failed.[2] Furthermore, of the three unsuccessful cities, two of them (Chicago and San Francisco) apparently had intransigent superintendents who dominated the board of education. Also, of these three unsuccessful cities, two of them (Albany and Chicago) are governed by well-established political machines which, without having to woo the Negro electorate, are impressively effective at delivering the vote (4 to 1 in Albany, often 5 to 2 in Chicago). Finally, in all three of the cities where racial imbalance was decreased, the boards (and most of the articulate public) simply assumed they were under no legal or moral obligation to adopt

1. This latter possibility is suggested in R. CRAIN et al., SCHOOL DESEGREGATION IN THE NORTH (1967).

2. This, incidentally, agrees with Raymond Mack's observation, based on another set of case-studies:

> "Small towns and medium-sized cities, North and South, are desegregating their schools, at least to a token extent . . .
>
> "Huge metropolitan areas, North and South, are resegregating their schools; the trend is toward more rather than less segregated educational facilities."

R. W. MACK (ed.), DESEGREGATION AND EDUCATION (mimeo ms. p. 10). (See review elsewhere in this issue.)

"color-blind" desegregation programs; whereas in three of the five other cities, there were official arguments (either from the board—as in Pasadena—or from the board's legal counsel—as in Pasadena and Chicago—or from the superintendent—as in Chicago and San Francisco, or from some combination of these) that it was illegal and/or immoral for the board to adopt race-conscious plans.

II INITIATION OF THE ISSUES

The controversies as seen in the case studies, arose from a number of sources and developed in a variety of ways. In each city it was the ultimate responsibility of the board to establish policy. And while it was not always the board which took the most active part in developing policy, it was always toward the board that the variety of interests and demands were directed. The expression of these interests and demands, our case studies indicate, can be roughly catalogued into several distinct patterns of tactics, though more than one tactic was seen in most of the cities.

It was seen that one means of initiating the controversies was simply for a parents' or civil rights group to seize upon a ready-made issue and attach certain demands as a condition for Negro or some other group's support. In Evanston, a classic example, integrationists' support for a school bond issue was "traded" for a public commitment by the Board of Education providing for a timetable to fully integrate the public schools. In Pasadena the School Superintendent successfully negotiated an informal agreement with the local NAACP leaders, trading a promise for improved racial balance in the city's high schools for the support of a bond proposal to build a third high school. In both of these situations organized Negro groups were able to obtain at least a limited "victory," and in Evanston this initial confrontation paved the way for a full-scale solution of the school segregation problem.

In several other situations, proposed plans or existing practices were attacked by Negroes in an attempt to make the boards of education appear "racist" if they did not meet certain demands. In Pasadena the question of where to place a group of white junior high school students entering the district became a racial one when civil rights leaders and parents' groups insisted that their placement be used to improve racial balance in the city's junior high schools. In St. Louis an attack on the

existing busing program became a racial controversy and resulted in the full integration of the bused pupils. And in San Francisco, a board decision to change an old high school into a junior high school became a racial issue and resulted in not opening the school at all. In all of these situations integrationists attached themselves to a "forced decision," that is, a decision in which the board had to act. Civil rights groups attempted to capitalize on some of these situations which the boards could not avoid facing, by attaching demands and attempting to transform the non-racial issue into a racial one.

The situation in Albany illustrates, though not very clearly, another style of initiation. In 1963 the state board of education directed Albany as well as other cities in the state "to study the problem" of racial imbalance in the public schools, make a report, and begin to take steps to correct imbalance. This directive was sent to the boards of education in all school districts in New York State. In Albany it met with the response from the Board and Administration that no planning action was possible until the downtown area was rebuilt. The Board tied the school "problem" to the long-range urban renewal plans just begun in Albany, and summarily tabled it. While "outside" pressures in this instance were not applied because the state chose to proceed against other cities with much more serious problems of racial imbalance, such a means of initiation certainly should not be discouraged. Through a variety of sanctions—both positive and negative—state and national authorities can seek to induce local boards to undertake change. An indication of the potential of this means of inducing change is suggested on a limited scale by a program in San Francisco, where school officials seemed to have been at least partially motivated to initiate some steps toward affirmative integration by the possibility of receiving a half-million dollar federal grant. Grants-in-aid and other conditional arrangements on the part of federal and state authorities have secured significant changes in other traditionally local activities, and there is no reason to expect that such a relationship might not be applied to the problem of reducing racial imbalance in the schools as well.

Another type of initiation suggested by these case studies is more complex. In several cities, after an initial request for a study of the problems by parents or civil rights groups, the board responded by appointing a citizens committee or retaining experts to conduct a study and make recommendations regarding the racial composition of the public schools. Quite different results occurred in the several cities where

this was done. In Pasadena, and to a degree in Chicago and San Francisco, a stalemate occurred over the initial request to even consider race as a "problem" and for a board-appointed committee to consider it. In each of these cases, when requests to survey the problems, or make an initial statement to the effect that some type of "problem" existed, the boards responded by either discounting the notion that there even was a "problem," or by denying that they had authority to deal with it.

In other cases, however, the response to "study the problem" did not get side-tracked by these means, and the boards responded by appointing a blue-ribbon committee, retaining a team of educational consultants or both. Evanston, St. Louis, and New Haven in particular followed this approach.[3] Though many people initially regarded the committees as relatively insignificant (*e.g.*, present a study topped by a stream of platitudes), it was seen that in some instances the committees took their jobs seriously and their members became significant forces in pressing for change. It was a group of determined members of the board-appointed committee in Pasadena, Evanston, New Haven, and St. Louis who became some of the strongest advocates for immediate and comprehensive change. In Pasadena, a conservative Board was faced with a type of Frankenstein when the Board-appointed committee urged extensive changes; the Board's response was not to reactivate the committee after its initial report.

While these roughly sketched methods of initiation do not constitute an exhaustive list of all the possible ways to create a forum for the consideration of racial imbalance, they are the predominant methods used in our eight cities. And while we are not able to make many statements about the relative effectiveness of each of them, they do permit us to identify the various participants in the controversies and their relationships to each other and to the boards of education. Perhaps the most perplexing question is why there was so wide a variety of responses to the initial requests for the boards to examine the "problems." Equally puzzling is the variety of responses in those instances where a committee report and set of recommendations were issued. The relative power positions of Negroes in the various communities can be discounted as the sole factor for these differences, though not as one of the forces. In some of the cases the school boards and administrations appeared to "act"

3. Other cities also had thorough studies conducted, but for instance in Chicago and San Francisco it was only after an initial stormy controversy.

even where they were not dependent on strong Negro support. For a variety of reasons the boards and their superintendents appear to enjoy some degree of independence and immunity from public opinion and "close calculations" of support did not determine their actions. In no instance did it appear that their policies were dictated by political figures for whom such considerations are often necessary.

The NORC study observes that:

> . . . despite the pressures working on school board members, they did not seem to be learning to play new roles as full-time political actors; instead their decisions about school integration seemed to be affected most by the personal prejudices for or against Negroes which they brought with them when they first joined the board.[4]

Some of our cases seem to bear this out, or more precisely, do not dispute this observation. Pasadena is the most clearcut example of an initially divided board, which ended up—after months of controversy, committee reports, and discussion—essentially where it had begun months earlier. Here the Board faced the initial round of battle divided three to two, with the majority opposed to any form of racial classification for improving racial balance; months later this same split remained. Here too it is also of interest to recall that the most outspoken member on the minority failed to gain reelection because of his position. Even here, however, it is difficult to imagine that he would have altered his stance had he anticipated his eventual defeat.

Other boards also appeared to pursue a course of less than politically calculated action. In New Haven, Berkeley, and Evanston, as well as in the two cities just discussed, the boards followed courses which did not appear to have been political necessities.

This lack of "political role-playing" by some board members, coupled with, or perhaps the result of, the relative independence and dependency upon initial prejudices seems to cut both ways: we found that some boards—or at least board majorities—did not even rationally discuss the issues, while other boards, whose members initially seemed to be committed to the notion of integration, went much further than virtually anyone ever expected, in initiating plans to minimize it.

A word of caution regarding the degree of independence and the magnitude of change brought about is in order. While it appears that initially "committed" boards did take action beyond what they might

4. R. CRAIN, et al., *supra* note 1.

have been expected to, even they had to be prodded with no small expenditure of energy before they took this action. Even where there was a quite sympathetic board, it took a certain amount of effort by civil rights and parents associations before the boards placed the problem on their already crowded agendas. Also, there is no doubt that the national interest in the civil rights movement in the early 1960s helped intensify and stimulate the interests of board members, either to a sense of commitment to or reaction against the demands of the Negroes.

It is instructive to point out again the scope of the actual change effected, where indeed there was any at all. In all of the cities the actual numerical change was considerably less than the projections in the final board-adopted plans. (NOTE: This was due to a variety of factors, including continued and increased migration to and from certain areas. We do not wish to give the impression that this was a deception on the part of the boards.) Also of interest is the incremental nature of the change. Even in cities with the most ardently committed boards which had adopted seemingly comprehensive plans for integration, there was much less change than one would have suspected. One hypothesized reason is the fragmentation of consideration of the programs into three levels—the elementary, junior, and senior high schools. In every city this pattern of fragmentation occurred and often it was seen that the controversies and resulting "comprehensive" plans applied to only one or two of the three levels. For example, the New Haven board adopted a "comprehensive" redistricting plan and put it into effect, but on close inspection it is seen that the plan dealt almost entirely with the junior high schools. Even in this city, several years after the board wholeheartedly embraced a policy of racial heterogeneity, there has been virtually no change in the racial composition of the elementary schools. This holds for Berkeley also, where change was almost entirely restricted to the high schools.

For several reasons this pattern is not particularly surprising. It is less trouble to rezone districts in the higher grades since there are fewer schools and larger attendance areas. In Evanston, for example, there was no problem at all at the high school level, since there was only one high school (though there were "problems" within the high school). On the other hand, elementary schools present a host of problems. The school children are younger and more dependent, there is a greater emotional commitment to the "neighborhood schools" and fear of sending children to strange areas; the schools are smaller and consequently more homog-

eneous; and plans for change are more complicated and complex because there are more students, schools, boundaries, and transportation problems at the elementary level. As a result of these conditions, reduction of racial imbalance has taken place more easily and in more places in the junior and senior high schools than in the elementary schools.

So far we have concentrated on the boards of education as the focal points of change, but it must not be assumed that there are no other significant factors affecting the process. The following section deals with these other factors and their relationship with each other in the policy-making process.

III MODUS OPERANDI

It is interesting to compare the various methods of operation and the participants included in these eight school controversies over de facto segregation. We shall discuss the various board-superintendent relationships and their variety of uses of public hearings and committees (board committees, blue-ribbon committees, expert committees, and the superintendent's staff).

The relationship between school boards and superintendents varies considerably in our eight case studies. On this point the National Opinion Research Center, in looking over the cities included in their study of school desegregation, confessed to being "somewhat surprised" by their findings: "a great deal has been written about school superintendents and their role in the school integration decision; our case studies suggest that the superintendent plays a minor role in comparison with the school board in the overall shaping of the decision." [5] Our studies tend to modify this conclusion.

In Berkeley, for instance, an aggressive and imaginative superintendent had the foresight and ingenuity to transform a letter written to him by one of his teaching staff into a board-endorsed, widely accepted and quite workable plan for junior high school integration. In New Haven the Superintendent strongly favored integration, participated actively in most if not all Board deliberations, wrote most of the Report, setting out the integration program, and eventually emerged as the focal

5. R. CRAIN, et al., *supra* note 1.

point of the community controversy. In Pasadena the Superintendent actively negotiated with the NAACP over the projected racial composition of the city high schools in order to gain the organization's support of an important bond issue which would permit construction of a third high school. (This in the face of an explicit Board policy not to indulge in "sociological gerrymandering" of districts for purposes of improving racial balance!) Furthermore, in both San Francisco and Chicago the superintendents, who seemed to be quite uncompromising and uncooperative with board members, played a significant role in shaping—or, perhaps more precisely, in thwarting—board decisions on the desegregation issue. In these larger cities, where a superintendent has a large professional staff, and has control of information and expertise, he can virtually monopolize the policy-making function of the board. In San Francisco, for example, the issue remained stalemated for a considerable period simply because the Superintendent refused to make a racial census of the school population. Similarly, in Chicago, the Superintendent refused for some time to take a racial census, withheld information about vacant classrooms, and repeatedly ignored requests for information by various members of the School Board—thereby preventing certain long-standing complaints from coming up for policy consideration.

Seven of eight school boards made use of other important forums, the public hearings and board-appointed committees, in a number of interesting ways. For example, the St. Louis School Board, when confronted with the demands of integrationist groups, quickly appointed a number of liberal integrationists to a blue-ribbon committee which then made a number of expectedly liberal recommendations. These recommendations were then immediately referred to the superintendent's office where each of them was accepted but in a modified form. The Board, with little discussion, adopted these modified proposals at the same meeting they were presented. Of course, neither the integrationists nor their opponents were too satisfied in the resulting compromise, but the Board had maneuvered itself into a strong position. To the integrationists the Board could say it was implementing as strong a desegregation program as the staff believed reasonable and feasible; to their opponents the Board could say it was hardly "knuckling under" to the demands and threats of integrationists since it was implementing a program which fell short of the recommendation of its own blue-ribbon committee. In all likelihood this situation yielded as much change with the least friction

as the situation allowed without unduly antagonizing certain factions of the white community.[6]

IV COURTS AND LITIGATION

In five of the eight cities litigation was commenced in regard to the controversy over school integration: San Francisco, St. Louis, Chicago, Pasadena, and New Haven. Some of these suits were filed by civil rights and other integrationist groups in attempts to enjoin alleged segregationist practices. In St. Louis there was a suit by the Board of Education, seeking a declaratory judgment on the legality of the busing program and an injunction regarding the demonstrations over busing. In New Haven a suit was filed to enjoin implementation of a board-adopted plan to promote racial balance in the schools.

In *San Francisco* the NAACP filed a suit over the Board's zoning of the proposed Central Junior High School, though in the petition it alleged that the San Francisco school system was illegally segregated. After several months the plaintiffs allowed this suit to be dismissed for lack of prosecution, so no court ever acted upon it.

In *St. Louis* two suits were brought: one was filed by the NAACP in behalf of several pupils against the busing program and other practices followed by the Board, alleging that they were instances of unconstitutional and illegal racial segregation; also, a suit was filed by the School Board, seeking a declaratory judgment on this point.

Chicago also had two suits, both initiated by integrationists against the Superintendent and Board. Both produced a great deal of controversy and a flurry of activity. In the first suit the court issued an order to compel the Superintendent to implement a new Board transfer policy. Superintendent Willis tendered his resignation following the court order, but was quickly asked to remain by the Board, after they rescinded their transfer policy which had been the subject of the suit. The other Chicago suit—again filed in behalf of Negro parents and their children—alleged a number of discriminatory practices in the Chicago school system, and here a district judge took an active role in effecting an out-of-court settlement. He was successful in getting the Board and the Negro parents

6. Eventually the St. Louis Board took a strong public stand for integration.

to agree to an out-of-court settlement, which resulted in the Hauser study and Report. But after the publication of the Report, which documented extensively the racial problems of the city schools, litigation was again initiated by Negro parents who claimed that the Board should have begun action on the problems cited in the Report. As of summer 1967, this suit was still on the books, although no action has taken place. While it appears that litigation precipitated some activity and policy statements, no integration in Chicago appeared to result from them.

Pasadena was the other city whose school board was the subject of a suit alleging discriminatory practices, and was the only instance of litigation resulting in a higher court ruling. Two years after the initial petition was filed, the California supreme court, reversing a lower court decision, held that ". . . the right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause." [7] However, no direct changes in Pasadena resulted from this decision; Jay Jackson, the plaintiff, had since been promoted into senior high school, and the Board continued to ignore the high court ruling.

In contrast to these several suits by integrationists was the *New Haven* case, where opponents as taxpayers and affected students filed suit to enjoin the Board's race-conscious program to improve racial balance in the schools. In upholding the Board's plans to reduce racial imbalance, the court held that the Board had not exceeded its authority.

It was seen that in no case did a court decision directly result in a declaration that an existing or proposed program was illegal, either because race was considered or because it was not considered by the board and an alteration in a board's practices. In fact, in only three of the several suits initially filed was there even a court decision.

However, to say that *court decisions* did *not* play a crucial role in any of the outcomes is not to say that litigation and legal issues are insignificant. Indeed, they played quite an important part—directly or by threat of legal action—in several of the controversies. It was seen that the threat of litigation was employed by civil rights organizations in at least three instances (Chicago, San Francisco, and St. Louis) and that in one (Chicago) it resulted in the out-of-court decision to undertake the Hauser

7. Jackson v. Board of Education, 59 Cal. 2d 876, 877.

study. In the other two cities (St. Louis and San Francisco) it was used as an effective bargaining device when litigation was commenced.

However, the major impact of the law is much more difficult to assess since the major effect seemed to result from ambiguous rules or the consequences of no rules. It was problems of this nature which virtually every city faced when initially confronted with demands to eliminate de facto segregation. In several cities this problem of racial classification became the dominant issue, virtually halting all other considerations.

The issue of racial classification is a complex and intriguing problem. In its simplest form it raises the questions of whether racial classification for any purpose—benign or malign—is morally acceptable and/or constitutional, and whether it is within the scope of power of local boards of education. Most often these questions arise in the form of assertions by opponents of integration that government ought not to use race as a classification. There are, of course, a variety of nuances to this argument, ranging from simple assertions that boards of education may not get involved or have no delegated power to "experiment" by manipulating the "natural racial balances" in schools, to the argument that it is just as unconstitutional for public officials to undertake "reverse discrimination" (*i.e.*, consciously use race as a criterion for benign purposes) as it is for them to purposefully segregate.[8] Countering these positions are a variety of equally developed arguments, ranging from a simple procedural argument that boards of education do or can have powers delegated to them to undertake the task of manipulating racial balances in the schools (*e.g.*, it is a reasonable educational function) to more general assertions that there is a constitutional obligation to minimize racial imbalance in the public schools. We saw some of these arguments in our case studies.[9]

Particularly in Pasadena, the issue of racial classification was prominent, and in fact consideration of policy never got beyond it. The School Board majority continually reiterated its lack of authority to consider benign racial classification, though ironically enough it was the *Jackson* case in Pasadena that produced the only upper court ruling. This decision by the California supreme court squarely tackled the question, suggesting that not only could local school boards consider race for purposes of improving racial balance, but that there was a general

8 Tometz v. Waukegan City School District, Docket No. 40292, Agenda 237.

9. Jackson v. Board of Education, 59 Cal. 2d 876 (1963).

state policy to do so.[10] But even after this ruling by the California supreme court, the local board and its counsel continued to maintain their initial arguments.

In San Francisco, too, racial classification became a significant issue, side-tracking debate on other considerations. Here an intransigent Superintendent initially argued that there should be "no consciousness of racial distribution" and then succeeded in preventing even a preliminary consideration—a racial census in the public schools—for over two years. Though he belatedly conducted a racial census, virtually no change toward a policy of affirmative integration has been initiated to date. Such a notion of racial classification still seems unacceptable to the dominant elements in the community and the Board. Chicago also was a center of controversy regarding racial classification for benign purposes. Though this precise point was not the subject of litigation, it was heatedly debated by the Board members and Superintendent Willis, who argued for a "racially neutral" policy.

However, toward the end of the interval covered in our studies, the two Illinois cities became subject to a legislatively adopted state policy that local school boards had an obligation to minimize racial imbalance in the schools. Passed by the Illinois State Legislature in 1965, the Armstrong Act specified that, " . . . the board shall change or revise existing units or create new units in a manner which will take into consideration the prevention of segregation and the elimination of separation of children in public schools because of race, color or nationality." [11]

In Evanston the Armstrong Act was cited by some school officials and proponents of integration as a rationale and source of obligation for increased affirmative integration, and is perhaps one of the reasons for the Evanston Board's going beyond initial expectations in its efforts to overcome de facto segregation. On June 2, 1967, the Illinois supreme court held the above mentioned provision of the Armstrong Act to be unconstitutional on grounds similar to those briefly discussed at the beginning of this section. Speaking for a majority of five, Mr. Justice Hause held that "Although today a court might rule that the state is required to consider race in a benign way, tomorrow this might well prove a precedent for a much less happy result." And further, "We hold that programs to create equal educational opportunities must under

10. Hobson v. Hansen, opinion of J. Skelly Wright, D.C.D.C.

11. Illinois School Code (Armstrong Act), §10-21.3.

the equal protection clause of the fourteenth amendment . . . be administered without regard to race."[12] While the eventual outcome of this decision is not at present clear, it clearly adds fuel to the fire.

THE POTENTIAL FUNCTION OF LAW

While it is difficult to determine with precision the effects and consequences of laws and court action, these case studies clearly suggest that court action and inaction, as well as statutes, can and do have a significant effect with regard to the outcome of social policy. From our studies two general effects can be distinguished: (1) the ambiguity of law regarding the authority to use racial classification serves as an issue-confounding device employed by opponents of increased integration (as seen initially in Chicago and Pasadena and San Francisco);[13] and (2) a clearly articulated public policy[14] *allowing* or *obligating* (in some manner) a local board to undertake a race conscious policy to reduce de facto segregation can be used as a source of support and as a rationale for local proponents of integration. It was suggested that this might have been the case in Evanston after the passage of the Armstrong Act.[15]

While it was seen that law tended to serve these two opposite functions, without a doubt it performed the former—an issue-confounding device—more successfully. The question of the use of racial classification cropped up time and again, and it is fairly obvious in many of the situations that it was not a technical concern for a subtle and intriguing legal rule that motivated such attention. Rather, quite often, it served to maintain the status quo in most cities, which quite simply meant the perpetuation of nearly completely segregated public schools. It is ironic that while the general intentions and purposes of recent court integration laws have condemned racial segregation, and sought to overcome it, that they also have the indirect effect of contributing to the maintenance of segregation.

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12. Tometz v. Waukegan City School District, Docket No. 40292, Agenda 237.

13. This has the effect of maintaining the segregated status quo.

14. Statute, court order, or administrative directive—probably in that order of effectiveness.

15. Perhaps the best illustration of this type effect of the law was seen after the passage of the Civil Rights Act of 1964. It gave proponents grounds for arguing for implementation, as well as provided a rationale for capitulation on the part of some opponents, who for a variety of "political reasons" had in the past opposed integration (*e.g.*, "We don't like it, but have no choice but to comply with the law").

Our own values lead us to conclude that minimal constitutional rules be stated and laws be enacted so there is no arguable question that school boards can—if they so desire—take race into consideration for the purposes of increasing racial heterogeneity. This would eliminate one source of argument by those who insist that there is no authority for boards to act, or that such action is either beyond the authority of the local boards to consider or is simply unconstitutional. Stronger policies, enacted by state legislatures or the Supreme Court might hold that school boards have a statutory and/or constitutional obligation to reduce racial imbalance in the public schools. While this might be the most desirable from the point of view of many integrationists, for political and legal reasons it hardly seems to be imminent in the foreseeable future. To repeat the main argument, however, the ambiguity of the constitutional and legal status of benign racial classification has the effect of confounding the issue and, as such, serves as one of the devices of inaction by opponents of integration. At a minimum this ambiguity should be eliminated. While legal doctrine cannot alone secure integration, it should at all events not become a significant barrier to this objective.