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Christine H. Rossell

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# THE CONVERGENCE OF BLACK AND WHITE ATTITUDES ON SCHOOL DESEGREGATION ISSUES DURING THE FOUR DECADE EVOLUTION OF THE PLANS

CHRISTINE H. ROSSELL\*

## I. INTRODUCTION

Few court decisions are more revered by intellectuals than *Brown v. Board of Education*.<sup>1</sup> As J. Harvie Wilkinson, a leading conservative in the Reagan Administration's Justice Department, eloquently phrased it: "No single decision has had more moral force than *Brown*; few struggles have been morally more significant than the one for racial integration of American life."<sup>2</sup> *Brown's* impact extended far beyond schools. Civil rights advocates have employed the 1954 decision to desegregate not only schools, but neighborhoods, public facilities, and private organizations.<sup>3</sup> The goal was the elimination of racial discrimination and state-sanctioned segregation in American life.

However, the standard for determining racial discrimination and an appropriate remedy continued to evolve over the next four decades along with public attitudes toward these issues. As shown in Figure 1, from 1954 to 1968, the criterion for convicting a school district of intentional segregation was the existence of government-mandated segregation. The only remedy was the requirement that states rescind their segregation laws and that school districts stop assigning children to schools solely on the basis of their race. Indeed, the original *Brown* decision required only that official discrimination on the basis of race be eliminated. Moreover, neighborhood schools were considered a legitimate desegregation tool by the Supreme Court in *Brown II*<sup>4</sup>

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\* Professor, Department of Political Science, Boston University.

1. 347 U.S. 483 (1954).

2. J. HARVIE WILKINSON, FROM BROWN TO BAKKE: THE SUPREME COURT AND SCHOOL INTEGRATION 62 (1979).

3. *Id.* at 61-64.

4. 349 U.S. 294 (1955).

**FIGURE 1. HISTORICAL STAGES OF COURT DETERMINED SEGREGATION: VIOLATION STANDARDS AND REMEDIES**

	ANTI-DISCRIMINATION ERA 1954-1968	AFFIRMATIVE ACTION ERA 1968-1981      1981-present	
VIOLATION STANDARD	Discrimination and segregation by law	Discrimination and/or failure to produce desegregated schools when (a) prior history of de jure segregation or (b) some board "violations" in drawing zones or locating new schools	
REMEDY REQUIRED	Voluntary: Freedom of Choice; South M to M: North	Mandatory Reassignment	Voluntary or Controlled Choice

when it opined that a permissible remedy would be the "revision of school districts and attendance areas into *compact units* to achieve a system of determining admission to the public schools on a nonracial basis."<sup>5</sup> That same year, a federal district court decision approved a desegregation plan in which "hereafter, except in exceptional circumstances, school children irrespective of race or color shall be required to attend the school in the district in which they reside and that color or race is no element of exceptional circumstances warranting a deviation from this basic principle."<sup>6</sup> The court went on to elaborate that although one of the schools in Topeka was "inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live."<sup>7</sup>

In effect, neighborhood schools were constitutional because they were race neutral. The essence of the dual school system in the South was that even if a black child and a white child lived in the same house, they were required to attend separate

5. *Id.* at 300-01 (emphasis added).

6. *Brown v. Board of Educ.*, 139 F. Supp. 468, 469 (D. Kan. 1955).

7. *Id.* at 470.

schools. Neighborhood schools were thus race neutral because students were assigned to schools on the basis of their residence not their race. Indeed, southerners of the 1950s considered neighborhood schools truly revolutionary and intensely resisted them because they might result in one or more black children attending school with white children.

Desegregation in the South during the 1950s and early 1960s consisted of court-approved "choice" plans that took three forms: (1) pupil placement laws that assigned students to schools on the basis of their race and considered requests for transfers on an individual basis, (2) freedom-of-choice plans that required everyone to choose a school, but allowed them to stay at their formerly one-race school if they chose to (as most of them did), and (3) "incremental desegregation" plans that phased in desegregation by grade and by year. All of these plans were used as delaying tactics to avoid having to implement a truly race neutral assignment policy, including neighborhood schools.<sup>8</sup>

As a result of intimidating tactics, the natural reluctance of black parents to risk their children's physical safety and/or psychological well-being by sending them into a hostile white school, and probably other factors, almost ninety-four percent of southern black students remained in all-black schools in 1965.<sup>9</sup> Consequently, the Office for Civil Rights (OCR) collaborated with the Justice Department in tightening up guidelines for "freedom-of-choice" plans by creating a new requirement that forms must be mailed to parents from school headquarters and could be returned by mail in order to avoid intimidating face-to-face confrontations.<sup>10</sup> Nonetheless, schools in the South remained racially imbalanced.

Intellectuals and the courts believed this imbalance was due solely to coercion of blacks. They simply took for granted that blacks wanted to go to school with whites, even if it meant cross-town busing or other inconveniences. This widespread belief may have contributed to the Supreme Court's 1968 decision in *Green*

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8. See CHRISTINE H. ROSSELL, *THE CARROT OR THE STICK FOR SCHOOL DESEGREGATION POLICY: MAGNET SCHOOLS VS. FORCED BUSING* 4-5 (1990).

9. *Id.* at 5.

10. GARY ORFIELD, *THE RECONSTRUCTION OF SOUTHERN EDUCATION: THE SCHOOLS AND THE 1964 CIVIL RIGHTS ACT* 137 (1969).

*v. County School Board*<sup>11</sup> to mandate racially balanced schools.

Although *Green* is much less well known than *Brown*, current debates over race and schools probably owe their intellectual origins to *Green*, not *Brown*, because it was in *Green* that the Court decided that eliminating de jure racial discrimination was not enough to establish a unitary system, defined as a system in which there were no white schools and no Negro schools, but "just schools."<sup>12</sup> The actual requirement, however, was not "just schools," but schools racially mixed to a greater degree than would be obtained from merely eliminating the dual school system.<sup>13</sup>

The *Green* decision thus marked, as is shown in Figure 1, the end of the period of "nondiscrimination" remedies and the beginning of the period of "affirmative action" remedies. In another sense, *Green* marks the point at which public debates over the principle of integration were largely replaced by public debates over the means of achieving that principle.

*Green* was followed by *Alexander v. Holmes County Board of Education*,<sup>14</sup> which put an end to delayed desegregation plans.<sup>15</sup> Neither *Green* nor *Alexander* specified required plan characteristics. Moreover, neither case specified the degree of integration that would have to be achieved or any deviation that might be allowed in individual cases.

Not until *Swann v. Charlotte-Mecklenburg Board of Education*<sup>16</sup> in 1971 did the Supreme Court specifically address the issue of permissible remedies in a desegregation plan that had already been implemented. The Court held that busing—the transportation of students from one part of the district to another to achieve desegregation—was a permissible tool for dismantling a dual system where "feasible."<sup>17</sup> Although the Court de-

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11. 391 U.S. 430 (1968).

12. *Id.* at 442.

13. New Kent County had in fact dismantled the dual school system: although no whites went to the black school, 15% of the blacks went to the white school, and that number increased every year. *Id.* at 438-41.

14. 396 U.S. 19 (1969).

15. *Id.* at 20 ("The obligation of every school district is to terminate dual school systems at once and operate now and hereafter only unitary schools.").

16. 402 U.S. 1 (1971).

17. *Id.* at 30-31.

clined to provide any specific guidelines for what "feasible" meant, it did state that busing was to be limited by considerations of time and distance that would "either risk the health of the children or significantly impinge on the educational process."<sup>18</sup> One court held that a bus ride could be no longer than forty-five minutes;<sup>19</sup> another limited bus rides to two and one-half hours per day for first and second graders.<sup>20</sup> In 1977 a state court in Los Angeles, California, allowed one way trips in excess of one hour.<sup>21</sup> Civil rights advocates did not bother to ask black parents—the injured parties—whether this remedy was satisfactory, nor did they question the assumption that busing would succeed in achieving more integration than neighborhood schools or voluntary techniques. As a result of these decisions, the public schools of the deep South were substantially integrated between 1970 and 1972 by court orders based almost exclusively on segregation statistics.

Mandatory reassignment plans were also implemented in northern states, particularly in California where a 1968 state law required racial balance of the schools at plus or minus fifteen percentage points of a school district's racial composition.<sup>22</sup> However, even in the few northern states that had state racial balance laws—California, Massachusetts, and New York—the level of desegregation activity was lower than in the South. It was simply not clear that northern districts were obligated to desegregate their schools because the federal court opinions to date applied to states that had at some time operated a dual school system mandated by law.

The issue was somewhat resolved in 1973 when, in *Keyes v. School District No. 1*,<sup>23</sup> the first northern case to reach the Supreme Court, the Court found the requirement of racially bal-

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18. *Id.*

19. *Northcross v. Board of Educ.*, 489 F.2d 15, 16 (6th Cir. 1973), *cert. denied*, 416 U.S. 962 (1974).

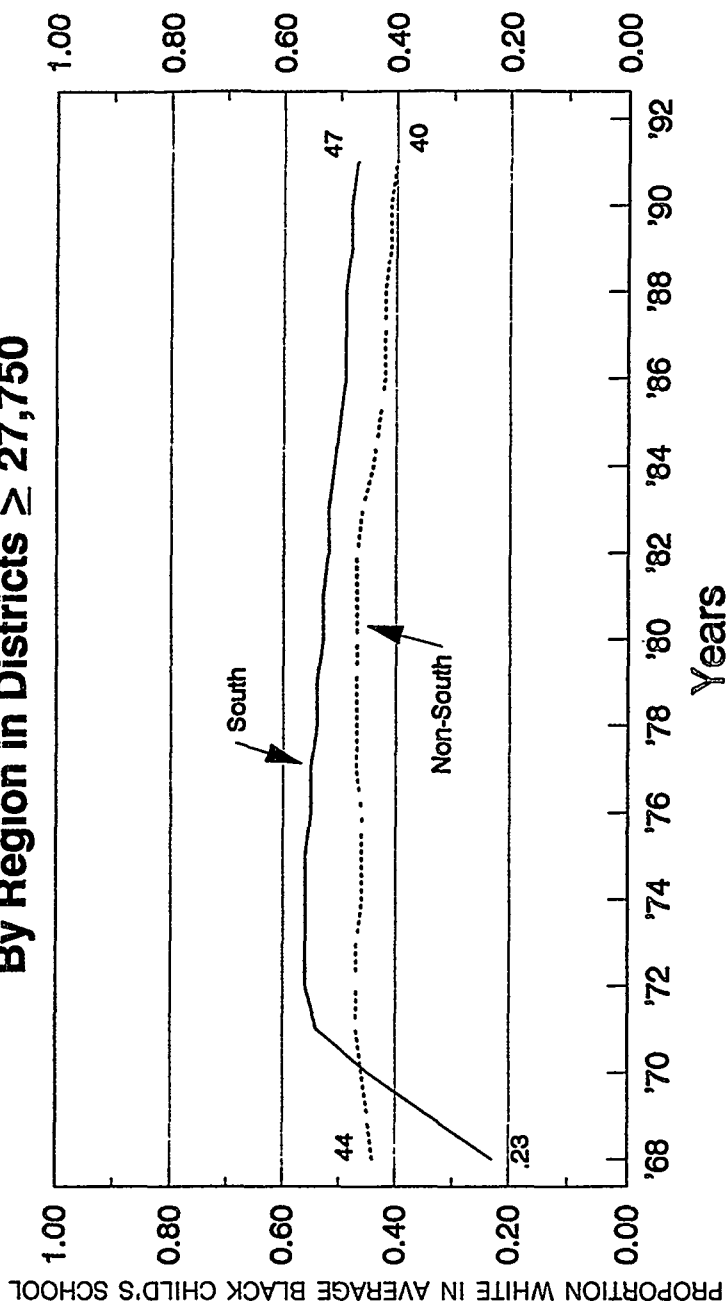
20. *Thompson v. School Bd.*, 363 F. Supp. 458, 461-62 (E.D. Va. 1973), *aff'd*, 498 F.2d 195 (4th Cir. 1974).

21. *Crawford v. Los Angeles Bd. of Educ.* (Ca. Super. Ct. 1977), (unpublished opinion).

22. See ROSSELL, *supra* note 8, at 30.

23. 413 U.S. 189 (1973).

**Figure 3**  
**Trends in Interracial Exposure**  
**By Region in Districts  $\geq 27,750$**



Source: National random sample of 600 school districts—enrollment data from OCR annual survey '68-'86, CCD annual survey '87-'91

anced schools applicable to a school district that had never had a law mandating segregated schools.<sup>24</sup> De jure segregation was defined, as shown in Figure 1, in *Keyes* and later cases, as encompassing almost any action a school board might take that resulted in racially imbalanced schools. Such actions included failure to desegregate when an opportunity arose in a district that had been found guilty of other intentionally segregative acts.<sup>25</sup> The *Keyes* decision ushered in the era of mandatory reassignment or "forced busing" plans throughout the northern states—three years after their advent in the South.

Although the violation standard continued to require an affirmative act, the required remedy began to change by the late 1970s. In 1975 and 1976, four years prior to the Reagan administration, three separate federal district courts approved plans in Houston (1975), Milwaukee (1976), and Buffalo (1976) that relied primarily on incentives in the form of magnet schools to motivate voluntary transfers.<sup>26</sup> Thus began the period of court approved voluntary magnet school plans. By the 1980s, the courts had gone even further in abandoning mandatory reassignment by allowing numerous school districts to dismantle mandatory plans and replace them with voluntary magnet school plans.

The effect of dismantling the dual school system and of four decades of desegregation activity can be seen in Figure 2 where racial imbalance in the South<sup>27</sup> has declined from 73 in 1968<sup>28</sup>

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24. *Id.* at 198-200.

25. *Id.* at 193, 196.

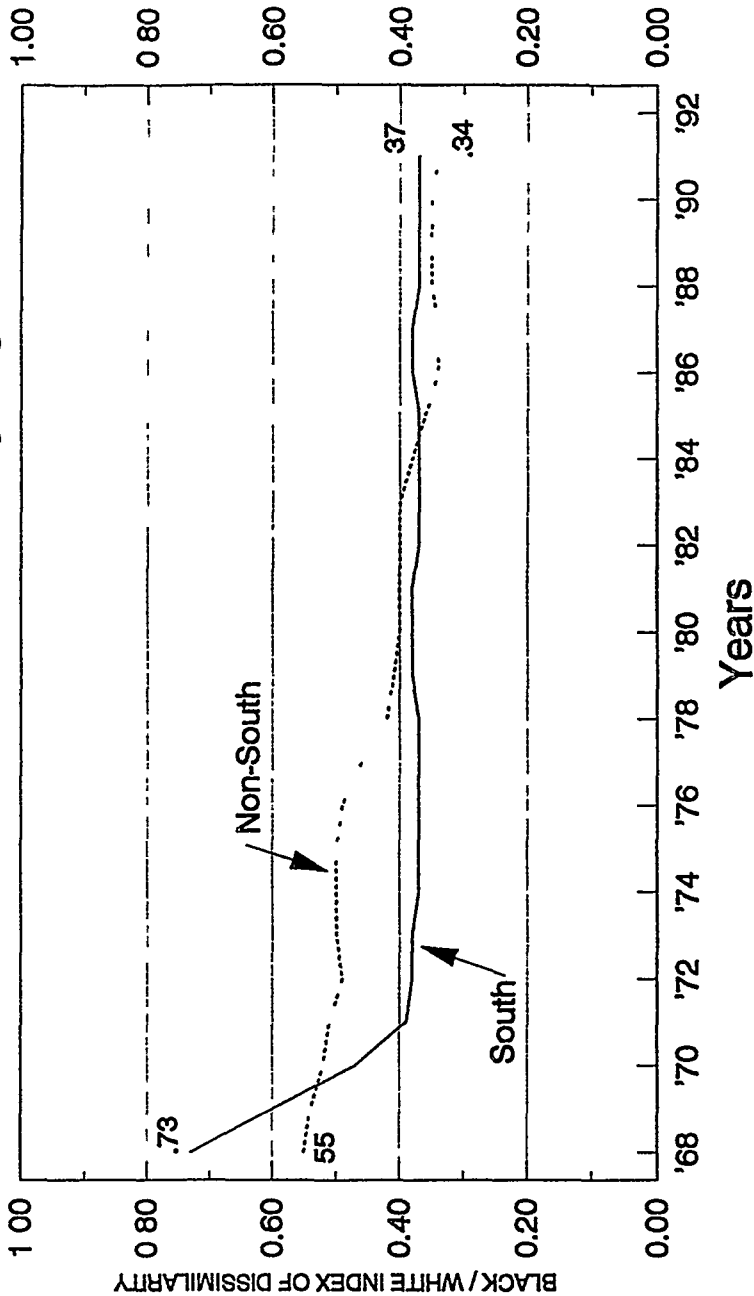
26. See generally ROSSELL, *supra* note 8, at 30.

27. The definition of South in this sample is the U.S. Department of Education definition: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

28. The chart begins with 1968 because that is the first year that enrollment statistics by race were kept in national data archives. These data come from the Office for Civil Rights annual survey through 1986 and after that from the Common Core of Data collected by the Department of Education. The sample is a stratified random sample of school districts in the U.S. with at least two schools with one grade level in common. Of the approximately 16,962 school districts identified in the 1989/90 Common Core of Data Nonfiscal Survey File, 6392 districts met this criterion. This sample was stratified on three dimensions a) district size, b) racial composition, and c) receipt of Magnet Schools Assistance Act funding. Districts were randomly selected from these strata to produce a total random sample of 600 school



Figure 2  
Trends in Racial Imbalance By Region



Source: National random sample of 600 school districts—enrollment data from OCR annual survey '68-'86, CCD annual survey '87-'91

to .37 in 1991 and, outside the South, from .55 in 1968 to .34 in 1991. It is obvious from the 1968 southern index, however, that even before implementation of the first mandatory reassignment plan in 1970, the dual system had been largely dismantled.

The index of dissimilarity is an index that ranges from 0.0—perfect racial balance—to 1.0—complete segregation. If the dual school system had still been in place in every district in the South, the index of dissimilarity would have been 1.0—that is, all blacks would have been in schools inhabited only by blacks and all whites would have been in schools inhabited only by whites. We can see, however, that this is not the case. The freedom-of-choice plans and neighborhood attendance zones that had been implemented throughout the South from 1954 through 1970 managed to reduce black-white racial imbalance by nearly thirty points—almost as great as the thirty-six point reduction that subsequently occurred from 1968 to 1991 with the advent of extensive desegregation plans.<sup>29</sup>

Racial imbalance in the North in 1968 was almost eighteen points lower than in the South and fell an additional twenty-one points until 1991 when the northern states were once again more balanced than the South.<sup>30</sup> These data indicate that nationally there is not much racial imbalance—an index of .35 is approximately what can be expected from a court ordered desegregation plan that allows schools some leeway, typically up to plus or minus fifteen or twenty percentage points difference in racial composition from the district's racial composition.

Figure 3 shows trends in interracial exposure by region in the

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districts. Case weights and student weights were given to each case to reflect their probability of being sampled thus enabling us to generalize to the universe of school districts with at least two schools. Student weights are used in Figure 1 to allow us to generalize to public school students in the U.S. These data were assembled as part of a U.S. Department of Education research contract from 1992-94, with Christine Rossell and David Armor as co-principal investigators and Lauri Steel and Roger Levine as project director and assistant project director. Christine H. Rossell & David Armor, U.S. Dep't of Educ., *Magnet Schools and Desegregation, Quality, and Choice* (1992-94) (unpublished manuscript, on file with author).

29. See ROSSELL, *supra* note 8, at 209-11.

30. Although it is a common assumption in the school desegregation literature, see GARY ORFIELD, *MUST WE BUS? SEGREGATED SCHOOLS AND NATIONAL POLICY* (1978), that there is more school integration in the South than in the North, this national random sample shows this assumption to be true only for the decade of the 1970s.

largest school districts in the U.S.<sup>31</sup> Racial imbalance, unlike interracial exposure, simply measures the extent to which each school deviates from the school district's racial composition. If in a school district with ten schools there are 300 minority students and one white in each of the ten schools, that school district will be perfectly racially balanced according to the index of dissimilarity because each school exactly reflects the school district's racial composition of 99.7% minority. Courts use a racial balance measure that only requires that each school reflect the racial composition of the district within fifteen or twenty percentage points. These racial balance measures share the limitations of the dissimilarity index: it does not matter how few whites there are in a district so long as they are equally distributed among schools.<sup>32</sup> This measure does not reflect, however, the prevailing public perception of integration.

The interracial exposure index, by contrast, does reflect a common sense perception of integration. The above hypothetical school district, although perfectly racially balanced, would have very little interracial exposure—less than one percent white in the average minority child's school. Not only does interracial exposure better reflect the extent of actual integration, but it also provides a better evaluation of the effectiveness of different desegregation plans because it reflects white flight much better than a racial imbalance measure. If the above hypothetical school district had originally had 1,000 whites pre-desegregation, half of them in schools with minorities, but post-desegregation only one in each school, the index of interracial exposure would accurately show more interracial exposure before desegregation than after. A racial balance measure, however, would find the district better off after desegregation, even after losing almost all of its whites, because the remaining few would now be more evenly distributed among schools than before.<sup>33</sup> Interracial ex-

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31. This enrollment criterion for defining a very large school district was adopted in order to identify the 150 largest school districts that are sampled with certainty by the Office for Civil Rights in their elementary and secondary enrollment surveys.

32. See ROSSELL, *supra* note 8, at 29-31.

33. I have written extensively on the superiority of interracial exposure in assessing the effectiveness of alternative desegregation plans. See ROSSELL, *supra* note 8; Robert L. Crain & Christine H. Rossell, *Catholic Schools and Racial Segregation*, in

posure is thus a more accurate measure of current level of integration and the impact of different kinds of plans.

Figure 3 shows trends similar to Figure 2. The dual school system had, on average, been eliminated in the South by 1968 because the percentage of white students in the average minority child's school, even in the largest districts, was twenty-three percent, not zero. However, the advent of extensive desegregation plans in 1970 in the South increased interracial exposure by twenty-five points to its highest point of .56 in 1972, a level that by 1991 had declined by nine points. The large districts of the South, however, still had more interracial exposure than those of the North.

Because no northern school district had a dual school system in the 20th century, we do not see, as in the South, the significant increase in interracial exposure in the late 1960s and early 1970s. Moreover, northern school districts that implemented mandatory reassignment plans actually had, on average, less interracial exposure than before the plan, within a decade or two of implementation.<sup>34</sup> The trends shown in Figure 3 are thus fairly typical: large northern school districts began with a higher level of integration in 1968 (forty-four percent white in the average black child's school) than they had after two and one-half decades of desegregation activity (forty percent white in the average minority child's school). The declining percentage of whites is due primarily to (1) white flight from desegregation, (2) sunbelt migration, (3) flight to the suburbs, and (4) the declining

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PUBLIC VALUES, PRIVATE SCHOOLS 184 (Neal Devins ed. 1989); Christine H. Rossell, *Controlled Choice Desegregation Plans: Not Enough Choice, Too Much Control?*, URB. AFF. REV. (formerly URB. AFF. QUART.) (forthcoming 1995) [hereinafter Rossell, *Controlled Choice*]; Christine H. Rossell, *The Progeny of Brown: From the Old Freedom of Choice to the New Freedom of Choice in Four Decades*, URB. GEOGRAPHY Vol. 15 No. 5 (1994) (special issue commemorating *Brown*) [hereinafter *Progeny of Brown*]; Christine H. Rossell, *The Carrot or the Stick for School Desegregation Policy?*, 25 URB. AFF. QUART. 474 (1990) [hereinafter Rossell, *Carrot or Stick*]; Christine H. Rossell, *How Effective Are Voluntary Plans with Magnet Schools?*, 10 EDUC. EVALUATION & POLY ANALYSIS 325 (1989); Christine H. Rossell, *Estimating the Net Benefit of School Desegregation Reassignments*, 7 EDUC. EVALUATION & POLY ANALYSIS 217 (1985). In addition, I have used interracial exposure to evaluate alternative desegregation plans in numerous reports to the courts in desegregation cases.

34. In the national sample described *supra* note 28, the decline was from .36 in 1968 to .34 in 1991. See also Rossell, *Progeny of Brown*, *supra* note 33.

birthrate—which affects all ethnic and racial groups but is greatest for whites.<sup>35</sup>

These data indicate that in the largest districts of the North and South there are between forty and forty-seven percent white in the average black child's school, whereas the country is eighty percent white. These statistics do not reflect the optimistic image shown in Figure 2, but neither do they depict a nationally segregated school system.

## II. CLASSIFYING DESEGREGATION PLANS BY THEIR EFFECTS ON WHITE BEHAVIOR

The desegregation trends demonstrated by Figures 2 and 3 were produced by a variety of desegregation plans, as well as by no formal plan at all. These plans can be classified as voluntary or mandatory plans, mandatory reassignment plans, voluntary desegregation plans, and controlled choice plans.

### A. *Voluntary and Mandatory Plans*

The broadest and most important dimension is the voluntary versus mandatory distinction shown in Figure 4, which refers to the extent of parental choice over school assignment and whether parents have a right to keep their child in their neighborhood school. Note that this classification does *not* refer to the source of the order to desegregate, that is, a court or school board.

As shown in Figure 4, both the courts and school boards have ordered all three types of desegregation plans—voluntary, mandatory, and “controlled choice” (the middle row of Figure 4, which involves parental choice but a mandatory back-up if parents do not make an integrative choice). The research indicates that the degree of white flight and protest is primarily a function, not of the source of the order (court or board), but of the

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35. See Mary Jordan, *Segregation in Schools Increases*, WASH. POST, Dec. 14, 1993, at A1.

FIGURE 4: CLASSIFICATION OF DESEGREGATION PLANS

		SOURCE OF ORDER TO IMPLEMENT	
		COURT/OCR	BOARD
Parental Choice Whether Student Reassigned From Neighborhood School	YES	Voluntary: Magnet-Voluntary Freedom of Choice M to M  1	Voluntary: Magnet-Voluntary M to M  2
	NO	Controlled Choice  3	Controlled Choice  4
	NO	Mandatory Reassignment: Pairing and Clustering Rezoning  5	Mandatory Reassignment: Pairing and Clustering Rezoning  6

GEOGRAPHIC SCOPE: METROPOLITAN OR NON-METROPOLITAN

extent to which parents are allowed to stay at their neighborhood school if they desire (the "Yes" row in Figure 4) or are assigned across town to an opposite race school they did not choose (the "No" rows in Figure 4).<sup>36</sup> Little or no protest and white

36. JAMES S. COLEMAN, ET AL., *TRENDS IN SEGREGATION 1968-1973* (1975); see David J. Armor, *School Busing: A Time for Change*, in *ELIMINATING RACISM* (P.A. Katz & D.A. Taylor eds., 1988); David J. Armor, *White Flight and the Future of Desegregation*, in *SCHOOL DESEGREGATION: PAST PRESENT AND FUTURE* 187 (Walter G. Stephan & Joseph R. Feagan eds. 1980); James S. Coleman, *Population Stability and Equal Rights*, 14 *SOC'Y* 34 (1977); Rossell, *Carrot or Stick*, *supra* note 33, at 138-48; ROSSELL, *supra* note 8; Christine Rossell, *Is it Busing or the Blacks?*, 24 *URB. AFF. QUART.* 138 (1988) [hereinafter Rossell, *Busing*]; Christine Rossell, *Applied*

flight accompanying "forced busing" results from the fact that the plan is court-ordered because when we observe court-ordered plans of the 1970s that allow parents to remain in their neighborhood school<sup>37</sup> (cell 1 of Figure 4) we see very little "white flight" and virtually no protest.<sup>38</sup>

All of these plans can be either metropolitan or non-metropolitan in scope. Despite the inclusion of the suburbs in a metropolitan desegregation plan, mandatory reassignment plans in metropolitan districts also produce significant white flight although not as much as the identical plan would produce in a central city school district.<sup>39</sup>

### *B. Mandatory Reassignment Plans*

Each of these plans—voluntary, controlled choice, and mandatory—can be further classified. Mandatory reassignment plans can be classified first as either metropolitan or non-metropolitan, then according to whether a grade structure change is employed (called pairing or clustering) in individual schools, and finally as to whether the new school attendance zones after desegregation are contiguous or non-contiguous.

In a typical pairing of a K-5 black school and a K-5 white school all students would be required to go to the white school for grades K to 2 and the black school for grades 3 to 5. In a typical three school clustering all students would be required to go to one school for grades K and 1, another school for grades 2 and 3, and a third school for grades 4 and 5. Sometimes, school districts also employ pairing at the secondary level. Some stu-

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*Social Science Research*, 12 J. LEGAL STUD. 69-107 (1983); Farley Reynolds et al., *School Desegregation and White Flight: An Investigation of Competing Models and Their Discrepant Findings*, 53 SOC. OF EDUC. 123-39 (1980); James S. Coleman, et al., *Recent Trends in School Integration* (Apr. 1975) (paper presented at the annual meeting of the Am. Educ. Research Ass'n); Finis Welch & Audrey Light, *New Evidence on School Desegregation* (1987) (report prepared for the United States Commission on Civil Rights); Christine Rossell, *Assessing the Unintended Impacts of Public Policy: School Desegregation & Resegregation* (1978) (report to the National Institute of Education) [hereinafter Rossell, Report to Nat'l Inst. Educ.].

37. These plans include those of Cincinnati, Houston, Portland, Milwaukee, Buffalo, Savannah, San Bernardino, San Diego, and Tacoma.

38. Rossell, *Carrot or Stick*, *supra* note 33, at 474-99; see ROSELL, *supra* note 8.

39. See, e.g., ROSELL, *supra* note 8, at 193.

dents thus attend as many as eight or ten schools in their school career.

Pairing and clustering plans can have non-contiguous school zones, as is generally the case with medium and large school districts (if there is no grade change it is called satellite zoning) or contiguous school zones, as often occurs in small districts. Usually a plan with non-contiguous zones has longer busing distances and more white flight.<sup>40</sup> In many small southern school districts, the pairing of opposite race schools often involved adjacent schools with short busing distances.

Any of these mandatory reassignment plans can have magnet schools. The Boston satellite zoning plan, for example, had twenty-two magnet schools.<sup>41</sup> Magnet schools in a mandatory reassignment plan may reduce white flight compared to the same plan without magnets, but the difference is not statistically significant.<sup>42</sup>

### C. *Voluntary Desegregation Plans*

Voluntary desegregation plans allow children to choose to remain in their neighborhood schools or transfer out of their neighborhood if there is space at the receiving school and the transfer improves racial balance. The earliest voluntary plans in the North were "stand-alone" majority to minority (M to M) transfer programs, and in the South, school districts implemented freedom-of-choice plans, few of which provided free transportation.

Voluntary plans can be metropolitan or non-metropolitan. Unlike mandatory reassignment plans, however, the districts participating in a metropolitan voluntary plan retain their independent political identities. Voluntary plans can be further classified in terms of whether contiguous attendance zones are modified in the implementation year and whether there are incen-

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40. Rossell, *Busing*, *supra* note 36.

41. Indeed, the failure to distinguish magnet schools that are part of a mandatory reassignment plan from those that are part of a voluntary plan has led to some confusion regarding their effectiveness as desegregation tools and in reducing white flight.

42. Rossell & Armor, *supra* note 28, at ch. 6.



tives for motivating voluntary opposite race transfers (typically in the form of magnet schools).

Voluntary plans with magnet incentives are distinguished from mandatory reassignment and controlled choice plans by the fact that every student receives an assignment to their neighborhood school and can remain in that school if they so choose, although in the implementation year some contiguous rezoning may occur. The incentives for voluntary transfers are free transportation and magnet schools with specialized curricula, reduced class size, and extra resource teachers. Racial criteria are imposed on student transfers so that usually only those that have a desegregative impact on the receiving school (and often the sending school) are allowed. Typically the options to transfer also include an M to M program where any student in the school district can transfer from any school in which his or her race is in the majority to any school in which his or her race is in the minority.<sup>43</sup> In general, only minority students participate in the M to M program because, even today, whites will not voluntarily transfer to schools in minority neighborhoods without an incentive in the form of a magnet program.<sup>44</sup>

#### *D. Controlled Choice Plans*

Controlled choice is the third of the three basic types of desegregation plans. These plans came into existence in the early 1980s as mandatory reassignment plans fell out of favor with the courts, policymakers, and minority parents. The academics and policymakers who embraced controlled choice<sup>45</sup> were those who remained uneasy over the freedom parents had to remain in their neighborhood school under voluntary plans. Controlled choice thus represents a compromise desegregation remedy that

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43. Some school districts, particularly those that are predominantly of one race, use as their standard whether a student's race is above the district percentage. Similarly the standard for the receiving school is whether a student's race is below the district percentage.

44. See Rossell, *Carrot or Stick*, *supra* note 33; see also ROSSELL, *supra* note 8.

45. See Michael J. Alves & Charles V. Willie, *Controlled Choice Assignments: A New and More Effective Approach to School Desegregation*, 19 URB. REV. 67 (1987); C. Glenn, *Controlled Choice in Massachusetts Public Schools*, PUB. INTEREST, Spring, 1991, at 88, 103.

is partway between mandatory reassignment plans that reassign everyone and completely voluntary plans that allow students to choose to remain at their neighborhood school.

The basic foundation of all controlled choice desegregation plans is that at least some parents are *required* to rank order a number of schools in the school system in order of preference and no one is guaranteed their neighborhood school. The school administration, while trying to give parents their first choice school, reserves the right to assign students to any school (typically one where their attendance will satisfy racial balance requirements).

In its pure form, a controlled choice plan has no school attendance zones and no magnets. Because no child has a neighborhood school, all parents new to the district or changing schools are asked to choose a school from among those in the system. Once enrolled, however, a student is usually allowed to stay at a school unless they request a transfer or graduate (as when they move from elementary to junior high to senior high). From ten to thirty percent of students do not receive their first choice school and, more importantly, many parents refuse to stick around to see if they receive a good school assignment in the lottery. Thus, these plans produce significant white flight.<sup>46</sup>

Magnet schools are not intended to be included in the pure controlled choice plans because they are viewed as elitist and theoretically unnecessary. In a controlled choice plan *all* schools are competing against each other and presumably developing their own reputation for excellence. Most controlled choice plans, however, currently include magnet schools.

Some school districts implementing a desegregation plan for the first time, most notably San Jose, California and Yonkers, New York, have adopted a variation on pure controlled choice (something called enrollment capping) in which neighborhood school zones are retained. The purpose of these attendance zones, however, is to give the students living in them a greater probability (though not a guarantee) of attending the school in that zone if it is their first choice.

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46. See Rossell & Armor, *supra* note 28, at ch. 6; Rossell, *Controlled Choice*, *supra* note 33.

The voluntary and controlled choice plans are virtually the only new plans implemented in the last decade. Indeed, since 1981, only two new mandatory reassignment plans, both in Mississippi, have been ordered by courts.<sup>47</sup> Thus, as shown in Figure 1, segregation remedies have come almost full circle. Although courts considered voluntary plans implemented after *Brown* ineffective because no whites ever transferred to black schools—prompting them to approve only mandatory reassignment plans from 1968 to 1975—these courts did occasionally point out that voluntary plans were not *per se* unconstitutional and were to be evaluated in terms of their results.<sup>48</sup> Where freedom-of-choice offered a *real* promise of achieving a unitary, nonracial system, there was no objection to its implementation. What has changed in the years since *Swann*<sup>49</sup> is the willingness of the courts to entertain the possibility that voluntary plans might work better than mandatory plans. This willingness to approve voluntary plans is in part a response to the “costs” of mandatory reassignment plans described above, as well as to the attitudes of black and white parents described below

### III. ATTITUDES TOWARD DESEGREGATION

Most people now agree that white attitudes toward desegregation strategies, like white behavioral response, appear to be influenced by two characteristics: the extent of parental choice and the right to remain at one's neighborhood school.<sup>50</sup> The plaintiffs arguing on behalf of mandatory reassignment plans, however, have assumed that these issues were *not* important to black parents. Indeed, with few exceptions, an almost unquestioned assumption of intellectual commentary and court opinions

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47. Courts ordered the plans in the Hattiesburg School District and the Natchez-Adams School District.

48. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 26 (1971); *Green v. County Sch. Bd.*, 391 U.S. 430, 440 (1968); *Stell v. Board of Educ.*, 724 F. Supp. 1384, 1401 (S.D. Ga. 1988).

49. 402 U.S. at 1.

50. The exceptions to this are Professor Charles Willie, Gary Orfield, and Robert Dentler who have argued in their writing that white flight does not exist or is grossly exaggerated by critics of desegregation. See, e.g., ALVES & WILLIE, *supra* note 45; ORFIELD, *supra* note 10.

in the 1970s was that black parents were demanding the mandatory reassignment plans that forced them out of their neighborhood schools across town to opposite race schools. Few courts questioned the plaintiffs attorneys as to whether black parents really wanted to abandon the race neutral assignment policies of *Brown* for the race conscious assignment policies of *Green* and *Swann*.

### A. Attitudes on Principles

The *Brown* decision was made at a time when, as shown in Figure 5, whites were evenly split on the principle of school integration. Only fifty percent believed that white and black students should go to the same school.<sup>51</sup> By 1963, one year before the Civil Rights Act, a clear majority of whites—sixty-five percent—believed in the principle of integration.<sup>52</sup> By 1982, fully ninety percent of whites believed in the principle of integration.<sup>53</sup> By 1985, this belief had reached its peak of ninety-three percent, causing the National Opinion Research Center (NORC) to stop asking the question because there was so little variation on it.<sup>54</sup>

The data after 1985 shown in Figure 5 and Appendix 1 come from the Armor and Rossell parent surveys in individual districts asking a question identical to that used by the NORC.<sup>55</sup>

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51. The question is, "Do you think white students and black students should go to the same schools or to separate schools?" This question has been asked by the National Opinion Research Center (NORC) at the University of Chicago from 1942 through 1985 in their general social survey. NORC data for 1942 through 1982 were obtained from HOWARD SCHUMAN ET AL., *RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS*, 74-76 (1985). Data for 1984 and 1985 were provided by Tom Smith at the NORC.

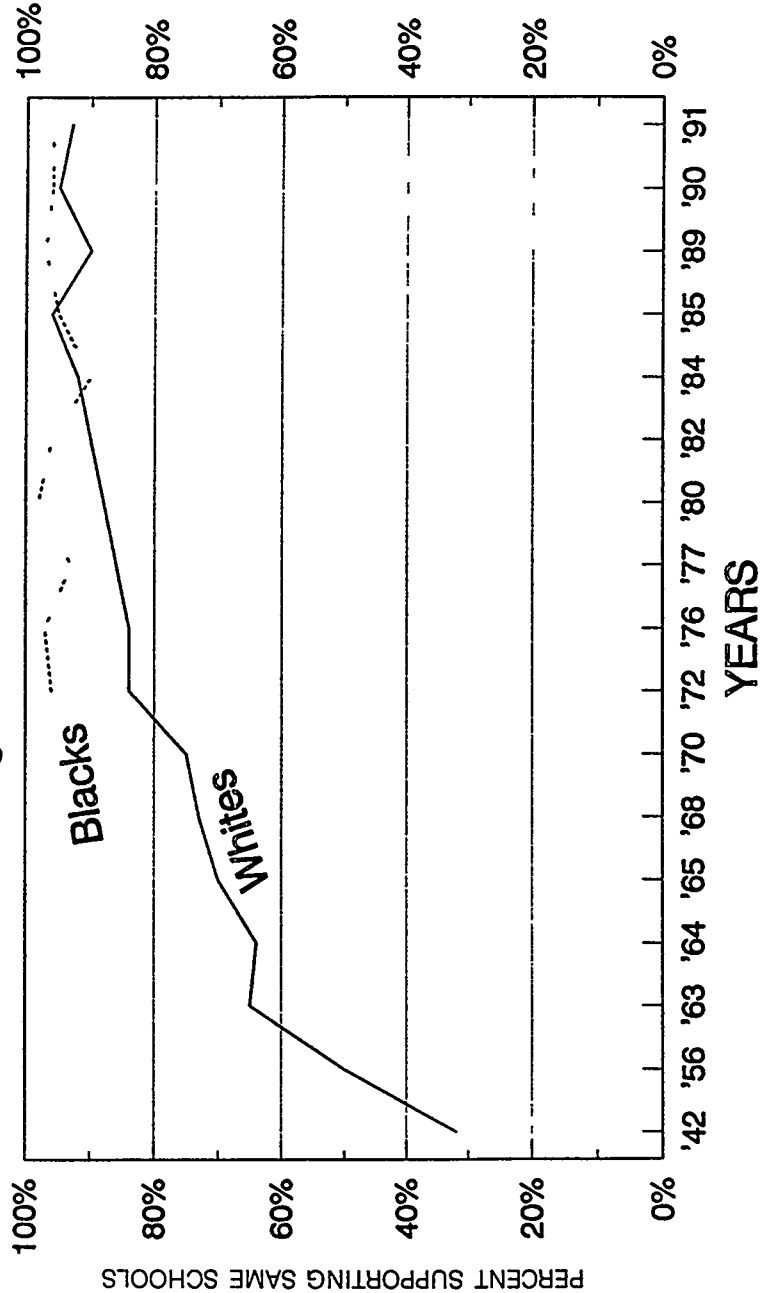
52. SCHUMAN, ET AL., *supra* note 51, at 74.

53. *Id.*

54. Conversation with Tom Smith at the NORC.

55. The districts are DeKalb, Ga. (1990), Topeka, Kan. (1990), Stockton, Cal. (1990), and Knox County, Tenn. (1991). When parents in more than one district participate in interviews in a single year, a weighted average of the district responses is computed. The weighing is done by multiplying the percent support by the number of responses of that race in that survey. David Armor is the original creator of the basic design of the parent survey. The responses, shown in Appendices 1 and 2, were obtained by telephone surveys administered by a professional polling firm with a CATI system. In each school district, parents were randomly selected from

Figure 5  
Percent Supporting White and Black Students  
Attending the Same Schools



Source NORC General Social Survey '42 '85, Armor and Rossell district parent surveys, '89 '91

The data show very similar responses. One could easily believe that only the lunatic fringe—about six percent of the white population—is opposed to the principle of school integration.

Blacks share this attitude. Indeed, the only difference between blacks and whites on this issue is that blacks have always had substantial support for the principle of school integration, at least since they were first asked this question in a national poll in 1972. By 1991, there was only a two percentage point difference between whites and blacks in their attitudes toward school integration. Thus, contrary to dire predictions of a resurgence of segregationist attitudes among blacks and whites, these data show no retreat on this principle.

Figures 6-8 show another question that taps support for the principle of integration, but in a more concrete fashion than the previous one. Figure 6 demonstrates that although in 1959 more than seventy percent of southern whites objected to sending their child to a school with a few blacks, in contrast to less than ten percent of non-southern whites, by 1980 there was no regional difference and by 1993 only four percent of whites nationally objected to sending their child to school with a few blacks.<sup>56</sup>

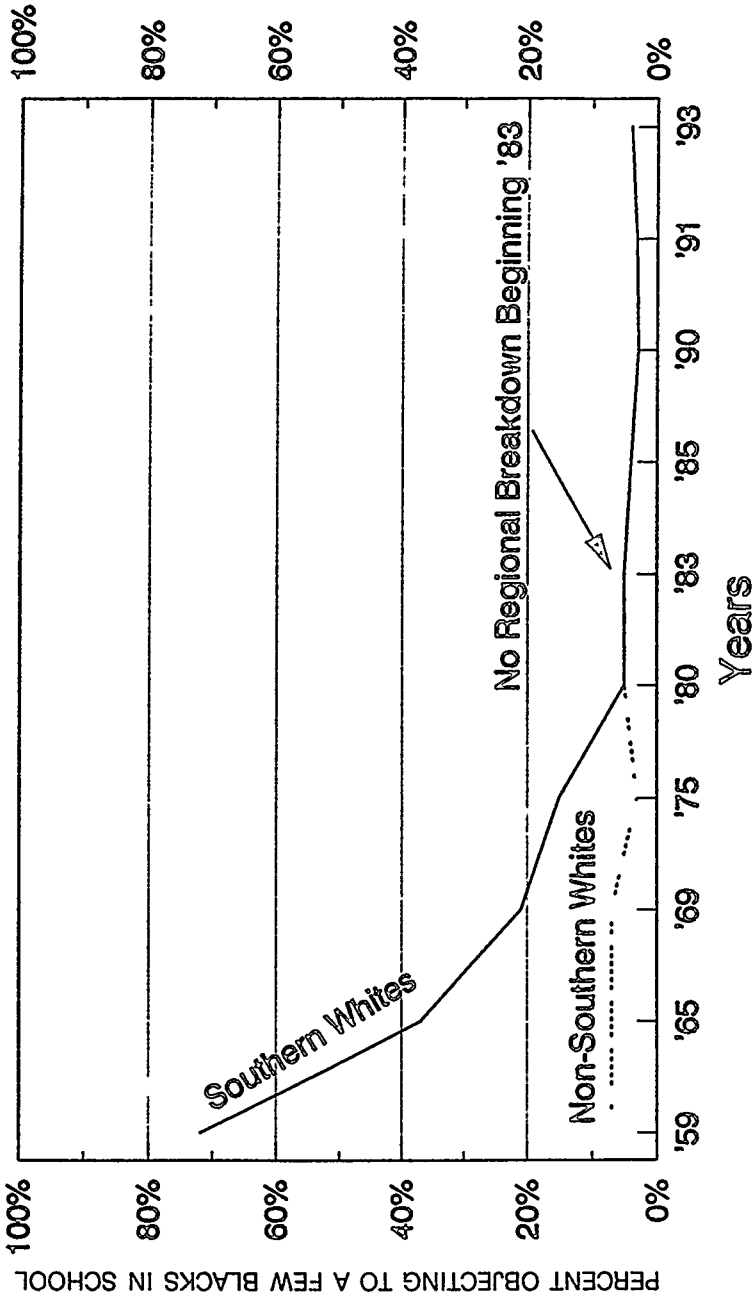
Figure 7 shows an extraordinary increase in the acceptance of blacks from 1959 through 1993. In 1968, almost eighty-five percent of southerners and thirty-five percent of northerners objected to sending their child to a school that was half black. Although there was still a regional difference in 1980, the last year a breakdown was available, southerners were only five percentage points more likely than northerners to object to sending their child to a school that is half black. By 1993, only seventeen percent of whites objected to sending their child to a school

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school district records, stratified by race, containing the student's name, race, grade, school assignment, address and telephone number. The response rate for each survey was at least eighty percent.

56. The question is, "Would you yourself have any objection to sending your children to a school where a few of the children are (Negroes/blacks)?" Gallup and NORC use the following definition of the South: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia.

**Figure 6**  
**Percent of Whites Objecting to a School**  
**With a Few Blacks**



Source Gallup Polls, '59-'80 by region, NORC General Social Survey, '83-'93 national sample not by region

that was half black, despite the fact that nationally blacks are only twelve percent of the population.

Figure 8 is even more extraordinary. Although in 1968 almost ninety percent of southern whites and sixty percent of northern whites objected to sending their child to a school that was majority black, by 1980 there was only a fifteen percentage point difference between southerners and northerners. By 1993, only forty-two percent of whites objected to sending their child to a school that was majority black.

The national surveys can be criticized as a random sample of adults, most of whom neither have children nor live in a school district with a sizeable black population. Thus, for many of these respondents, questions regarding the racial composition of a school to which they would be willing to send their child are abstract or irrelevant.

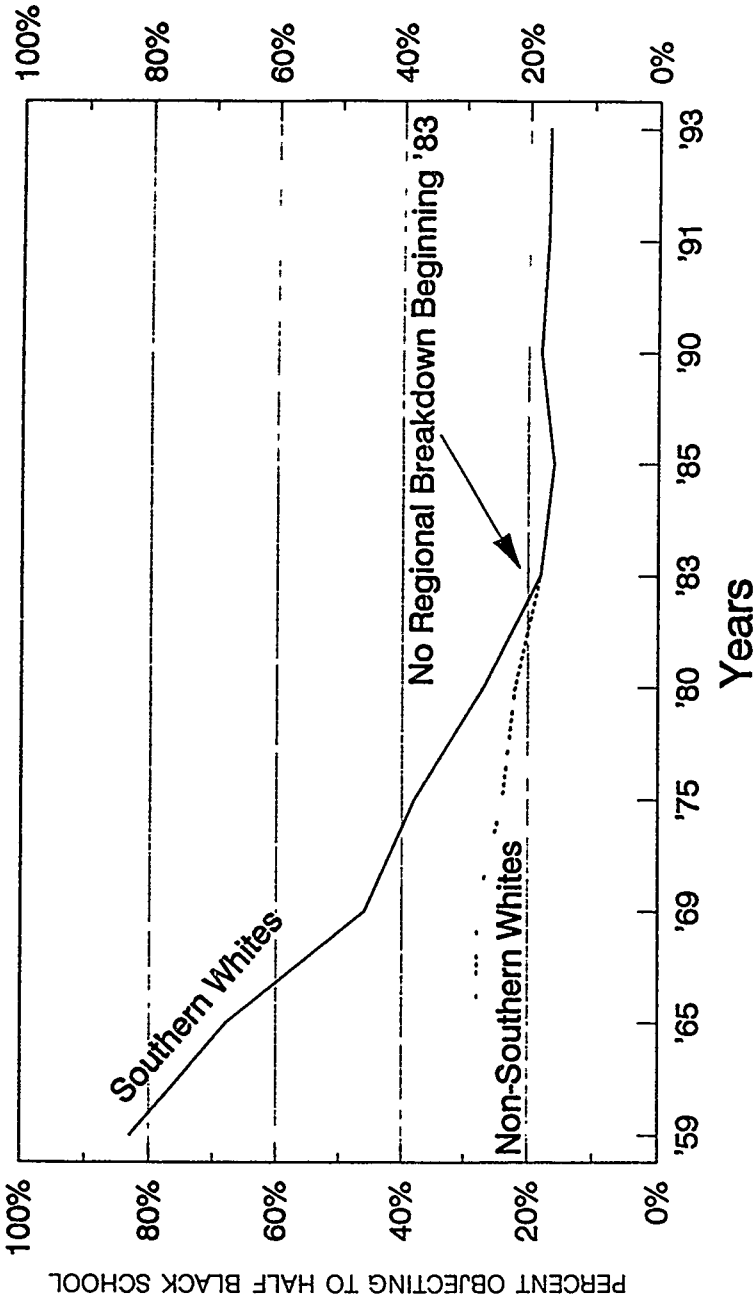
Figure 9 and Appendix 1 show a weighted average of 1977 to 1991 data on the percentage of parents objecting to sending their child to a school half black/Hispanic or to a school two-thirds black/Hispanic if the opposite race children came to their neighborhood school. These data show that only thirteen percent of white parents and as much as five percent of black parents would object to sending their child to their neighborhood school if it became half black/Hispanic. Moreover, only thirty-three percent of white parents and as much as fourteen percent of black parents would object to sending their child to their neighborhood school if it became predominantly black/Hispanic.

Given the fact that this question taps issues of power and control, not just race, it is quite remarkable that a majority of white adults and white public school parents do not object to having their child in a school where their race is not in the majority so long as it is their neighborhood school. It is also interesting that a fifty-fifty racial composition is more desirable to black parents than a predominantly minority composition, although the increase in objection to a predominantly minority school is on a smaller scale than is the white increase in objection.

Thus, these data suggest that the civil rights movement has been extraordinarily successful in achieving its symbolic goals. Almost no whites are upset if there are a few blacks in their child's school. The Little Rock crisis, and others like it, where



Figure 7  
Percent of Whites Objecting to a School  
That Is Half Black



Source: Gallup Polls, '59-'80 by region, NORC General Social Survey, '83-'93 national sample not by region

angry white mobs protested a handful of black children entering their school are gone forever. More surprisingly, most white parents do not object to having their children in a racial minority in their neighborhood school. Blacks are no longer "official pariahs" and racial prejudice in the old-fashioned sense is simply, for all but a tiny minority of whites and blacks, socially unacceptable. These statistics reflect a remarkable revolution in white attitudes that must be credited to the moral leadership of the civil rights movement.

### *B. Attitudes on Implementation Techniques*

At the same time that racial intolerance and support for segregation were declining, however, post-*Swann* mandatory reassignment plans were producing an increase in white enrollment losses in the North from an average annual 2.4 percent loss before desegregation to a ten percent loss with the implementation of a plan.<sup>57</sup> In the South, white enrollment losses increased from an average 0.8 percent loss predesegregation to a 7.5 percent loss with implementation of a plan.<sup>58</sup> The southern loss is even more dramatic because it occurred in the kinds of school districts thought to be most immune to white flight—countywide districts already encompassing the suburban areas to which whites would normally be expected to flee.

White flight is not inconsistent with white attitudes. Although whites support the principle of integration, they overwhelmingly oppose the most widely used method of desegregating schools—mandatory reassignment or "busing." The Institute for Social Research (ISR) at the University of Michigan has asked the following question in 1972, 1974, 1976, and 1980:

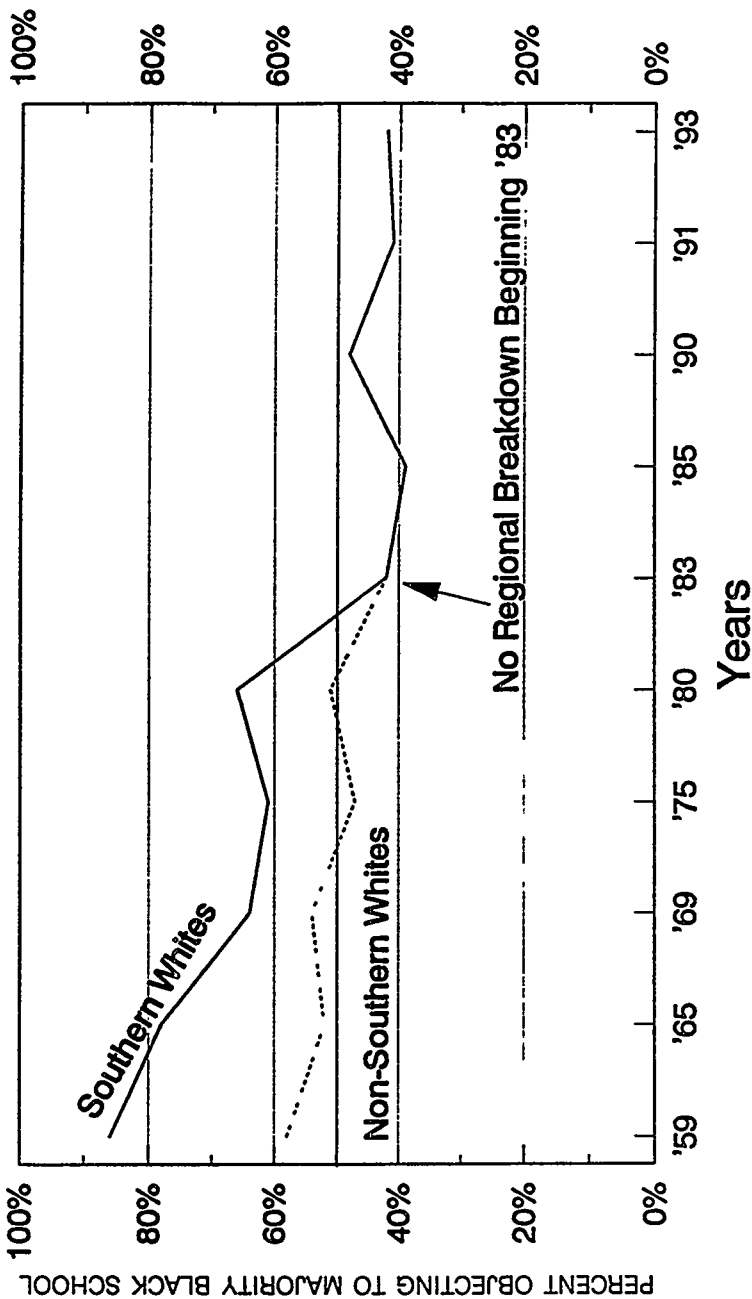
There is much discussion about the best way to deal with racial problems. Some people think achieving racial integration of schools is so important that it justifies busing children to schools out of their own neighborhoods. Others think let-

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57. This statistic is calculated as follows: white enrollment in one year is subtracted from white enrollment the previous year and that sum is divided by white enrollment the previous year. This figure is then multiplied by 100 to produce a percentage. These data come from Rossell, Report to Nat'l Inst. Educ., *supra* note 36.

58. *Id.*

**Figure 8**  
**Percent of Whites Objecting to a School**  
**That Is Majority Black**



Source: Gallup Polls, '59-'80 by region, NORC General Social Survey, '83-'93 national sample not by region

ting children go to their neighborhood schools is so important that they oppose busing. Where would you place yourself on this scale, or haven't you thought much about this?

1. Bus to achieve integration (1-4)
2. Keep children in neighborhood schools (5-7)
3. Haven't thought much about this.<sup>59</sup>

As shown in Figure 10, white respondents show a consistent lack of support for busing to achieve integration—rarely greater than ten percent—when the alternative is keeping children in their neighborhood schools.<sup>60</sup> Black respondents are also not supportive of busing to achieve integration. Indeed, they are clearly split on this issue with only a minority or a bare majority supporting mandatory reassignment.<sup>61</sup>

The data in Figure 10 for the years from 1986 to the present, represents parents in school districts considering desegregation plan alternatives.<sup>62</sup> When black *parents* are asked whether they want *their child* mandatorily reassigned, however, there is about the same lack of support as in the ISR national surveys of adults.

Figure 11 shows the results of the parent surveys from 1977 through 1991, ordered by year, with the district noted. These parent surveys show declining support for mandatory reassignment among black parents from a high of almost seventy per-

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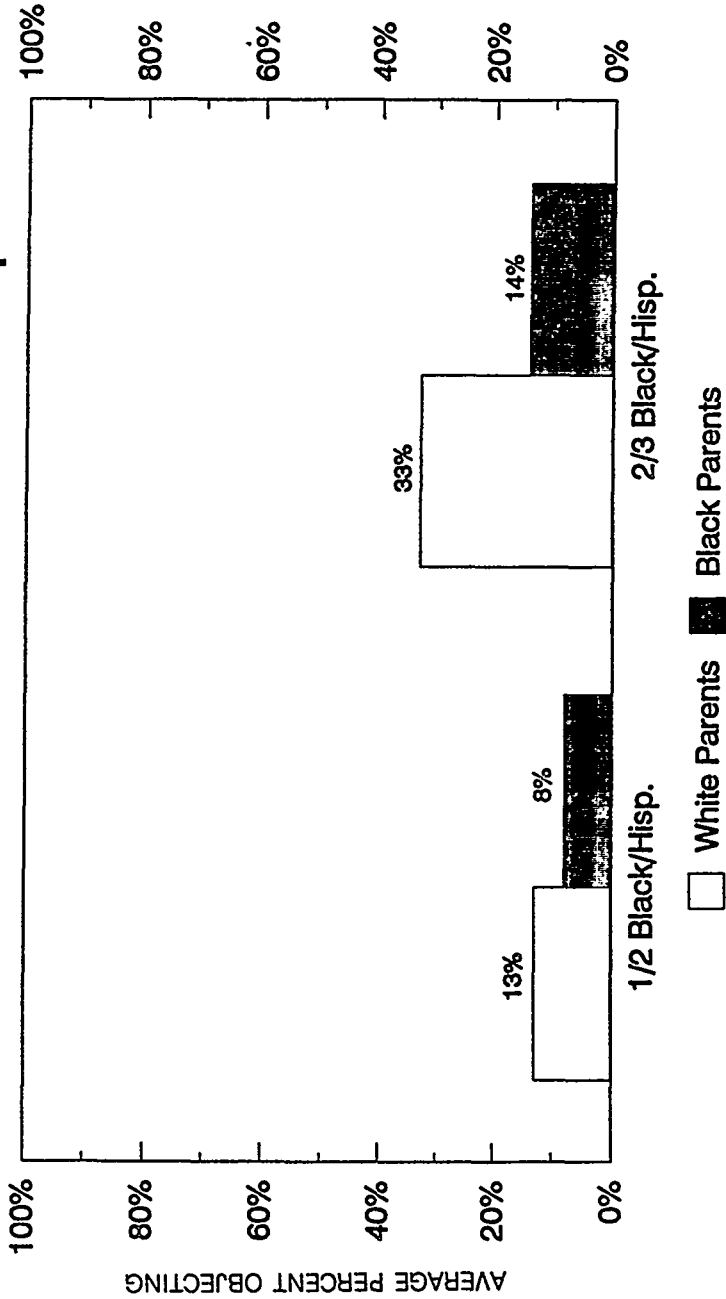
59. SCHUMAN, ET AL., *supra* note 51, at 89.

60. The Institute for Social Research (ISR) responses are cited in *id.* at 88-89.

61. The NORC general social science survey has also asked a question about busing that is not used here because it does not offer an alternative and the question itself is poorly worded and subject to differing interpretations. *Id.* The question is, "in general, do you favor or oppose the busing of black and white school children from one district to another?" *Id.* This question does not mention busing children to the same schools to attain racial integration. Moreover, "district" could be interpreted as referring to voluntary city-suburban cross-district programs or within-district mandatory reassignments from one attendance zone to another. Thus, responses on this question probably have a high error rate.

62. The question asked in the parent surveys from 1986 forward varies slightly from district to district, but generally informs public school parents that the school district is considering options or ideas for school desegregation and wants their opinion of these options. For each desegregation alternative, parents are asked whether they strongly support, somewhat support, strongly oppose, or somewhat oppose the described alternative. In the case of mandatory reassignment plans, the question usually asked is how they feel about mandatory busing of students in order to attain racial integration.

**Figure 9**  
**Average Percent of Black & White Parents Objecting**  
**to Neighborhood School 1/2 or 2/3 Black/Hispanic**



Source: Armor surveys, '77, '81, '89, Armor and Rossell surveys, '86, '88, '90, '91

cent in Los Angeles in 1977 to a low of less than forty percent in Knox County, Tennessee, in 1991. Although there is some fluctuation depending on the district or year, the level of white support for mandatory reassignment varies from ten to twenty percent, and there seems to be no trend over time as with black parent support.

As shown in Figure 12 and Appendix 2, on average,<sup>63</sup> black and white parents are in absolute agreement that the most desirable desegregation policy alternative for their district is neighborhood schools with choice (the four bars on the far left of the graph)<sup>64</sup> followed by redrawing attendance zones of adjacent schools ("change zones").<sup>65</sup> What they least want for their child is a mandatory reassignment plan—although controlled choice has even less support among black parents. Interestingly, only a minority of parents of both races support controlled choice plans, even though they provide a relatively high level of choice, perhaps because the plans do not guarantee a child the right to attend their neighborhood school nor their first choice school.<sup>66</sup>

63. This statement refers to a weighted average (weighted by the number of white or black respondents in each sample) of the school district survey responses shown in Appendix 2 from 1977 to 1991.

64. In Figure 15 "Vol. w/Mags." refers to voluntary plan with magnet options, and "Vol. w/Transp." refers to voluntary plan with transportation provided. The survey generally begins,

[A]s you may know the \_\_\_\_\_ public schools are considering ways to improve school integration. I am going to read you a few ideas that could improve school integration in the \_\_\_\_\_ public schools, and I would like you to tell me if you strongly support, support somewhat, oppose somewhat, or strongly oppose each idea.

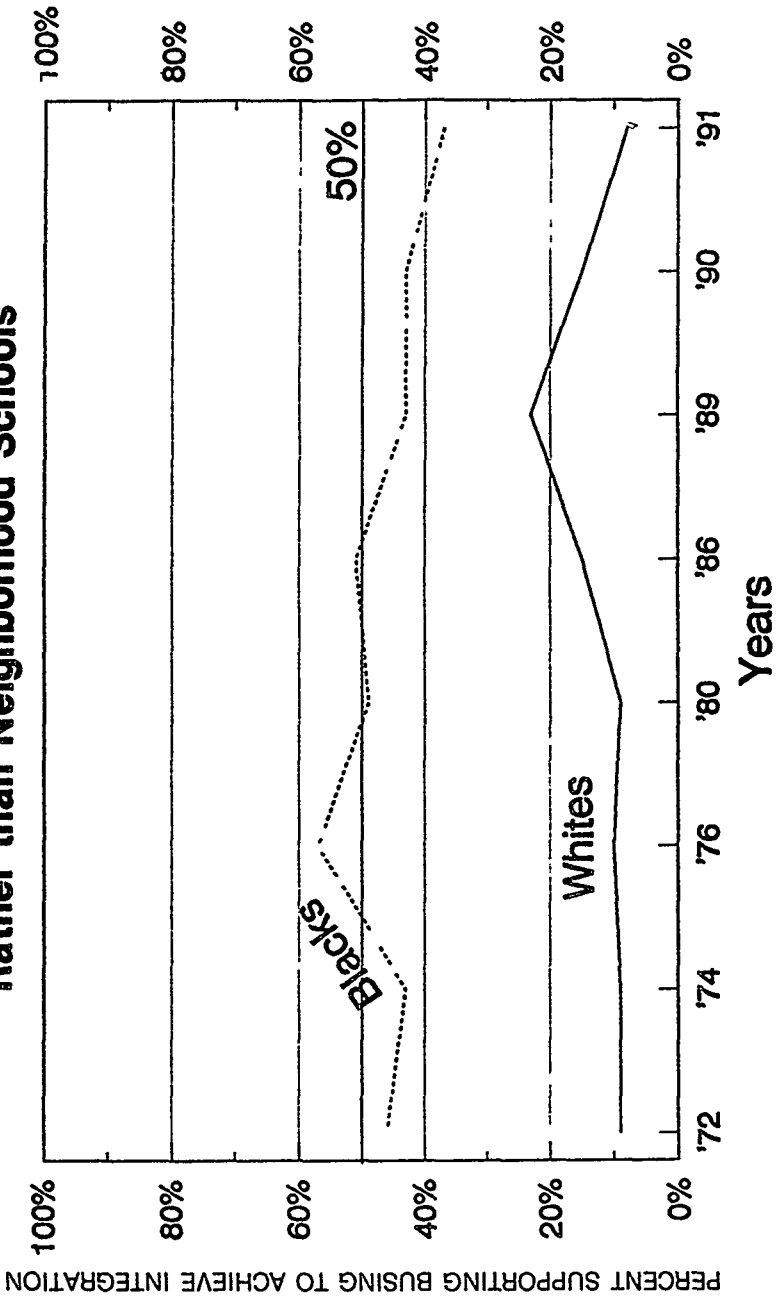
The voluntary techniques are described by asking, "what about voluntary transfers to other schools to improve racial integration, with free transportation?" and "what about a voluntary program in which children can attend integrated schools with special programs like intense computer or science studies, which are called magnet schools?"

65. The question is, "What about improving integration by changing attendance boundaries of adjacent schools?"

66. This question is generally worded:

[A]nother method for racial and ethnic integration is called a controlled choice plan. In this type of plan, all neighborhood attendance zones are eliminated and no one is guaranteed a neighborhood school. Instead, all parents choose what schools they would like their children to attend, which could include your current neighborhood school. The administration would make school assignments, and they would try to give everyone

**Figure 10**  
**Percent Supporting Busing to Achieve Integration**  
**Rather than Neighborhood Schools**



Source: Institute for Social Research Surveys '72-'80, Armor and Rossell district parent surveys, '86-'91

Thus, having choice and neighborhood schools not only explains white (and middle class black) behavioral response<sup>67</sup> to school desegregation plans but also seems to explain both black and white parental support for desegregation alternatives.

Figure 13 and Appendix 1 show the behavioral intentions of black and white public school parents if a mandatory reassignment plan were adopted in their school district and their child was reassigned to an opposite race school. The percentage of white parents who would not go along declines over time, but increases for black parents until by 1991 in Knox County, Tennessee (which at the time of the survey was about eighty-five percent white), seventy-one percent of white parents and seventy percent of black parents would not go along with a mandatory reassignment plan that assigned their child to an opposite race school.

Even more surprising is the low willingness of black parents to voluntarily transfer out of their own school to an opposite race school, even when that school has a special magnet program. Figure 14 and Appendix 1 show a weighted average of the behavioral intentions of white and black parents from 1977 to 1991 when asked if they would transfer their child to a magnet school in an opposite race neighborhood. Given the publicity about the poor quality of black schools and the high level of support for neighborhood schools with magnets, it is surprising that only thirty-three percent of black parents, on average, would definitely choose to transfer their child to a magnet in an opposite race neighborhood. This attitude is not inconsistent, however, with black parents' estimation of "discrimination" in the quality of education for black students in their district. As shown in Appendix 1, on average, only thirty-five percent of black parents believe that black students get a worse education

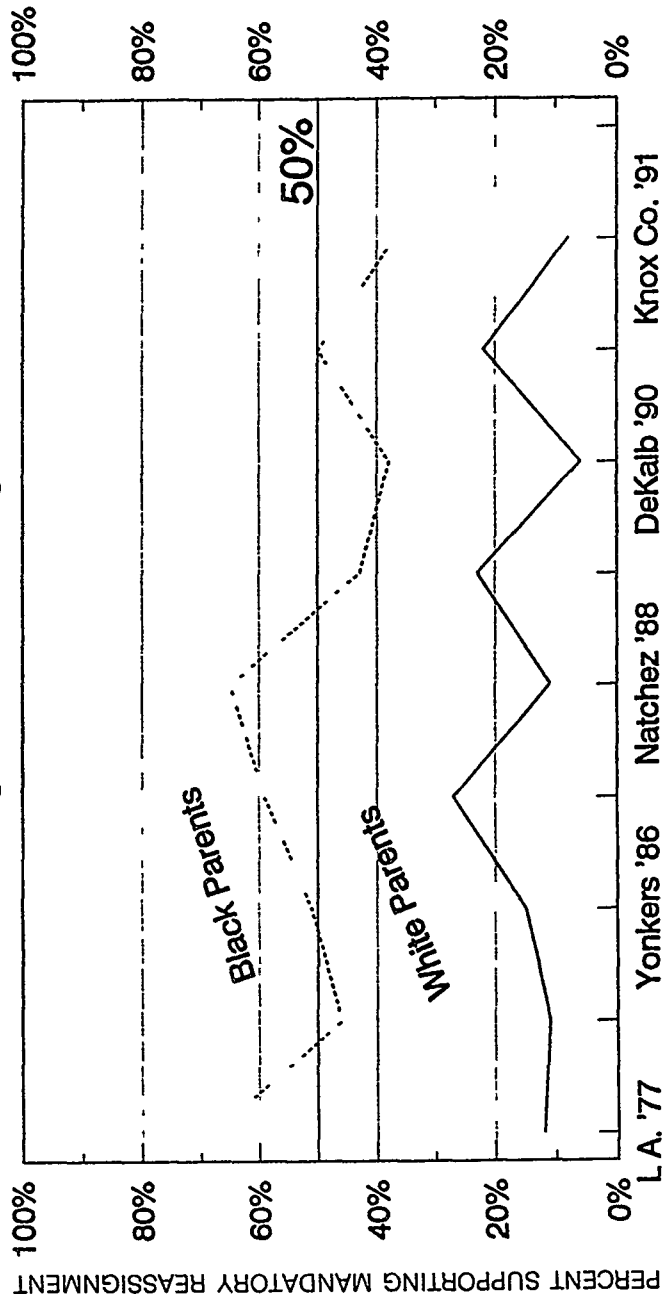
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their first choices. But they would also have to make sure each school was integrated, so some students would be assigned to schools their parents did not choose. Free transportation would be provided if you chose or were assigned to a school other than your neighborhood school.

67. Unfortunately, because enrollment statistics are not kept by class, it is difficult to determine the extent of middle class minority flight on anything but a case study basis. See, e.g., Cram & Rossell, *supra* note 33 (documenting black and Hispanic flight to Catholic schools in Boston, Cleveland and Chicago).



Figure 11  
Percent of Parents Supporting Mandatory  
Reassignment for Integration



DISTRICTS AND YEARS

Source: Armor surveys, '77, '81, '89, Armor and Rossell surveys '86, '88, '90, '91

in their public schools than do white students.

Thus, contrary to the assumption of most of the court decisions of the 1970s and the academic commentary on this subject, only a minority of black Americans support mandatory reassignment and a majority would not go along with a mandatory reassignment of their own child to an opposite race school. Most black parents, like most white parents, prefer their neighborhood school over being bused out to a school they did not choose. Even more surprisingly, a large majority of black parents prefer their neighborhood school to a special school chosen by them, perhaps because most of them believe that black children are currently receiving an education that is at least as good as white children receive.

Given these survey results, it is not unreasonable to ask why the civil rights community has almost totally ignored black parents and their preferences. In his article in the *Yale Law Journal*, Derrick Bell, a black law professor at New York University, concludes that this disregard results from the fact that the NAACP Legal Defense and Educational Fund (LDF), the major plaintiffs' attorney in school desegregation cases, has a conflict of interest.<sup>68</sup> They ignore their clients' preferences because they must answer to the middle class blacks and whites who provide financial support for the organization and who not only believe fervently in school integration but in a kind of "domestic domino theory" in which failure on the busing issue would trigger a string of defeats in other civil rights arenas.<sup>69</sup> Their local clientele, black parents, have little or no contact with the LDF once it has solicited them as a plaintiff for litigation.<sup>70</sup> Ron Edmonds, another black educational expert and scholar, agrees with Bell on this point.<sup>71</sup>

Nathaniel Jones, NAACP General Counsel, defends the group's behavior, arguing that "[i]t would be absurd to expect

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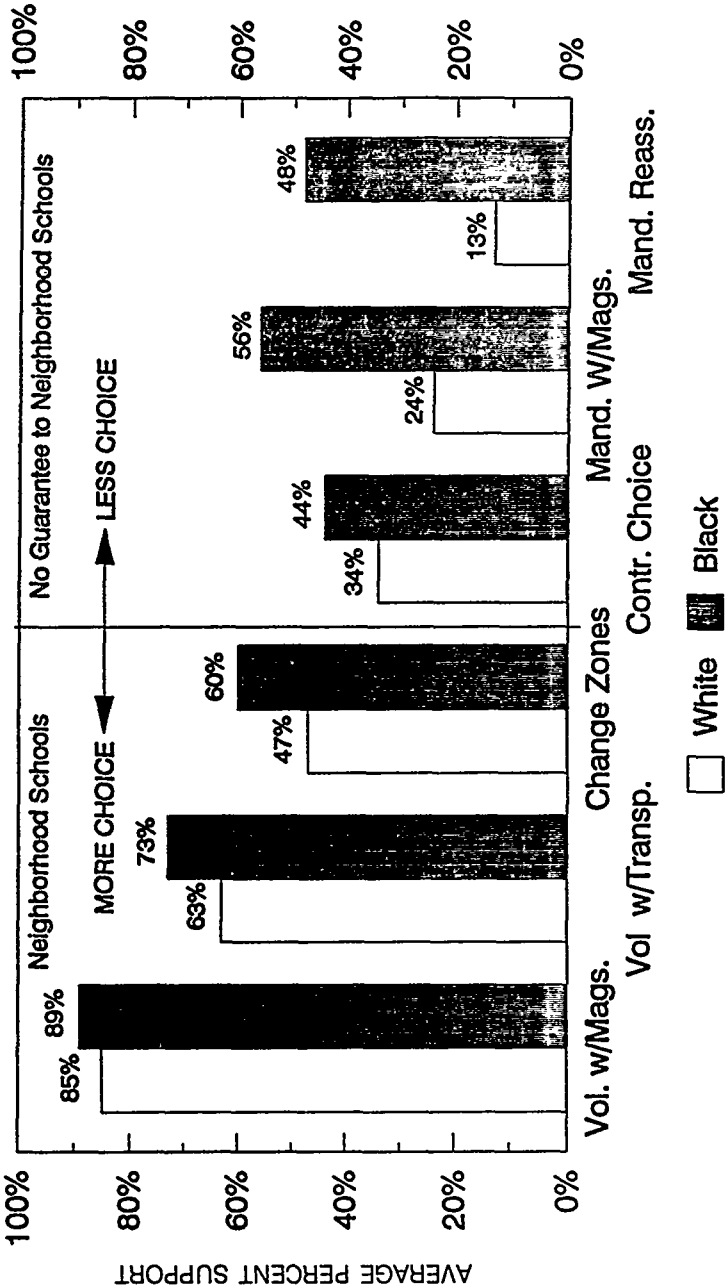
68. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

69. *Id.* at 489-92.

70. *See id.* at 475-76.

71. Ronald R. Edmonds, *Advocating Inequity: A Critique of the Civil Rights Attorney in Class Action Desegregation Suits*, 3 BLACK L.J. 176, 178-79 (1974); *see* Bell, *supra* note 68, at 490.

Figure 12  
Average Percent of Parents Supporting  
Alternative Desegregation Plans



Source: Armor and Rossell surveys, '86, '88, '90, '91, Armor survey, '89

that each and every black person should be polled before a lawsuit is filed, or a plan of desegregation is proposed."<sup>72</sup> Jones said that he did not need to ask black parents about their preferences because he himself was black and could draw on his own life experiences.<sup>73</sup> However, this generalization cannot possibly be true, and it is precisely the problem with class action suits—lawyers are a highly educated, highly paid, elite group who, regardless of their origins, are not capable of knowing what their clients want without asking them.<sup>74</sup>

One watchdog group charges that the reason class action suits often do not represent the preferences of their clients is not just because of a conflict of interest, but because of egotism. Class action suits "have the capacity to provide large sources of narcissistic gratification and [t]he psychological motivations which influence the lawyer in taking on 'a fiercer dragon' through the class action may also underlie the tendency to direct the suit toward the goals of the lawyer rather than the client."<sup>75</sup>

Indeed, it is interesting to note that in the Chicago, Yonkers, Worcester, and Stockton cases, the legal counsel for the plaintiffs offered a mandatory reassignment plan supported by only a minority of black parents, and in *none* of the court cases shown in Appendix 2 under the name of each defendant school district did the plaintiffs' attorney offer the plan supported most by black parents—a neighborhood school plan with magnets—despite being given the results of the parent surveys showing that they were not representing the preferences of their "clients."<sup>76</sup>

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72. Bell, *supra* note 68, at 492 (citing Letter from Nathaniel R. Jones to Derrick A. Bell, Jr. (July 31, 1975)).

73. Personal communication with Nathaniel Jones, NAACP General Counsel, Williamsburg, Virginia (May 17, 1994).

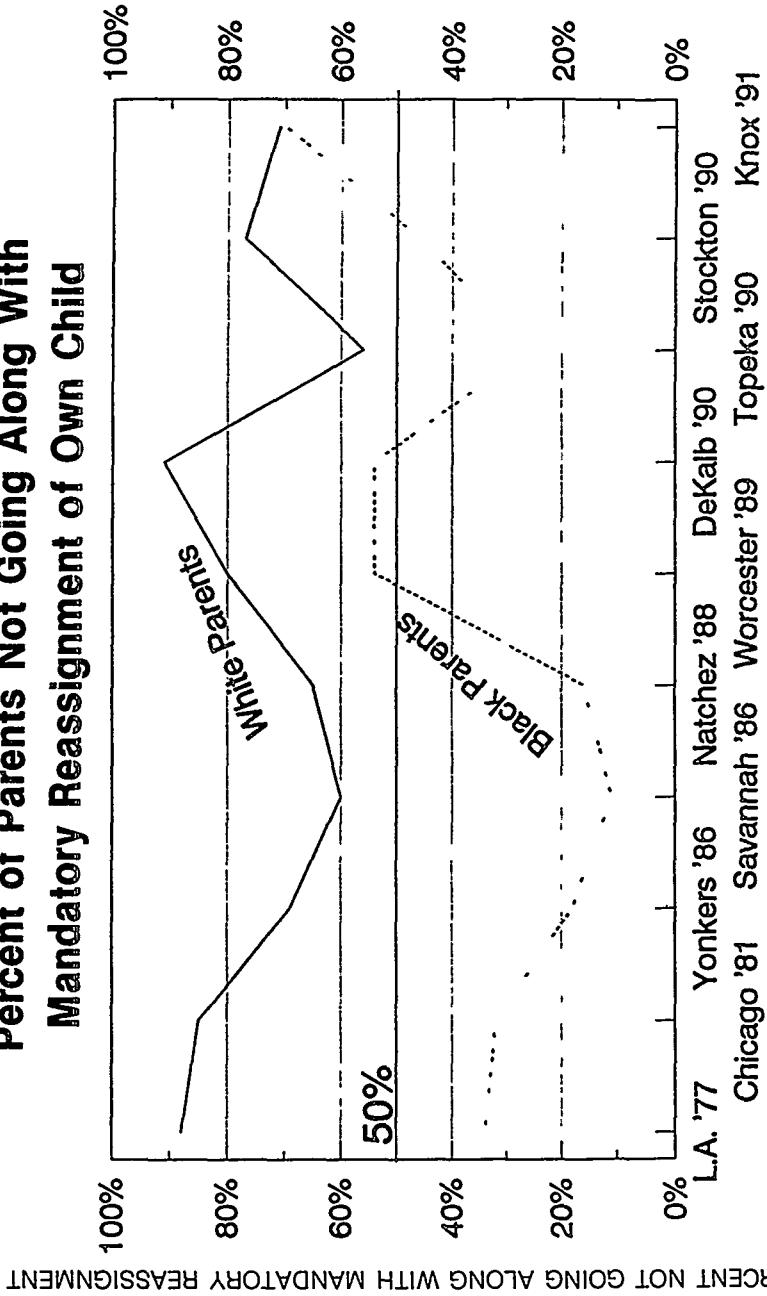
74. Nor is listening to parent activists a good substitute. As any political scientist knows, activists have different attitudes and opinions from ordinary citizens.

75. Bell, *supra* note 68, at 493 (citing COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., LAWYERS, CLIENTS & ETHICS 101 (M. Bloom ed., 1974)).

76. In Stockton, an 80% minority school district, the plaintiffs finally agreed, after months of negotiations, to enter into a settlement agreement offering educational enhancements, but only because the changing demographics of the school district eventually caused them to conclude that desegregation was no longer achievable, not

Figure 13

**Percent of Parents Not Going Along With  
Mandatory Reassignment of Own Child**



**DISTRICTS AND YEARS**

Source: Armor surveys, '77, '81, '89, and Rossell surveys, '86, '88, '90, '91

### *C. Explanations for the Rejection of Busing and Acceptance of Integration*

What accounts for the preferences of black and white parents, in particular the high level of rejection of busing and support for neighborhood schools? Unfortunately, because of the fascination with white racism in America and the disinterest of the intelligentsia in the opinions of ordinary black parents,<sup>77</sup> almost all of the research and writing has focused on an explanation for white attitudes and opinions.

#### *1. Black Attitudes*

Schuman, Steeh, and Bobo offer two hypotheses for the declining black support for mandatory reassignment and other government strategies for achieving racial equality in American society.<sup>78</sup> They first hypothesize that after the incredible energy blacks put into the civil rights movement of the 1960s, some "natural falling away during the 1970s as the salience of these issues decreased"<sup>79</sup> was inevitable. They see this growing disinterest as a possible cyclical, psychological pattern—a burst of energy must be followed by exhaustion and alienation.<sup>80</sup>

Their second hypothesis is that some blacks may have retreated from the use of federal force for desegregation because of their perception that it was so intensely opposed by whites as to

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because it was not supported by their "clients." In Knox County the plaintiff organization was not a black civil rights legal defense group, but the Office for Civil Rights and their position on mandatory reassignment was not very clear. The only thing that was clear was that the district's prior M to M transfer plan and other voluntary efforts were considered inadequate.

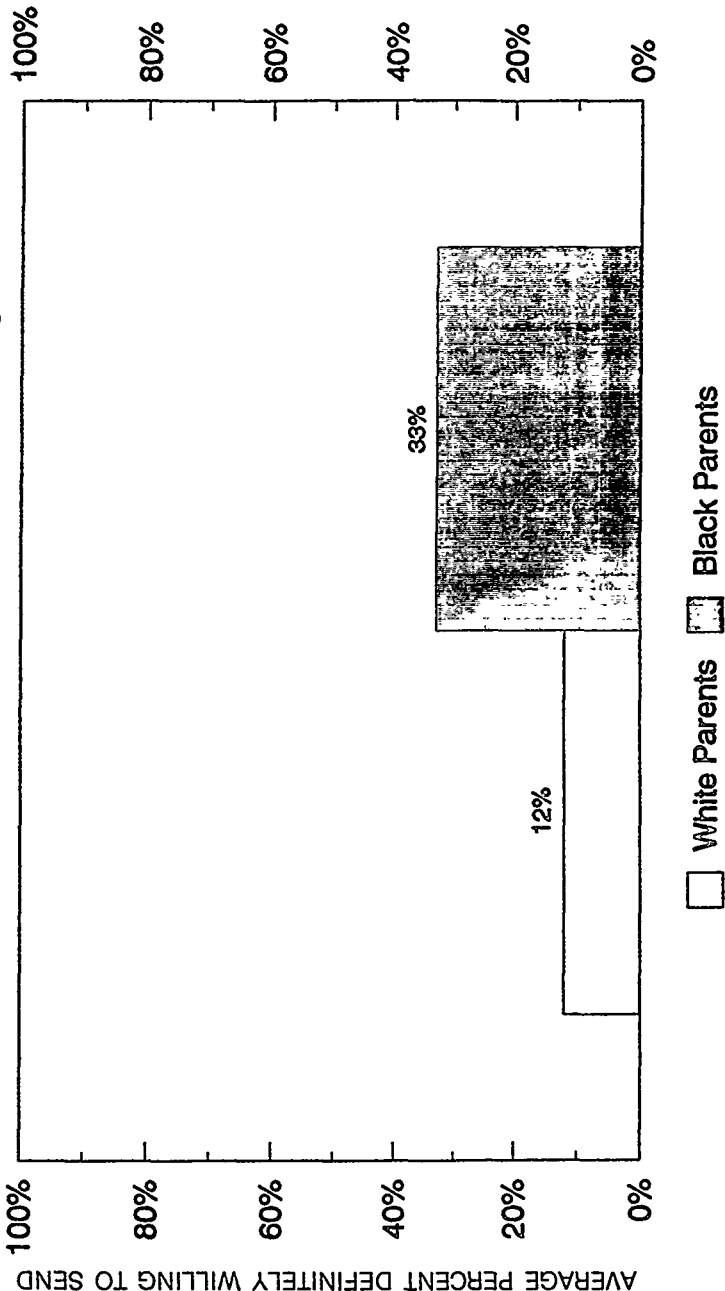
77. It is telling that the first national survey of the attitudes of black Americans on the principle of school integration and their opinions on school desegregation implementation techniques was in 1972, 18 years after *Brown*, four years after *Green*, and one year after *Swann*—all court decisions that produced major innovations in school integration and its strategies. These innovations apparently did not need to be guided by insights regarding what black parents wanted. Indeed, the Author of this Essay is not aware of any advocate of mandatory reassignment who has polled black parents on this issue. See SCHUMAN, ET. AL., *supra* note 51.

78. *Id.* at 2.

79. *Id.* at 159.

80. *Id.*

**Figure 14**  
**Average Percent of Parents Definitely Willing to Send**  
**Child to a Magnet in an Opposite Race Neighborhood**



Source: Armor surveys, '77, '81, '89, and Rosell surveys, '86, '88, '90, '91

be impractical.<sup>81</sup> In short, white opposition to busing and its resulting flight and protest, rather than their own preferences, may have caused the decline in black support.<sup>82</sup>

These authors admit, however, that they find neither explanation satisfactory,<sup>83</sup> and little evidence supports either hypothesis. At the very least, however, they believe the gap between black support for the principle of school integration and their opposition to or conflict over *forcing* people to integrate can help us interpret white trends.<sup>84</sup> They conclude: "In their attitudes, as in their lives more generally, blacks and whites in the United States are inescapably connected in many ways, and these connections are easily missed when only one group is considered at a time."<sup>85</sup>

## 2. *White Attitudes*

Commentators rely on two major theories of the determinants of political attitudes and behavior to explain white opposition to busing. The first theory is that whites are motivated by diffuse attitudes formed in early childhood. In other words, racism explains white opposition to busing. This theory has been offered in several guises—one Schuman, Steeh, and Bobo<sup>86</sup> call "superficial tolerance" from the works of Mary Jackman<sup>87</sup> and the other they call "symbolic racism" from the work of David Sears and his colleagues,<sup>88</sup> and John McConahay<sup>89</sup>

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81. *Id.* at 161.

82. *Id.* at 152-62.

83. *Id.* at 161.

84. *Id.*

85. *Id.*

86. *Id.* at 171-88.

87. See Mary R. Jackman & Michael J. Muha, *Education and Intergroup Attitudes: Moral Enlightenment, Superficial Democratic Commitment, or Ideological Refinement?*, 49 AM. SOC. REV. 751 (1984); Mary R. Jackman, *Education and Policy Commitment to Racial Integration*, 25 AM. J. POL. SCI. 256 (1981) [hereinafter Jackman, *Education*]; Mary R. Jackman, *General and Applied Tolerance: Does Education Increase Commitment to Racial Integration?*, 22 AM. J. POL. SCI. 302, 320-23 (1978).

88. Donald R. Kinder & David O. Sears, *Prejudice and Politics: Symbolic Racism versus Racial Threats to the Good Life*, 40 J. PERSONALITY & SOC. PSYCHOL. 414; David O. Sears, et al., *Self-Interest vs. Symbolic Politics in Policy Attitudes and Presidential Voting*, 74 AM. POL. SCI. REV. 670 (1980); see David O. Sears, et al., *Whites' Opposition to "Busing": Self-Interest or Symbolic Politics?*, 73 AM. POL. SCI.



Jackman's "superficial tolerance" theory argues that the "implementation" questions demonstrate a genuine commitment to integration whereas the "principle" questions show only a superficial commitment to integration.<sup>90</sup> The problem with her argument, however, is that it ignores the fact that implementation techniques can have differing success in achieving the goals of the civil rights movement and that both blacks and whites might be capable of perceiving this fact. She also ignores the very real change in white tolerance for half black and majority black schools in their own neighborhoods that suggests more than a "superficial" tolerance.

The "symbolic racism" theory argues that white racial attitudes are formed in early childhood, but because racism is less socially acceptable today, this racism is expressed covertly in opposition to busing, to a black candidate, or to preferential treatment for blacks.<sup>91</sup> Thus, these opinions on issues are symbolically related to deep rooted attitudes regarding the racial inferiority of blacks or to fear of them and their effect on society.<sup>92</sup> The evidence for the symbolic racism theory is that in national surveys of white adults, opposition to busing is moderately correlated with a variety of more obvious measures of prejudice (such as support for segregation in general) and has little relationship to whether an adult has a school-age child—presumably a measure of self-interest.

The major problems with the symbolic racism research<sup>93</sup> are: (1) the absolute levels of opposition to busing are so high that virtually the entire white population must be labeled racist,<sup>94</sup>

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REV. 369 (1979).

89. John B. McConahay, *Self-Interest Versus Racial Attitudes As Correlates of Anti-Busing Attitudes in Louisville; Is It the Buses or the Blacks?*, 44 J. POL. 692 (1982); John B. McConahay, et al., *Has Racism Declined in America? It Depends on Who Is Asking and What Is Asked*, 25 J. CONFLICT RESOL. 563 (1981).

90. Jackman, *Education*, *supra* note 87.

91. *See id.* at 263-67.

92. *Id.*

93. Much of my discussion here draws on Schuman, Steeh, and Bobo's criticisms. SCHUMAN ET AL., *supra* note 51, at 178-79.

94. Moreover, it produces a variable that is so skewed that what Sears and his colleagues are really measuring is symbolic "anti-racism." *Id.* at 178; *see* Kinder & Sears, *supra* note 88.

which not only ignores the change in—and currently high level of—tolerance for half black and majority black schools, but black opposition to busing as well; (2) although opposition to busing is correlated with prejudice, prejudice does not need opposition to busing as a vehicle for expression, as demonstrated by the six percent of the white population that continues to maintain that white and black students should go to separate schools and the seventy percent that once maintained it; (3) the size of the correlation between their racial intolerance scale and a seven-point antibusing item is .36, leaving much of the variation unexplained so that one might reasonably conclude that all racists may oppose busing, but not everyone opposed to busing is a racist; and (4) their definition of self-interest is too narrow in assuming that busing has no cost to those without children, a fact which the childless residents of cities beset by protest, white flight, and unhappy neighbors, relatives, and friends would probably dispute. Indeed, if one thinks of self-interest in terms of collective as well as individual interest, it is quite possible for a group that thinks of itself as distinct to view as a personal threat something that happens to only some of the group.<sup>95</sup>

Moreover, if whites are dishonest in their responses to survey questions, the fact that they feel they have to lie, not just in public but in a semi-private situation, and that prior to *Brown* they could openly express blatant racist opinions, suggests a fundamental change in American norms that cannot be ignored. Indeed, the only question is exactly how much this enormous social change has affected individuals. It would be hard to imagine that it has had no effect.

The second general theory explaining white opposition to busing is that whites express attitudes and behave in ways that are in their own self-interest. In other words, white parents oppose busing because it entails real costs and burdens for them and their children (or their future children and current friends, relatives and neighbors' children) and the benefit does not appear to be greater than the cost. Self-interest can also be ex-

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95. As Schuman, Steeh, and Bobo point out, almost all blacks were opposed to the Reagan Administration and its policies, but only a few of them were directly affected by those policies. SCHUMAN ET AL., *supra* note 51, at 179.

pressed in terms of the kind of society in which one wants to live. For example, Lipset and Schneider<sup>96</sup> reviewed a wide range of survey responses and concluded that there is a powerful consensus in American society against discrimination that disappears when issues of compulsory integration or preferential treatment are raised because the former is viewed as a threat to freedom and the latter is seen as another form of discrimination.

In short, there is a basic conflict between two important values held by Americans—individual freedom and egalitarianism—that are at the core of our conception of a good society. This value conflict theory would suggest that most blacks are opposed to busing, not only because of the costs in terms of white resentment, but because they too resent being forced to go to a school they did not choose by a government they do not particularly trust for an ideal they are not sure produces the benefits claimed using a strategy that obviously has some serious costs.

Indeed, Derrick Bell typifies this when he writes:

Yet, the remedies set forth in the major school cases following *Brown*—balancing the student and teacher populations by race in each school, eliminating one-race schools, redrawing school attendance lines, and transporting students to achieve racial balance—have not in themselves guaranteed black children better schooling than they received in the pre-*Brown* era. Plans relying on racial balance to foreclose evasion have not eliminated the need for further orders protecting black children against discriminatory policies, including resegregation within desegregated schools, the loss of black faculty and administrators, suspensions and expulsions at much higher rates than white students, and varying forms of racial harassment ranging from exclusion from extracurricular activities to physical violence.

The educational benefits that have resulted from the mandatory assignment of black and white children to the same schools are also debatable. If benefits did exist, they have

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96. *Id.* (citing Seymour M. Lipset & William Schneider, *The Bakke Case: How Would It Be Decided at the Bar of Public Opinion*, PUB. OPINION, March/April 1978, 38).

begun to dissipate as whites flee in alarming numbers from school districts ordered to implement mandatory reassignment plans.<sup>97</sup>

#### IV CONCLUSION

The survey data reviewed above strongly suggest that some, if not most, blacks perceive busing as not in their self-interest. If true, then why is this fact not also possible for whites who have seen trumpeted in the media allegations by the plaintiffs' attorneys that black schools are inferior, that white racists will ensure that desegregation is accompanied by protest and violence. Moreover, these whites grew up believing that neighborhood schools are best because they provide for local control and parent participation in the education of their child. In short, both black and white parents are probably capable of perceiving the real benefits to neighborhood schools and real costs to mandatory reassignment out of one's neighborhood. Moreover, the superiority of mandatory reassignment plans in simply achieving integration is not evident. The Boston public schools, for example, are now eighty-one percent minority, twenty years after the original mandatory reassignment order. Indeed, there is less interracial exposure now, .18, than the .24 level that existed before the authorities implemented the first mandatory reassignment plan in 1974.

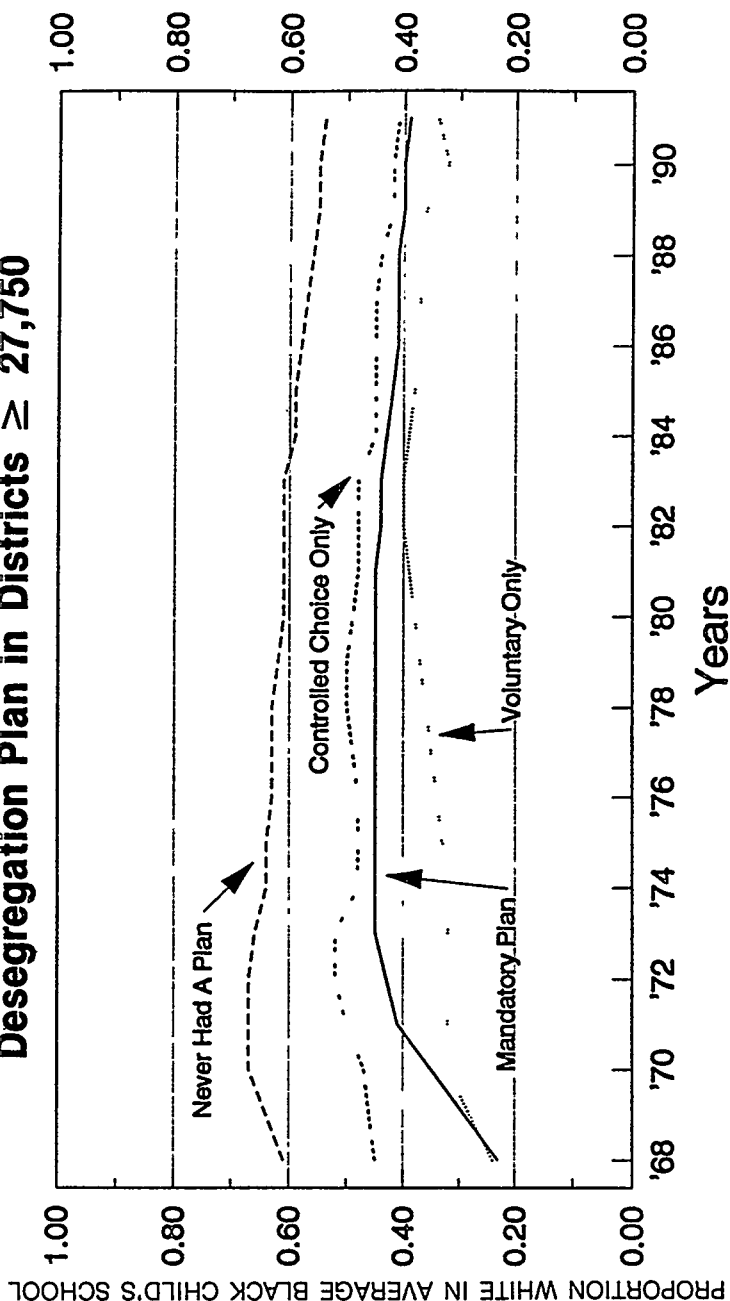
Nor do the national trends demonstrate the superiority of mandatory reassignment plans. Figure 15 shows the extent of interracial exposure in the largest school districts in the United States where most blacks live. School districts that had never had a formal plan<sup>98</sup> continue to have greater interracial expo-

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97. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 530-31 (1980) (footnotes omitted).

98. The question asked in our 600 district telephone and mail survey, see Rossell & Armor, *supra* note 28, was "Does your district operate under a board-authorized or court-ordered desegregation plan—that is, a formal written plan or student assignment to attain a specific racial/ethnic composition in some or all schools?" If they replied no to this question, they were asked "Did your district ever have such a plan?" Districts that currently have a formal desegregation plan, were also asked about not only the characteristics of their current plan, but of their former plan(s).

**Figure 15**  
**Trends in Interracial Exposure By**  
**Desegregation Plan in Districts  $\geq 27,750$**



Source: National random sample of 600 schools districts—enrollment data from OCR annual survey '68 '86, CCD annual survey '87 '91

sure—that is, a higher proportion white in the average black child's school—than school districts that implemented a formal desegregation plan. In addition, school districts that implemented only voluntary desegregation plans (neighborhood schools with M to M or magnet options or freedom-of-choice) have virtually the same interracial exposure as school districts that implemented mandatory reassignment plans although they had no initial advantage in percentage white<sup>99</sup> or interracial exposure. Controlled choice seems to have had no effect at all on interracial exposure.<sup>100</sup>

Thus, after 40 years of desegregation plans, many of them massive racial balance/busing schemes with serious costs not only to communities but to individuals—particularly the poorest families who do not have the alternatives available to the affluent—no evidence supports the conclusion that mandatory reassignment plans do a better job of achieving school integration than (1) doing nothing formal (beyond not discriminating or modifying attendance zones of adjacent schools or placing new schools so they will be racially balanced) or (2) letting people stay in their neighborhood schools and offering them the choice to transfer to an opposite race school. Although white and black parents may not know about the national trends in desegregation outcomes shown in Figure 15 when they respond to survey questions regarding their desegregation preferences, they do have a sense—thanks to the national media and their own experiences—of the probability that mandatory reassignment plans will have large costs and small or no benefits in the places where blacks are most likely to live—large cities.

The validity of the racism explanation is questionable and that of the self-interest explanation more credible, when viewed

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*Id.*

99. Both the districts with voluntary and those with mandatory plans had a 1968 percentage white of 69%. The districts that never had a plan had a 1968 percentage white of 80% and those with a controlled choice plan had a 1968 percentage white of 78%.

100. The lack of superiority of the mandatory reassignment plans or controlled choice is not due to the fact that they were less extensive than the voluntary plans. Indeed, there is almost no difference between voluntary and mandatory plan districts in their 1991 racial imbalance and the controlled choice plans have a bit less racial imbalance.

in light of the lackluster empirical evidence on positive outcomes and the current agreement between black and white parents' on desegregation implementation strategies and their behavioral intentions if forced to desegregate. If black parents overwhelmingly support neighborhood schools with voluntary magnet options, and would not go along with the mandatory reassignment of their own children to an opposite race school, and only a minority of black parents want to voluntarily transfer to a magnet school in a white neighborhood, or believe that whites are getting a better education, then why is a similar white sentiment suspect?

Sniderman and Piazza argue that too many cynics have missed the fact that race is today largely (although not completely) an issue of politics.<sup>101</sup> In the years after *Brown*, intellectuals and civil rights activists had come to believe that how Americans reacted to public policies dealing with blacks was the same as how they felt about blacks. After four decades of experimenting with public policies aimed at overcoming the evils of slavery and segregation and achieving a just and decent society, however, I am convinced that we have learned enough to be able to have rational disagreements about which policies work best.<sup>102</sup>

Indeed, the evidence presented in this Essay suggests that disagreements over the desirability of busing or affirmative action do not have to be covert racism; they can be rational and realistic assessments of the efficiency, effectiveness, and equity of alternative strategies in achieving the principle of a just and color blind society. The agreement between black and white parents on principles and strategies of school integration, evidenced both in the national trend data and our parent surveys in school districts considering desegregation plans, strongly suggests that Sniderman and Piazza are correct in their conclusion

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101. PAUL M. SNIDERMAN & THOMAS PIAZZA, *THE SCAR OF RACE* (1993).

102. Moreover, as Sniderman and Piazza demonstrate in some experiments alternating the order of questions, the mere mention of policies that are thought of as fundamentally unfair, such as affirmative action, can actually increase white prejudice against blacks. *Id.* at 11-12. In short, rather than racism causing opposition to policies designed to help blacks, opposition to policies designed to help blacks can increase racist attitudes. *Id.* at 1-13.

that although

prejudice is part of the politics of race, a larger part is politics itself.

Today there *is* a politics to issues of race. Racial policies themselves—the specific goals they are intended to serve, and the particular means by which they propose to accomplish those goals—define significantly the structure of conflict over race.<sup>103</sup>

And that is the legacy of *Brown*: black Americans are no longer a subject of public debate; rather, policies designed to *help* them that are the subject of debate. Even if whites are lying about their feelings about blacks, the fact that they feel they have to lie demonstrates an enormous change in social norms since *Brown*. This is not to say, however, that we have even come close to solving the race problem in the United States, only that we have made substantial progress in agreeing on goals and in one policy area—integrated schools—on the means. School integration should be voluntary and neighborhood schools should be maintained.

Unfortunately, these truths make the public policy arena enormously complex because they point to the conclusion that if we want school integration, we must accomplish it indirectly, and thus slowly, by the elimination of the social class and cultural differences between blacks and whites that still keep us largely in different neighborhoods and, at least part of the time, in different worlds. The solution is no longer simple, but perhaps it will actually achieve the goals black Americans had in 1954 of freedom, dignity, and an equal status in American life. At the very least we will be focused on the cause, not the symptom, of black/white inequality. Moreover, these survey data suggest that black parents will be happier.

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103. *Id.* at 175.



Appendix 1  
ARMOR AND ROSSELL PARENT SURVEY RESULTS

	L.A. CA	Chicago IL	Yonkers, NY	Savannah— Chatham Co. GA.	Natchez— Adams Co. Miss.	Worcester MA
SURVEY YEAR	1977	1981	1986	1986	1988	1989
% MIN. SURVEY YR.	66%	82%	50%	59%	65%	31%
RESPONDING RACE	WH BL	WH BL	WH BL	WH BL	WH BL	WH BL
SAMPLE NUMBER	572 473	599 315	551 231	419 347	400 400	525 102

THINK BLACK & WHITE  
STUDENTS SHOULD GO TO  
SAME SCHOOL

BELIEVE BLACK STUDENTS a  
GET A WORSE EDUCATION  
IN PUBLIC SCHOOLS THAN  
WHITE STUDENTS

OBJECT TO SCHOOL  
50—50  
2/3 MIN.

WOULD OBJECT TO DISTRICT  
ADOPTED BUSING

VOL. TRANSFER TO MAGNET  
IN OPPOSITE RACE NEIGHB.  
% DEFINITELY

a—Question not asked.

Appendix 1 (cont.)  
ARMOR AND ROSSELL PARENT SURVEY RESULTS

SURVEY YEAR	DeKalb GA		Topeka KS		Stockton CA (Prior Mand.)		Knox Co. TN		WT. AVG. (N=10 Districts)
	1990	1991	1990	1991	1990	1991	1990	1991	
% MIN. SURVEY YR.	62%	62%	29%	29%	78%	78%	16%	16%	
RESPONDING RACE	WH	BL	WH	BL	WH	BL	WH	BL	
SAMPLE NUMBER	432	501	503	326	400	150	600	600	
THINK BLACK & WHITE STUDENTS SHOULD GO TO SAME SCHOOL	94%	95%	98%	98%	94%	98%	92%	96%	94%
BELIEVE BLACK STUDENTS GET A WORSE EDUCATION IN PUBLIC SCHOOLS THAN WHITE STUDENTS	6%	25%	4%	28%	3%	27%	19%	51%	9%
OBJECT TO SCHOOL 50-50 2/3 MIN.	6%	1%	5%	7%	3%	3%	7%	7%	13%
	38%	4%	34%	a	25%	2%	a	a	38%
WOULD OBJECT TO DISTRICT ADOPTED BUSING	91%	54%	56%	26%	77%	46%	71%	70%	75%
VOL. TRANSFER TO MAGNET IN OPPOSITE RACE NEIGHB.									
% DEFINITELY	8%	27%	12%	34%	18%	73%	12%	36%	12%
									33%

a-Question not asked.

Appendix 2  
ARMOR AND ROSSELL PARENT SURVEY RESULTS

	L.A. CA	Chicago IL	Yonkers, NY	Savannah— Chatham Co. GA. (Prior Mand.	Natchez— Adams Co. Miss.	Worcester MA
SURVEY YEAR	1977	1981	1986	1986	1988	1989
% MIN. SURVEY YR.	66%	82%	50%	59%	65%	31%
RESPONDING RACE	WH BL	WH BL	WH BL	WH BL	WH BL	WH BL
SAMPLE NUMBER	572 473	599 315	551 231	419 347	400 400	525 102
VOLUNTARY TRANSFERS FOR INTEGRATION W/ MAGNETS	a a	a a	85% 95%	86% 87%	78% 82%	70% 73%
VOLUNTARY TRANSFERS FOR INTEGRATION W/TRANSPOR	a a	a a	42% 65%	45% 60%	28% 54%	90% 94%
CHANGING ATTEND. ZONES OF ADJACENT SCHOOLS TO IMPROVE INTEGRATION	a a	a a	54% 78%	84% 78%	20% 75%	63% 51%
CONTROLLED CHOICE	a a	a a	a a	a a	a a	37% 43%
MANDATORY REASSIGN W/MAGNET OPTIONS	a a	a a	a a	a a	a a	a a
MANDATORY REASSIGNMENT FOR INTEGRATION	12% 68%	11% 46%	15% 51%	27% 59%	11% 65%	23% 43%

a--Question not asked.

Appendix 2 (cont.)  
ARMOR AND ROSSELL PARENT SURVEY RESULTS

	DeKalb GA		Topeka KS		Stockton CA (Prior Mand.)		Knox. Co. TN		
SURVEY YEAR	1990		1990		1990		1991		
% MIN. SURVEY YR.	62%		29%		78%		16%		
RESPONDING RACE	WH	BL	WH	BL	WH	BL	WH	BL	WT. AVG. (N=10 Districts)
SAMPLE NUMBER	439	501	503	396	400	150	600	600	WHITE BLACK
VOLUNTARY TRANSFERS FOR									
INTEGRATION W/ MAGNETS	88%	91%	87%	88%	91%	93%	88%	91%	85% 89%
VOLUNTARY TRANSFERS FOR									
INTEGRATION W/TRANSPOR	69%	73%	71%	76%	73%	74%	71%	83%	63% 73%
CHANGING ATTEND. ZONES									
OF ADJACENT SCHOOLS									
TO IMPROVE INTEGRATION	43%	63%	55%	70%	65%	67%	24%	42%	47% 60%
CONTROLLED CHOICE	31%	49%	31%	46%	30%	39%	37%	42%	34% 44%
MANDATORY REASSIGN									
W/MAGNET OPTIONS	15%	55%	35%	62%	19%	41%	a	a	24% 56%
MANDATORY REASSIGNMENT									
FOR INTEGRATION	6%	38%	22%	50%	a	a	8%	37%	13% 48%

a--Question not asked.